

Neutral Citation Number: [2023] ECC Chd 3

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF BULMER, ST. ANDREW: PETITION NO. 2022-080056

JUDGMENT

1. Bulmer is a small village in Essex, close to the border with Suffolk and the market town of Sudbury. It has around 500 inhabitants. Its parish church is the church of St. Andrew, a fine, Grade I listed building. St. Andrew's forms part of the Hinckford Benefice, which comprises 15 village churches.
2. The Petitioners in this matter are the Rev. Gill Morgan, the Team Rector, and Mr. Peter Fulcher, the Treasurer of St. Andrew's PCC (there are no churchwardens). By their Petition, they seek:
 - (i) The re-ordering of the nave and north aisle by the removal of the Victorian pews;
 - (ii) The replacement of the pews with chairs; and
 - (iii) The replacement of the pew heaters in the nave and north aisle with chandelier heaters.
3. The Petitioners approached a number of consultees in relation to these proposals. Replies were received, as I describe further below, from Historic England, the Victorian Society and the Society for the Protection of Ancient Buildings ("SPAB"). SPAB and the Victorian Society raised objections, but neither has elected to become a Party Opponent. I have, however, taken their objections into account in reaching my decision.
4. On 14 December 2022, the Diocesan Advisory Committee ("the DAC") issued a Notification of Advice recommending the proposals for approval by the Court. That Notification of Advice, however, wrongly stated that no amenity societies had been consulted and that no objections had been received.

St. Andrew's Church: its historical and architectural significance

5. St. Andrew's is Graded I in Historic England's List "*for architectural, heritage and landscape importance*". It sits on a high ridge above the village street. Parts may date back to the 12th century, though the majority of the building is 14th century and 15th century; there was also a significant 19th century restoration. The walls are of flint and pebble rubble with dressings of limestone and clunch. The roofs are gabled and of peg tiles. The tower was added in the fifteenth century.

6. Inside the church, there are or may be fragments of the original 12th century building, including an internal wall. The fine, and very large, chancel is largely 14th century. It has an early 16th century roof of arch braced design, with unusual carvings of angels. The chancel side windows include fragments of 14th century glass. The font, at the rear of the nave, is 15th century and features an interesting Green Man carving. The north aisle is slightly cut off from the nave, being divided from it by a three bay arcade with octagonal piers. The nave roof is Victorian.
7. I discuss the seating in the church further below.

(1) The proposed removal of the pews and replacement with chairs

The proposal

8. The church has plain Victorian pine pews in the nave and in the north aisle. There are further pews in the chancel, which is, as I have said, large. Those pews are more ornate than the pews in the nave and north aisle.
9. The Petitioners seek the removal of the pews in the nave and the north aisle of the church. They wish to replace them with “Theo” beech chairs manufactured by Trinity Church Furniture.
10. The details of this proposal have evolved over time. The documents originally supplied by the Petitioners were somewhat scanty. In particular – and, as I note below, this is a matter of which the Victorian Society complained – the Statement of Significance – which is short – makes no mention of the pews in the nave and north aisle. Given that the Petition seeks the removal of those pews, I consider that they should have been addressed in the Statement of Significance. Whilst, as appears below, there is evidence that they are of no great distinction, it is nonetheless the case that they reflect a period of the life of the church and that their removal will have an impact on the historic significance of the building. The Statement of Need, did, it is right to say, include an explanation as to why the removal of the pews was sought. But without information being given as to the value, or otherwise, of the pews, and without an assessment of their significance being offered, it was difficult for those who were being consulted to form a view as to whether they should object to the proposals or not.

The further information supplied by the Petitioners

11. However, on 24 January 2023 the Petitioners sent a message to SPAB, which was also sent to the Victorian Society. In that message, the following points were made:
 - (i) The pews consist of three blocks: two in the nave (with 9 rows on the south side and 8 on the north) and one in the north aisle (7 rows).

- (ii) They are made of pine. They all have the same end panels facing the main and north aisles. (Photographs accompanying the message show the pews to be very plain; there are no carvings of any kind.)
 - (iii) The pews were installed between 1880 and 1890, as part of the Victorian refurbishment of the church.
 - (iv) In the 1970s and/or the 1980s, the pews on the south side of the nave and in the north aisle were altered/repared because the end panels which were in contact with the walls of the church had become rotten. Those end panels were replaced with plain pine and the pews shortened so that they no longer touched the wall.
 - (v) One row of pews was added to the south side of the nave in the 1960s (which is why there is an extra row there); two rows were removed from the north aisle pursuant to an earlier Faculty which provided principally for the construction of a toilet and servery in the base of the tower.
12. The Petitioners also raised a question as to why the pews had to remain when they were a relatively modern addition and when many cathedrals do not have pews. These are, with respect, not by themselves reasons for removing the pews without a clear need to do so being demonstrated. As the Church Buildings Council's guidance on seating notes: *"Many churches have nineteenth-century pews or benches that are not of great artistic merit in themselves yet contribute greatly to the overall character of the church. This is especially true if they were installed as part of a wider restoration and reordering."*
13. However, it does appear to me, in the light of the points set out above, that the pews are not of great historical or architectural significance. A sub-committee of the DAC, which made a site visit on 11 April 2022, expressed the view that there is *"nothing particularly special about the current pews"*. I also note that there is no suggestion that the (rather more distinguished) pews in the chancel should be removed or altered. The chancel is large; the chancel pews will seat around 50 people, meaning that much worship can, and does, take place in the chancel.
14. As for the need to remove the pews, a short justification had been given in the Petitioners' Statement of Needs, but this was amplified significantly by a written statement from the Incumbent, which was also supplied to SPAB. In that statement, she explains that:
- (i) St. Andrew's is regarded as the "hub" church for the benefice of 15 churches.
 - (ii) The parish sees the ability to use the nave and north aisle space flexibly as being central to that "hub" role.

- (iii) In any event the current pews in the north aisle are unsatisfactory because the altar and chancel are not visible from them.
- (iv) The removal of the pews would afford a large, clear space for creative ministry and new ways of worshipping.
- (v) In addition, a larger space in the nave could be broken down effectively into smaller spaces for group discussions, healing groups and other activities, to which the straight lines of the pews do not lend themselves.
- (vi) There are a number of specific and identified activities which either currently do not take place in the church because the space is unsuitable, or which would be accommodated far better were the pews absent. Those she identifies include services for and visits from the local school and pre-school; Lent and Advent discipleship courses; benefice and Deanery training events; fundraising and local history events; café style worship; baby and toddler church and Messy Church.

The consultees' position

- 15. As I have noted above, the Petitioners have contacted a large number of statutory consultees. Of those consulted, three, namely Historic England, SPAB and the Victorian Society, have responded.
- 16. The position of those bodies in relation to the proposal to remove the pews and replace them with chairs is as follows.
- 17. Historic England's position is set out in a letter from Sheila Stones dated 11 November 2022, in the following terms:

"We have considered the Statements of Significance and Need, together with accompanying information regarding the type of heating proposed and details of the Theo beech chairs proposed to replace the Victorian pews.

We are satisfied that clear and convincing justification has been provided in relation to the reordering and the new heating system and that the impact of the works would not cause an unacceptable level of harm to the significance of this church."

- 18. SPAB were initially more cautious. They expressed the view that the loss of the pews would cause a measure of harm to the significance of the interior and that therefore it was necessary to demonstrate a clear public benefit that would be achieved by their removal. It was that indication which led to the sending by the Petitioners of the message dated 24 January 2023, to which I have referred above. By an e-mail from Ms Christina Emerson dated 10 February 2023, they indicated that they were pleased to see that a much more detailed assessment of the significance of the pews had been provided,

and that the Incumbent's thorough explanation of the ways in which a re-ordered nave would be used was very helpful. They concluded, "*We think that the parish has made a solid case for the reordering of the nave*", but indicated that they would "*ultimately defer to the Victorian Society as to whether this would outweigh the harm caused by the complete removal of the pews*".

19. The Victorian Society's initial view, as expressed in an e-mail from James Hughes dated 3 January 2023, was that more information needed to be provided by the parish in relation to the significance of the pews, and a clear demonstration given of the need for their removal, before the Society could comment further. Mr Hughes pointed out that a detailed assessment of the pews was required "*by the Faculty Rules*"; he also suggested that the parish augment its Statement of Need "*to give a much clearer picture specifically of how a reordered interior would be used*".
20. In response to that message, the Petitioners say that they also sent their 24 January 2023 message to the Victorian Society. It appears that this message might not originally have been received (certainly, on 9 February 2023, Mr. Hughes advised that the Society required a Statement of Significance that satisfied the Faculty Jurisdiction Rules 2015 and a more detailed Statement of Needs). However, on 10 February 2023, the Petitioners forwarded that message and its attachments to the Victorian Society again, and it appears that SPAB also forwarded it independently. Despite a chaser from the Petitioners, no further response was received. Whilst that message was not, strictly speaking, a revised Statement of Significance or Statement of Need, it did, in my view, clearly address the concerns raised by the Victorian Society.
21. It is also right to note that none of the consultees has made any adverse comment in relation to the chairs which the parish propose to replace the pews (Theo chairs by Trinity Church Furniture). That being so, I have taken the view that *if* the removal of the pews is justified, *then* the use of Theo chairs – which can be stacked away when not in use – is acceptable.

My determination

22. In determining whether the removal of the pews is indeed justified, I ask myself the "*Duffield questions*", that is to say, the guidelines set out by the Court of the Arches in Re St. Alkmund, Duffield [2013] Fam. 158, at [87].
23. I therefore ask myself: will the removal of the pews result in harm to the significance of the church as a building of special architectural or historic interest? In my view, the answer is Yes, but only limited harm. The removal of the pews will change the appearance of the nave and north aisle, but those pews are a late addition, have been significantly altered (as the Petitioners have explained) and were in the first place of no great distinction. I note that SPAB have recognised this to be the case. Further, the more elaborate pews in the chancel will remain, so it is not as though the church will be

completely “de-pewed” (to adopt an expression used by Mr Hughes of the Victorian Society in his e-mail).

24. That being so, I must weigh the justification given for removing the pews against the level of harm that will be caused by their removal. In my judgment, the Petitioners have given a clear and convincing justification for the removal of the pews, in the form of the Incumbent’s explanation. I have in mind in particular the fact that the church is treated as the “hub” church for the benefice, and the specific activities which have been identified as being ones that already take place or for which plans are in motion, and which are impeded by the existence of the pews.
25. I therefore have little hesitation in directing that a Faculty issue so as to permit the removal of the pews in the nave and north aisle, and their replacement with Theo chairs.

(2) The replacement heating system

26. The church has hitherto been heated by under-pew heaters. Obviously, if the pews are to be removed, a replacement system needs to be found. The Petitioners seek approval for the installation of chandelier heaters to replace the existing heating arrangements. Chandelier heaters had been recommended by the DAC Heating Adviser, Mr. Oliver Clarke, as a possible solution to the church’s heating needs following a site visit in April 2022.
27. The Petitioners seek approval for four 3kw chandeliers in the nave and two in the south aisle. They are to be in what is described as a “mediaeval style”, designed and manufactured by Electric Heating Solutions. Each chandelier is to have three 1.0kW infra-red radiant heaters and three up-lighters with LED candle type lamps.
28. Neither English Heritage nor the Victorian Society has raised any objection to this aspect of the proposals. But SPAB has done so. I summarise the points made, and the Petitioners’ response to them, below.

The views of SPAB, and associated exchanges

29. On 21 December 2022, Ms Emerson of SPAB asked for further details of the heating arrangements that were proposed, given that, at that time, there was more than one option being considered by the parish.
30. In response, on 16 January 2023, Ms Emerson advised that “*overhead heating chandeliers may in principle be an appropriate option for heating the church*” but required further details and drawings.
31. Further details were supplied by the Petitioners, but SPAB were unhappy with them. On 10 February 2023, Ms Emerson wrote in the following terms:

...the unsightly nature of the model selected remains a concern. As mentioned, there are now much less visually obtrusive models available which do not glow red when in operation. We provided one example... in our previous letter... Whilst we appreciate that these are more expensive than the model you favour, we do not think that cost should be the only consideration here. Those who built our churches, and have cared for them for many centuries, had a keen awareness of the fact that there is a devotional power attached to beauty... The chandeliers are likely to be in place for any decades, and we would very much hope that whatever is introduced could add to, rather than detract from, the worship experience..."

32. The "example" provided was of a Herschel "Halo" heater. Ms Emerson also asked for details of wiring and cable runs.

33. Mr Fulcher, the Petitioner who has been principally responsible for the Petition, wrote to the Registry on 13 February 2023, seeking to address those comments. He said that he had approached the parish's chosen chandelier maker, and confirmed that the church was asking for "soft glow" heaters, not ones that glow red. He further stated,

"I refer you to the original documents where one is a page showing the type of heater we proposed to use. This page also has other models and the Gaddesby heater is similar, perhaps not quite so ornate, to those suggested by the SPAB. I believe the PCC would have no objection if the Chancellor felt this was a better option..."

34. That was how matters rested when the matter came before me in March 2023.

35. On a review of the materials before me, I was concerned (amongst other things) that the SPAB's concerns had not been properly addressed, and that the Petitioners were – in effect – asking me to substitute my aesthetic judgment for that of the SPAB and to choose a chandelier design myself. I did not consider that it was appropriate for to me to make a judgment of that kind. Accordingly, on 17 April 2023 the Registrar wrote to the Petitioners, at my direction, stating that:

"The Chancellor has given initial consideration to the petition and has commented that it appears that the DAC has given its advice before the consultation process has been properly completed..."

The Chancellor has directed that before she can determine the petition she requires:

...details about the proposed chandelier heating....

...the Chancellor is unclear as to what is now proposed in this respect. It is not the Chancellor's role to choose the type of chandelier. SPAB have suggested that the PCC involves an architect, but I understand the PCC does not wish to do so. The Chancellor has asked that the PCC provides alternative proposals to SPAB and obtains their advice."

36. On 25 April 2023, Mr. Fulcher wrote to SPAB in the following terms:

“The Chancellor has asked me to provide SPAB with details of the Chandelier Heating we have decided upon for your comment. I attach photos of the chandelier we have chosen which is of a ‘medieval’ design as you seemed to favour this design for the church in your comments on the proposal.”

37. On 27 April 2023, the Petitioners provided further details of the proposed heaters, including a quotation from their supplier. The proposed heaters are of a “cartwheel” design. There are two options, “Gothic style” and “Mediaeval style”. The Petitioners indicated that they proposed to use the more expensive “Mediaeval style” since their impression was that the SPAB had preferred it. They made clear that the positioning of the heaters would mean that the view of the chancel was not interrupted.

38. On 10 May 2023, Ms Emerson asked for further technical details of the proposed chandelier model, noting that *“one of our concerns related to the previous choice of a chandelier with a heating element that glowed red. It would be helpful to hear whether that is the case for the model you have selected.”* Mr. Fulcher’s response of 10 May 2023 was that, *“This has all been covered in our previous information. We have only changed the model to a ‘Medieval’ design; we have always stated that we were having ‘soft glow’ heaters not red glowing ones”.*

39. That further material was forwarded to me on 25 May 2023. I was on the brink of determining this Petition when the Registry received a further e-mail from SPAB, on 6 June 2023. I took the view that it was appropriate for me to take this e-mail into account and that I should therefore hold off from determining the Petition until the Petitioners had had an opportunity to comment further.

40. Ms Emerson’s e-mail said:

“...we would maintain our previous advice that a less intrusive model which does not glow on heating would be preferable...”

We would add that we are somewhat sceptical about ‘soft glow’ claims, as made for the parish’s selected product. While it is true that the glow can be less than the older versions, it is still there - most pronounced when first switched on. This type of chandelier uses near-infrared technology, which will glow at various points, and more importantly has dramatic (rapid on and off) heating impacts which can be damaging to historic fabric. Far infrared products are available which do not glow and are less damaging to historic fabric....”

41. On 14 June 2023, the Petitioners provided a helpful and detailed response to these comments in the form of a letter from Mr. Fulcher and comments from Leisure Heating Ltd., the proposed chandelier supplier. Mr. Fulcher explained at length why the parish

had chosen the chandeliers that they had, rather than the “Herschel” chandeliers apparently favoured by SPAB. In summary he said that:

- (i) The Herschel chandeliers are vastly more expensive – a difference in cost as compared with the parish’s proposed model of some £36,000 – and the church cannot afford to pay the higher price.
- (ii) The Herschel chandeliers would be larger and require a greater power input. They are not suitable for the church.
- (iii) The Herschel model includes long-wave infra-red which is less efficient than the short-wave infra-red proposed.
- (iv) The proposed system would, contrary to SPAB’s concerns, have no effect on the church’s historic fabric.

42. I felt that SPAB should be given an opportunity to respond. They did so on 28 June 2023. Their position, as expressed in Ms Emerson’s e-mail of that date, was that:

- (i) They disagreed with the Petitioners’, and their suppliers’ assessment of the Herschel model and the evaluations relating to it.
- (ii) They remained concerned about possible damage from the model proposed by the Petitioners, particularly given the proposed use of near infra-red heating.
- (iii) They continued to be unhappy about the chandelier design, regarding it as “clumsy”; they “[did] not consider this to be an appropriate design for a historic church setting”. They also thought, whatever the Petitioners said, that the heating would glow red.
- (iv) They did not consider that cost should be the only consideration.

43. It seemed to me that by this stage the positions of the Petitioners and SPAB had become somewhat entrenched. In order to assist me in resolving the matter, I directed that the further advice of the DAC be sought as well as, of course, giving the Petitioners an opportunity to respond to what SPAB were saying.

44. On 31 July 2023, the following further material was put before me:

- (i) A further letter from the Petitioners, responding to SPAB’s criticisms of the system proposed. This attached a message from the proposed supplier, in which the point was made that short-wave infra-red is damaging only if not properly installed. It appeared to me from the supplier’s message that he had carefully considered

SPAB's comments and had a good understanding of how the proposed heaters would be installed, in a manner that would not result in damage to the fabric. The Petitioners, and the suppliers, also reiterated that the proposed design was smaller and more cost-effective than the alternatives available.

- (ii) A letter from the Diocesan Heating Adviser, in which he expressed the view that, *"The damage from infra-red heating is mainly to fabrics and other vulnerable surfaces. Bulmer church is of Masonry construction with no fabrics or other materials of concern that I can recall. Infra-red heating has been used in churches for at least 50 years with the high level wall mounted type that glows bright red and hotter so there must be plenty of evidence of damage, of those that I have seen damage has not been evident."*
- (iii) A message from the DAC Chair in which he stated that the design of the proposed chandeliers was, in the DAC's view, acceptable.

45. I gave SPAB the opportunity to have the last word. They did not wish to provide any further comment of substance.

My determination

46. I have come to the view that the Petitioners should be permitted to instal the chandeliers for which they seek permission. I do so on the following basis.

47. The Duffield test again applies. The question, therefore, is: will the proposed heating result in harm to the significance of the church as a building of special architectural or historic interest? In my view, the answer is Yes, but only limited harm. I say this because:

- (i) In the light of the exchanges between SPAB and the Petitioners, as well as the advice of he DAC's Heating Adviser, I am not satisfied that there is a serious risk that the proposed chandeliers will cause damage to the church building. Had that been the case, my conclusion would necessarily have been different.
- (ii) The chandeliers will, however, necessarily have some aesthetic impact on the church of a negative kind.

48. Set against that, however, is the justification for the proposed chandeliers. They will meet the parish's need, which is for warmth. They are relatively low-cost. The DAC considers, in my view with justification, that they are aesthetically acceptable. And they are energy efficient – so facilitating the church's move towards net zero. That is an important consideration.

49. I therefore direct that a Faculty issue in relation to the proposed chandeliers also. I do so on the following conditions:

- (i) All wiring is to comply with IEE regulations;
- (ii) All conduits and wiring are to be located to blend in with the background to minimize the visual impact;
- (iii) All conduits and wiring are to be fireproof and waterproof.

Philippa Hopkins K.C.
Chancellor
23 October 2023