

Neutral Citation Number: [2024] ECC SEI 1

IN THE CONSISTORY COURT OF THE DIOCESE OF ST EDMUNDSBURY AND
IPSWICH

In re Orford, St Bartholomew

JUDGMENT

1. The Diocese of St Edmundsbury and Ipswich has few contested Consistory Court hearings. This might explain why I had such distinguished parties appear in front of me in this case. The Petitioners were represented by HH John Bevan KC assisted by HH Peter Beaumont CBE KC both of whom are active parishioners. The party opponent, appearing in person, was Nicholas Bridges RIBA FRSA a distinguished architect and expert in heritage who is resident in the parish and a member of the congregation.
2. This is a petition for a confirmatory Faculty to regularize the unlawful installation of 6 combination light and heating chandeliers to replace the current lights and the current oil-fired heating system.
3. St Bartholomew's is Grade I listed and as such any petition for a Faculty must be dealt with thoughtfully and with care, taking the appropriate advice where necessary. The listing reads as follows:

Church. C14. Nave and aisles and south doorway in porch. Restoration of Tower 1830, further restoration of north aisle and nave between 1897-1900. Tower was restored in 1971. The ruined north chancel is late Norman, begun c.1166. Mixture of stone rubble and flint with copper roofs. Tower has diagonal stepped buttresses. Aisle windows are three lights with reticulated tracery. South porch has spandrels with shields: emblems of the Passion and Trinity. West Tower has original C14 doorway with two order of thin shafts and many continuous mouldings; above is a 3 light window with flowing tracery. Interior arcades have quatrefoil piers with spurs in the diagonals; arches with thin filleted rolls and big sunk quadrant; tower arch in like manner. C14 font on two stepped base. Against the stem are four lions and four wild men. The bowl is supported on angels' heads. 2 reset parclose screens on north and south of high altar. 2 paintings one of Holy Family with St. John by Bernardino-Luini c.1520; the other also of nativity by Rafailino del Colle. Many brasses dating from C15 to C17. 3 bells now at floor level C17-C18. C19 rood screen.

Chronology

4. I have taken the Chronology from the Petitioners' statements. These dates were not challenged by the party opponent.

?2019	Andrew Wileman becomes treasurer. Cost savings considered including replacing oil fired boiler
March 2020	Lockdown
Spring 2020	Revd Giles Tulk appointed Rector
1.2021	PCC discuss issues with oil fired heating
'Early' 2021	500 l of oil drained from heating tank and stolen
March 2021	Treasurer outlines costs benefits in move to electric heating
23.4.2021	DAC consider the heating issue
7.5.2021	DAC heating engineer visits Orford-recommends electric heating

November 2021	Electric Heating Solutions (EHS) suggest lighting/heating chandeliers
25.11.2021	Visit to Beccles church to view lighting/heating chandeliers
2.12.2021	EHS quote to install lighting/heating chandeliers
February 2022	'Link Magazine' (delivered to 6 local parishes and every house in Orford) outlines proposals to fit the EHS lighting/heating chandeliers
26.2.2022	'Friends of St Bartholomew's' Quiz night and supper to raise funds for the proposed heating
2.3.2022	PCC members visit King's Lynn to view chandelier heaters.
10.3.2022	PCC meeting to discuss DAC advisor's report, PCC vote to install lighting/heating chandeliers
11.3.2022	Petition submitted for Faculty to replace oil fired boiler with combination light and hearing chandeliers
3.8.2022	DAC approve design of proposed chandeliers
1.9.2022	DAC email the PCC to advise 'the Chair of the DAC has agreed that we can press ahead with your application for the chandeliers without it going to the DAC on the 16 th September'
5.10.2022	DAC email the PCC to say that Historic England had no objections to the installation
12.10.2022	Public notices are displayed.
21.11.2022	Contractors start installation
22.11.2022	Email from party opponent objecting to cabling of the installation
9.2.2023	The Diocesan Registry inform the PCC that the Church Buildings Council are to make a visit
10.3.2023	CBC visit

14.3.2023 CBC report with advice as to how the appearance may be mitigated

5. The party opponent objected out of time but, as the works had already been carried out unlawfully, I exercised my discretion and allowed his objection to proceed. Subsequently he requested that there be a full hearing rather than have the matter dealt with on the papers. Various applications were requested for my directions to be varied to allow the party opponent to submit his objections.
6. My directions (including a timetable for the submission of expert evidence) were amended by the Registrar adding several months to the delay in this case.
7. The first hearing date, the 9th March, had to be vacated due to diary clashes, and a final date of the 23rd March was listed.
8. Of note is the fact that the moment that the objections were notified the Churchwarden, Guy Marshall, wrote a letter of apology via the Registry setting out the fact that as Historic England had raised no objections and there had been no objections within the 30-day period of the notices being displayed, the PCC had assumed that the petition would be a *fait accompli*. The petitioners are to be commended for their swift apology and their attempts to mitigate their error.

The petition

9. The petition to install the chandeliers was submitted with a very scant statement of needs and no statement of significance at all. Bearing in mind this is a Grade I listed church and the parish is familiar with the Faculty system I have to say I am very surprised by this.

10. The PCC had voted on 10th March 2022 to have bespoke heating/lighting chandeliers manufactured that were intended to look like the lighting chandeliers in situ.

11. On 5th October Historic England stated:

Although the proposed will be larger and more bulky than that which exist at present, there will be no harm caused to the significance of the building through the provision of these items.

Historic England do not object to the scheme as proposed

12. In January 2023 the petitioners submitted a new statement of significance and statement of needs. Whilst brief, it is better than the scanty documents originally submitted.

13. To summarise the background to the petition, the petitioners were dissatisfied with the old oil-fired heating system. They maintain that it was expensive, inefficient and unreliable. The new system will soon be supplied by 100% sustainable sources in line with the Church of England's commitment to net zero emissions. I received written statements supporting not just those claims but also setting out that the fact that the new system with its ease of use and its efficiency have increased community use of the church and its outreach to schools and for musical events as well as in worship.

14. In a written skeleton argument submitted for the hearing the petitioners repeated their apologies, assuring me that the PCC had acted in good faith in the mistaken belief that a Faculty was in the process of being granted. They aver;

- a. They believe the chandeliers replaced were not exceptional and the benefit of the new heating system outweighs any harm caused,
- b. The heating system was chosen by the PCC and accepted by the DAC as the best practical and energy efficient solution for heating the church,
- c. The heating is easy to use and will save the church £3,000 a year in heating costs
- d. They accept that the wiring needs to be improved as recommended by the Church Buildings Council, and will do so if the petition is granted,
- e. Restoration of the lights would be an unreasonable financial burden on the church,
- f. There are practical consequences resulting from the opponent's objections which could have a serious adverse effect on the future of the building (I take this to mean the threatened resignation of the Churchwarden),
- g. The 'Duffield' principles would justify the introduction of the new chandeliers,
- h. The chandeliers are less intrusive than the modern organ installed recently and will ensure and enhance the church's continuing mission.

The objections

15. The objections in written form were extremely extensive. They comprise a lever arch file with 8 separate sections/indices including a total of 72 separate subsections. They include a 22-page written statement from the party opponent, a 6 page written statement from his wife, and an 11 page 'first skeleton argument'. I am grateful to Mr Bridges for the extraordinary amount of time and care that he has put into producing such helpful and well researched documents.

He supplemented his trial bundle with a 23-page written statement which he read out at the hearing.

16. I mean no discourtesy if I summarise Mr Bridge's objections as falling into two areas;

- a. Process
- b. Procedure

The process

17. Mr Bridges points out, quite correctly, that the petitioners not only did not comply the Faculty Jurisdiction Rules but submitted inadequate statements of need and significance in their original petition. He argues that they failed to take the advice of the amenity bodies and therefore proceeded without the benefit of assessing the heritage significance both of removing the original chandeliers and installing the new ones. Mr Bridges argues that no effort had been made to assess the feasibility or cost of repairing and maintaining the pre-existing oil fired heating system.

Procedure

18. Mr Bridges accuses the petitioners of; failing to take proper advice from the Diocesan heating advisor, making no assessment of potential condensation issues and using an electrical contractor with insufficient understanding of historic buildings such that the cabling installation has caused damage.

19. Mr Bridges submits that the chandeliers that were removed were part of Gothic revival work on the interior of at least part of the church. The Gothic revival work is *'a palimpsest of C19 change, climaxing with the 1920's rood screen. Its character is shared with fittings such as the lecterns and chandeliers, designed and manufactured by firms such as Jones and Willis, and Hardman's, whose business thrived as a result of the demand created by the Gothic revival.'*

20. Mr Bridges goes on to complain that there is a loss of historic interest in the removal of the original chandeliers which *'hang lightly in the space, the mass diminished by subtle detailing'*. They argue that the original chandeliers have the same character as the lamps in the rest of the church, in particular in the chapel. They say that harm has been caused by the new heat lamps and the cabling, in that the cabling has been fixed insecurely to stonework at low level and drilled through a wooden screen at the base of the bell tower. They say that the light provided is less bright, the heat provided is patchy and large areas of the church remain unheated. They say there is no analysis of the breathability of the church's fabric which may cause further mould to grow. Mr Bridges submits that the harm caused is *'less than substantial but at a high level'*. He rejects the idea that there is any public benefit to be had from the changes.

21. Mr Bridges expanded on his objections in his statement submitted in written and oral form during the hearing. He mentions the introduction of the extremely large modern organ in 2009 where it was acknowledged by the Deputy Chancellor that its introduction had harmed the significance of the church. As he puts it *'the principle of modernity was not a reason for causing harm, more the character of the design.'* Mr Bridges quotes from a letter from the Victorian Society describing the lights as being *'good quality, carefully designed, dignified and*

attractive pieces which undoubtedly contribute to the character and appearance of the interior and to an understanding of its development'.

22. Mr Bridges pointed out that the petitioners had not carried out a thorough Options Appraisal in relation to the heating. He criticizes the failure adequately to publicise the petition. He asserts that Historic England's decision (quoted above) should be ignored as there is no evidence of a site visit by their inspector.

23. Mr Bridges made submissions on the Duffield principles. He submitted that the design of the chandeliers cause harm to the to the significance of the church as a building of special architectural or historical interest, quoting a letter from the Victorian Society that described them as: *'charmless, crude pastiches that utterly fail to evoke the qualities of the historic chandeliers, and which coarsen and erode the character of the church'*. He described the harm as being 'Less than Substantial'. In relation to the justification for carrying out the proposals me Bridge asserts:

- a. The existing boiler could have and still can repaired at 1/20th the cost of the new heat lamps,
- b. It would last just as long before the latter's heating elements have to be replaced,
- c. Less of the church is heated by the new fittings,
- d. The heat density varies and the coverage excludes the choir who now sit at the west end to be beside the organist,
- e. With the boiler repaired the whole, not just part of the church would be warm,
- f. The limited coverage of the heat lamps will *'reduce seating in winter concert (sic), impacting their viability and reducing potential revenue for the PCC'*,

- g. With the existing boiler, concerts would be able to book the maximum seating capacity meeting of the church
 - h. The existing heating would be just as easy to operate with the maintenance carried out as it should have been
 - i. Keeping the boiler operation can buy time for a more thorough options appraisal to reach a comprehensive route to Net Zero
24. Mr Bridges boldly asserted that there were 'no benefits' flowing from the heated lamps to increase 'liturgical freedom, pastoral well-being, opportunities for mission or putting the church to viable uses' that "did not already exist with the boiler working and will if it is repaired".
25. He claimed that the last three years accounts showed a net loss from concerts. He later retracted that claim after the petitioners' case had concluded.

The hearing

26. I must express my thanks for the generous welcome I received from the parishioners. I had made it clear from the outset that this was not a state trial, but an inquiry into how the chandeliers were installed and to obtain evidence that would assist me in reaching a decision in line with the 'Duffield' questions.
27. The petitioners inquired at the outset, through me, who was to be called to give live evidence on behalf of the party opponent. Mr Bridges stated that he would be calling no live evidence.

28. The petitioners had already stated that they objected to the letter from the Victorian Society being admitted as evidence. I have, however read it. In the absence of it being in appropriate statement form and in the absence of any chance of the author being questioned, I can give it very little weight. In the same way, in the absence of the chance of questioning Mr and Mrs Bridges on the contents of their statement, I can give those statements less weight than had they given live evidence.

29. The petitioners called the Revd Giles Tulk, Rector of the parish. Exercising his prerogative as former Leading Counsel Joh Bevan lead Mr Tulk through his statement and also extracted further evidence from him that was not in his witness statement. Mr Tulk told me that the delay in the case had meant that the new chandeliers had been used for two winters already. The chandeliers were easy to operate, swift and accurate in what area of the church they heated. This added spontaneity and flexibility to the work of the church. He no longer had to ask his churchwarden to put the heating on well in advance of any visit or service. The flexibility and accuracy of heating only specific parts of the church had been invaluable in outreach to the local schools ranging in age from pre-schoolers to those in year 6. These visits, both formal and informal occur on a regular basis. The expense of the old heating system meant that funeral families had formerly been charged £80 on top of the usual funeral fees to pay for the church to be warm. This charge was no longer levied. He also spoke about the concern he had for future ministry if the churchwarden resigned. He spoke about the number of concerts that the church held and the fact that the new heating system took only minutes to heat the space rather than the time that the old system had taken. The old oil fired system was unreliable and the boiler was

in an underground storage area in the churchyard. He only felt it was safe for his churchwarden to go down there. He was briefly cross examined and explained that he had not filed a full witness statement earlier for pastoral reasons.

30. The petitioners also called the PCC treasurer, Andrew Wileman, to give evidence in relation to the assertion by Mr Bridges that concerts and other performances had operated at a loss. He gave evidence that, in fact, concerts were profitable. Mr Bridges was gracious enough to concede that point immediately.

31. Mr Bridges read out his supplementary 23 page statement the contents of which I have summarised above.

32. In final submissions the petitioners stated that there had been a breakdown in relations between them and the party opponent as they had been threatened with the prospect of fines and prosecution in some of emails and written statements. They emphasized the financial savings of the new system. They emphasised that there was no reliable proof that the lights themselves were nineteenth century and also that there was no evidence that the Victorian Society had ever visited the Church.

Discussion

33. I had the chance, along with the Registrar to inspect the church before the hearing began. The most striking feature of the church as you enter is the feeling of light and airiness. These features cannot even be dimmed by the organ which, installed where it is, has all the grace of a brutalist block of flats being built next door to the Bodleian library. I unhesitatingly accept it is a very fine musical

instrument. It has the added benefit that you do not have to look at it to enjoy its playing.

34. The chandeliers are uncompromisingly modern and are in stark contrast to the remaining original chandeliers which have a lightness and delicacy that their modern replacements do not. I have given little weight to the Victorian Society's letter, although I agree with its essence. The wiring of the new lights is, however deplorable, and appears to have been installed with no thought for the beautiful interior of the church.

35. It is abundantly clear, however, that the new lights are efficient, flexible and cheap to run. They are easy to use and can be used in targeted areas of the church. There is clear evidence that they are helping the mission of the church and also helping community and other projects.

The failure to obtain a Faculty

36. Great store is set by Mr Bridges in the unlawful process involved. He repeatedly criticized the petitioners for failing to obtain a Faculty. As I said in 'In re Bristol, St Bartholomew 2024 Bri 1:

'It is timely to be reminded of the words of Morag Ellis QC (as she then was when Commissary General of the Diocese of Canterbury) in *Eastry, St Mary the Virgin* that:

The Church of England does not have the faculty jurisdiction in order to benefit from the ecclesiastical exemption; it only has the ecclesiastical exemption because the Government's understanding is that the faculty jurisdiction does, and will continue to provide a system of control that meets the criteria set out in guidance

issued by the relevant department of state in relation to the ecclesiastical exemptions. That exemption is of importance to the Church as it permits it to retain control of any alteration that may affect its worship and liturgy.'

The Faculty jurisdiction will survive only as long as it is followed. The rules are clear and, in this Diocese, we have an expert and wise Registry that can answer any questions that may arise. It is a very great pity that the petitioners did not follow the rules. With the introduction of the organ only a few years ago the process should not have taken them by surprise.

37. In my judgment the petitioners acted unwisely but did not intend to break the rules. They 'jumped the gun' and I accept the apology that was offered immediately and repeated.

The Duffield Questions

38. The test I have to apply is this:

(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 the question (1) is 'no', the ordinary assumption 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 *Peak v Trower* (1881) 7 PD 21, 26-28, 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* [1995] Fam. 1 at 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?

39. Having visited the church and read all the very detailed evidence, in my Judgment the answer to the first question is 'yes'. The original lights, although not mentioned by Pevsner or forming part of the listing particulars were attractive and sympathetic to the interior. The replacements, in my view, are not.

40. In terms of the seriousness of harm, I do not, with respect, agree with Mr Bridges. The Church is not listed Grade I because of its lights. They lights were attractive but not so beautiful or special that they could be considered anything other than noteworthy. The harm caused by their removal is small. The visual and physical harm caused by the wiring of the new lights is serious but is easily remedial.

41. I reject Mr Bridges' submissions that the old oil fired heating system was reliable and could be maintained easily. I accept the petitioners' submissions in relation to that. I accept that the new lighting/heating chandeliers have proved efficient, economic and flexible to use. I also accept that they have allowed further outreach and public benefit and missional work (in its widest sense) to thrive. I reject the submission that the church should be ordered to use an inefficient and ecologically unsustainable boiler.

42. Accordingly this petition will pass the seal with the following conditions;

- a. The CBC's mitigating advice must be followed in terms of the wiring and damage caused to the building,
 - b. The original lights (currently in storage) are to be photographed and a full description of where each was originally hung must be made. Photographs and descriptions are to be archived.
 - c. The original chandeliers are to be sold or auctioned.
43. The petitioners have asked to make written submissions about costs in this case. They have 14 days to file those submissions. The party opponent has 14 days to reply.

10th June 2024

Justin Gau
Chancellor