

**IN THE CONSISTORY COURT OF THE DIOCESE OF YORK
PARISH OF BEVERLEY ST NICHOLAS
CHURCH OF ST NICHOLAS**

IN THE MATTER of a Petition to remove a redundant heating system, demolish a redundant boiler house, install a new wet heating system, with associated necessary works, including the removal (to storage) of twelve pews.

1. On the 13th December 2005 the Vicar and Churchwardens filed a Petition to renew the heating system in this Grade II listed church. The previous system was a hot air system and was condemned by the engineer on its annual maintenance inspection in September 2004. The PCC then sought the advice of an independent heating engineer who advised them that the most suitable form of heating would be a wet system with fan convectors. They say that part of the advice they were given was that if the heating was to deliver the maximum effect then it would be necessary to remove the pews that would otherwise be immediately in front of the new radiators.
2. The matter was considered by the DAC at their meeting on the 5th December 2005 when they decided to recommend the proposals. They added two provisos to their recommendation, namely that the twelve pews to be removed should be securely and appropriately stored and that the architect should investigate the possibility of a gas supply from the western boundary.
3. The matter would seem on the face of it to be relatively straightforward and uncontroversial. However a letter dated the 12th December, which date was before the advertisement of Public Notice had taken place, was received in the Registry from Mr D E Hood. A further letter dated the 15th December was received from Mrs Bessie Foot. Both these letters suggested that the proposal to remove the twelve pews was what I might call “the thin end of the wedge”, the wedge being the underlying plan of the vicar and others who were dominant on the PCC to remove all the pews in order to enable a whole-scale re-ordering of the church.
4. In the light of those letters Chancellor T A C Coningsby gave a number of directions on the 15th December 2005. Since then Chancellor Coningsby has retired.
5. He directed that because the proposed pew removals would have an effect on the character of the Church as a fully and contemporaneously pewed Victorian Church the views of English Heritage, the Victorian Society and the local planning authority should be obtained under Rule 13(3) of the Faculty Jurisdiction Rules 2000. He made provision for the Petitioners to respond to those views when they were known.
6. He further directed that the letters of objection should be served on the Petitioners and that they should respond in relation to the matters raised about the proposed removal of the pews, noting that the DAC’s views that the matter

of retaining a fully-pewed church (or not) should not be pre-empted by the removal of the twelve pews for a particular reason.

7. Mr Hood and Mrs Foot were written to and supplied with copies of Form 4 and informed of the options available to them under Rule 16 (3) of the Faculty Jurisdiction Rules 2000 namely that they could choose between becoming opposing parties or simply allowing their letters to be taken into account by the Chancellor when he came to a decision upon the issues. Replies were received from each of them indicating that they did not wish to become opposing parties but that they wished their representations to be considered in the making of any decision.
8. The views of English Heritage were expressed in a letter dated 3rd January 2006 and were that “English Heritage finds the proposal acceptable” No response was received from the Victorian Society, although they subsequently wrote about the proposed re-ordering to the Secretary of the DAC following a site visit and have more recently responded to a request from the Registrar for clarification of their views on the heating petition per se. The local authority in a letter dated 12th January 2006 indicated that “it may be necessary to obtain planning permission prior to the commencement of the work”, this I assume to be in connexion with the proposed demolition of the redundant boiler house. Neither of the January responses had any regard to the possible major re-ordering, simply to the proposal to replace the heating system involving the removal of some twelve pews.
9. The DAC then held a site visit in April 2006. That was attended by representatives of English Heritage and the Victorian Society as well as members of the DAC. The Council for the Care of Churches had been invited but did not attend, making their own visit on 7th July 2006. At the site visits, representatives of the parish explained their thinking about the long term future of the church and what they would like to do by way of re-ordering the church so that it would better serve the needs of worship and mission both now and in the future.
10. The parish had by this time made significant progress in its thinking about re-ordering. They had by then appointed an architect, Jonathan Hobson, and had given him their wish list, or “shopping list” as they termed it.
11. It will perhaps be helpful for me at this stage to rehearse how the thinking about re-ordering had developed. It had its roots in the parish profile prepared in relation to the appointment of a new incumbent in 1997. The PCC said then that the new vicar should “be alive to the discussion on the re-organisation of the fabric of St Nicholas Church”. Between 2002 and 2004 the church had held workshops, and engaged in other forms of corporate study about mission and their church plant. Their Mission Action Plan (presumably prepared in response to Archbishop Hope’s call for every parish in the diocese to produce such a plan as part of his “Living the Gospel” initiative) included “prepare proposals for the improvement of the building”. They invited the then Archdeacon of the East Riding to preach to them on “Building a vision, a vision for a building”. Then from February 2004 their Lent Course was based

on Richard Giles' book "Repitching the Tent". All of that activity appears to me to have been quite open in its methodology and open ended in its direction of travel.

12. I have been supplied with the minutes of the meetings of the re-ordering group and have been able to follow the history of their thinking since the 6th April 2004 when they first met. On 15th June 2004 they met with the Secretary of the DAC. They explained their shopping list and discussed it with him.
13. The stated priorities at that time were said to be firstly: flexibility in worship and space for drama, musicians etc. Secondly they needed meeting rooms and more space for their various services which then consisted of an 8am service in the chancel, two services at 10am – one in the church and one in the Community Centre and at 6 pm an evening service in the church. Thirdly they wanted toilet facilities and a refreshment area. Then they wanted to improve the entrance possibly, with glass doors and finally they were looking at the possibility of an extension wrapped round the west end.
14. On the 6th July 2004 they decided to appoint an architect for the project and settled upon Jonathan Hobson as their first choice,
15. By the time of the next meeting on the 21st October 2004 the heating system had been condemned and was discussed as a priority. They considered the advantages and disadvantages of fan systems and decided to seek advice on comparative systems. Then they met Mr Hobson and discussed the heating with him. After discussing the relative merits he suggested an independent heating engineer be approached. After further discussions they agreed in principle to recommend to the PCC that Mr Hobson should be appointed to advise about the re-ordering. The PCC agreed to that and so at the next meeting of the group they re-defined their requirements to put to the architect. The priorities were said to be
 - (1) Flexibility in Worship
 - (2) Three separate rooms each large enough to accommodate 20 children or other activities
 - (3) Adequate toilet facilities
 - (4) Brighten the interior of the church
 - (5) Improve the access and make it a more welcome and congenial area
 - (6) Light refreshment kitchen area with capacity to expand
 - (7) A worship area with the altar in the nave, level floor
 - (8) Font location to be considered
 - (9) Existing altar / chancel could form a chapel
 - (10) Organ location / use of existing space to be considered
16. This has now been expanded into a Statement of Need. I do not propose to go through this in detail as it is beyond the scope of this petition. All I propose to say is that it shows that the parish has continued to think carefully about their needs, to consider thoughtfully the things that have been said in the consultation process and to act responsibly as stewards of the building while trying to make it useful for worship and mission to which they are committed.

17. All of that provides the context for the site visit by the DAC, English Heritage and the Victorian Society in April 2006.
18. The DAC discussed the outcome of their site visit at their meeting on the 4th July 2006 and I have a copy of the minute of that meeting. The outcome was that the DAC's advice to the parish was that a lot could be done to achieve their objectives without the removal of all the pews. The essence of their suggestion was that the south side aisle could be emptied of pews, some pews could be removed from the east end of the nave. The DAC's view was that this, coupled with a chancel extension for a nave altar and the removal of some pews at the west end, would retain the essential integrity of the building and yet give sufficient flexibility for the liturgical and community developments that the parish wanted to achieve. Such a scheme was said in the DAC Minute to be one that the DAC and the English Heritage would find acceptable and which would also go a significant way towards addressing the principal concerns expressed by the Victorian Society.
19. The parish has responded to that in a submission which I have found very helpful in explaining the background to the debate that has taken place both within the church and with the bodies with whom they have been consulting. Within the church the proposal precipitated the letters from Mr Hood and Mrs Foot, also letters from V Tindale (23.12.05) and Mrs Jean Wilkinson (24.12.05) and an undated letter from an M Foster who provided no address for correspondence. I have already observed that Mr Hood and Mrs Foot did not wish to become opposing parties; I now also note that neither Mrs Wilkinson or V Tindale wished to become opposing parties and that it was not possible to respond to M Foster to ask her whether she wished to do so.
20. I shall of course have regard to the submissions made in these letters in accordance with Rule 16 (6) of the Faculty Jurisdiction Rules 2000. I will in due course deal with the specific matters that they each raise.
21. In their submissions the Petitioners set out in a General Introduction their approach. They say that "the first part of their response deals with the application for a faculty which is mainly the replacement of the heating system and contains responses to requests for information and to the objections to that application. The second part covers the issues raised by their request for advice on their preliminary proposals for large-scale phase two re-ordering and gives their response to the views of the DAC and organisations consulted by them."
22. It is clear from that and from the body of their response in the "second part" that they are not yet in a position to apply for a faculty to re-order the church, and do not regard themselves as having done so.
23. That leaves the question for me as to whether I consider that it is possible for me to deal with the heating petition before there is such a re-ordering petition. That was what concerned Chancellor Coningsby and that was what caused him to give the directions that I have referred to above.

24. The critical issue is whether a decision on the heating system involving the removal of twelve pews will pre-empt any subsequent decision on the matter of whether a fully-pewed church should be retained or not. Having considered all the material now available to me, I have concluded that such an ultimate decision will not be pre-empted if I were to decide to allow the removal of the twelve pews referred to in the heating petition.
25. The reasons for coming to that conclusion are as follows:
- (1) There is an urgency in returning this church to full and proper use – it has now been out of use for Sunday worship since September 2004 when the boiler was condemned. The present congregation is becoming accustomed to using the Community Centre and it would be unfortunate if they were to go through a third winter away from the church building.
 - (2) Although there is a range of views about how the church might be reordered the type of heater to be introduced is not really in dispute, whatever the final outcome of any re-ordering petition. The DAC have raised in discussions the question as to whether some form of under floor heating might be suitable for part of the space. The Petitioners say, and I have no reason not to accept their statement about this, that they have made enquiries of the manufacturers of underfloor heating and have been told that such heating is not suitable for this church.
 - (3) I am satisfied that this is the most appropriate type of heating for the church and that it will be most effective with the removal of the twelve pews.
 - (4) So, will the removal of these twelve pews make it inevitable that I would in any subsequent hearing about re-ordering have to conclude that the removal of all the pews must follow? Clearly the answer to that is “no”. If a number of pews are removed for necessity, ie to enable a new heating system to function efficiently, notwithstanding either that the pews individually are of intrinsic worth (whether because they are individually carved and decorated by the local craftsman J E Elwell or otherwise) or that the pews taken together are part of a fully and contemporaneously pewed Victorian church, then those arguments against the removal of pews from this church lose none of their force just because some of the pews have been removed. It could be argued that the case against further loss is strengthened by any loss now.
26. The correctness of that decision is tested by judging against it the different contentions advanced by those who have contributed to the consultation and to the directions given by Chancellor Coningsby. There is a range of such contentions about the present thinking of the PCC in relation to re-ordering. Does my question and answer satisfy equally each of those contentions?

27. The Victorian Society argued in their letter to the DAC Secretary that there should be no change. Their recent letter states that they “feel that the loss of a limited number (of pews) should only take place in the context of an overall scheme that made provision for retaining the remainder”; and that they “would reject even a small-scale removal if this were proposed as the first in a series of incremental changes resulting in the complete de-pewing of the church”. On the 26th November 1993 in an unreported but now widely quoted judgement, in the case of *Re St Helen's Bishopsgate*, Chancellor Sheila Cameron QC summarised the approach she had adopted in deciding how to resolve the conflicting arguments about how you deal with a case where the proposed scheme has been devised in order to meet a clear need but will in being put into effect, affect the character of the church as a building of special architectural and historical interest. She summarised that approach in three questions which have since become known as “the Bishopsgate Questions”. They are regularly asked and answered by Chancellors when dealing with that conflict. In coming to a decision about this petition I shall pose and answer those Bishopsgate Questions, namely:
- ‘(1) Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral well-being of St Helen's or for some other compelling reason?
 - (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
 - (3) If the answer to question (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?’
28. If I am satisfied that installation of a new heating system creates the necessity of removing a limited number of pews and if I judge that that necessity overcomes the loss to the integrity of this Victorian church as built and furnished, then that would not pre-empt any subsequent decision about a major re-ordering when the same Bishopsgate Questions would have to be asked and answered in relation to a different claimed need.
29. The DAC and English Heritage have come up with a compromise scheme whereby they would support a re-ordering that would leave a significant number of pews and retain the east-west axis of the church. The argument that to allow this heating scheme with the loss of a number of pews would pre-empt the final decision is even weaker in this case than in the case of the stance adopted by the Victorian Society and is met in precisely the same way, that is by posing and answering the Bishopsgate Questions in the future as now.
30. The Council for the Care of Churches are more accommodating to the PCC than either the Victorian Society or the DAC and English Heritage. Their view is that “The ends of the pews contain work by Elwell (or the studio of Elwell) and are of significance. The Council noted that the pew ends were separate pieces of work, distinct from the benches and that, other than the carved ends,

the benches themselves were not of particular quality. Without Elwell carving the Council did not think that the removal of seating would be controversial. The Council therefore had no objection to the removal of the pews but would expect to see the ends retained and reused appropriately within the re-ordering so that Elwell's work was still represented in the Church". They also addressed issues of orientation, but that is not for me today. However if I were to accept their views then no issue as to pre-emption arises.

31. I also need at this point to address the letters that I received from Mr Hood, Mrs Foot, Mrs Wilkinson, V Tindale and M Foster.
32. In essence Mr Hood was concerned about due process; his first letter alleged either incompetence or bad faith on the part of the Petitioners as the public notice had not clearly stated the extent of pew removal involved; he also said that to approve the proposal would be "to prejudge the greater issue of the removing all the pews in a major re-ordering, an issue which had yet to be presented debated and judged." I would add that the issue about the accuracy of the public notice has since been clarified and so far as I can see resolved.
33. Mrs Foot expressed very similar views and reasons for writing. She said that "It would appear that if this faculty were to be granted, the pews/chairs issue would be dealt with by the back door." She also expressed the view that the scheme was a waste of money and a waste of good pews.
34. Mrs Wilkinson also wrote about the process within the church, her sense that she (and others) had not been heard when they tried to voice objections to the removal of all the pews from the nave in the potential re-ordering. She makes reference at the end of her letter to the "plan for heating" and states that she (and many others) appreciate the pews particularly because of their stability for those who are themselves less stable.
35. V Tindale addresses the issue as a "non-churchgoer" who nevertheless regrets the many changes taking place in society, drawing my attention to a number of those issues (such as the abolition of the death penalty) which in her opinion have not been for the better. The fear is expressed that "the removing pews could herald a change to a building that is not what it was intended for, namely peace and quiet and a place where one can sit and meditate, a lot easier in a pew than a chair".
36. M Foster describes him/herself as a St Nicholas parishioner of many years and says that s/he is writing to voice objection to the removal of the pews in St Nicholas Church in view of the alteration of the whole building".
37. It therefore seems to me that what concerns each of these objectors is the possible longer term plan to remove all the pews as part of a re-ordering and joined to that the additional fear that if removal of some pews is permitted as part of the renewal of the heating then that will be determinative of any subsequent petition to remove all the pews.
38. For all the reasons I have set out above, that is not the case.

39. For completeness sake I note that in their current thinking about re-ordering the PCC would currently wish to remove all the pews from the nave, but would retain some in various positions in the reordered church and would also use the carved ends of others in the decoration of the church.
40. Having reviewed and considered all this material, I have come to the clear conclusion that I am able to deal with the heating petition without pre-empting the outcome of an eventual re-ordering petition, whether that is in the form currently being discussed by the leadership team at St Nicholas or whether in some other form.
41. So I turn to consider the substance of the heating petition. The proposal is to install fan convector heaters around the perimeter of the church supplied by a boiler which will be situated in the vestry. This will necessitate the relocation of the current toilet within the vestry. That is not controversial and, subject to planning permission, will enable the removal of the flat roofed concrete boiler house presently situated outside the church in the south west corner to the west of the tower. The heaters will replace the heaters that served the previous system and will be slightly larger. Currently there are seven heaters in the nave, four against the north wall and three against the south wall, all positioned beneath windows, there is also one heater against the wall on the south side of the sanctuary. The proposal is to place eleven fan convector radiators in the church and one in the vestry, with three flat radiators in the WC and lobby.
42. When the previous system was installed the four pews which were positioned in front of the heaters on the north side were shortened at their northern ends so as to provide space in front of the heaters, presumably for the better circulation of the warm air emitted by the heaters. In the south aisle of the church the pews were already short and not susceptible to further shortening and so the three pews in front of the heaters on the south wall were removed.
43. What is now proposed is that in the south aisle the heaters will be positioned differently in that they will no longer be under the windows. This will result in a further six pews being removed, leaving five, in all in that aisle. It is proposed that the spaces created in that way will be used by persons in wheelchairs and families with push chairs and prams. Presumably the reason for leaving the pews, rather than removing them all is to provide seating for the people accompanying those in chairs or prams.
44. The effect of all this will be to leave a church with a significant alteration to the pewing of the south aisle the number of pews being reduced from eleven to five. On the north side the number of pews will be reduced from fifteen full and four half pews to twelve full pews. It seems to me that it would be possible to replace the remaining half pew with a full length pew which would enhance the appearance of the front half of the church leaving thirteen full pews, eight of which would be in one block towards the east end of that aisle.

45. Clearly the overall impact of the removal of these pews will adversely affect the appearance of church as originally furnished and equally will have an adverse effect on the present appearance of the church as showing a contemporaneously pewed Victorian church.
46. The issue for me is whether notwithstanding that effect I should permit it because of the degree of necessity.
47. I am considerably influenced by the views of the Council for the Care of Churches in relation to the significance and importance of the pews in and of themselves. James Elwell was well known in the East Riding and his work on the choir screen of Beverley Minster and the reredos at St Mary's Beverley are both well known and of a different order. His work here is neither widely known nor much cited in local history when compared with the other two works. It is the ends of the pews that are said by the Council for the Care of Churches to be significant and worthy of preservation and possible re-use.
48. Furthermore I note that the Council for the Care of Churches were of the view that the removal of all the pews in a re-ordering would not be controversial. English Heritage in their letter to the Secretary of the DAC was concerned with the removal of all but about fifteen pews which would themselves be variously used in the re-ordered church. Although they note that the pews "are the work of J E Elwell of the respected Beverley craft family" they do not express views about their intrinsic quality as pews or about the proposal I am currently considering. I have already noted more than once that this present heating scheme was one which the DAC recommended. And I also note that the DAC added a proviso to its recommendation of this proposal namely that the pews to be removed should be securely and appropriately stored. That was wise advice and will enable a decision as to the ultimate use of the pews and/or their carved ends in any re-ordering to be considered further in the future.
49. Bearing all these matters in mind I have come to the clear conclusion that the proposal is one that is necessary and that although it will affect the appearance of the church and will adversely affect some historical interests, nevertheless a proper balancing of these matters, subject to conditions I shall impose, requires that in the exercise of my discretion I should grant the petition.
50. One of the matters that Chancellor Coningsby directed was that there should be an exploration of an alternative route for the supply of gas. That has been done and an alternative route has been found that is shown on the plan "drawing number 7" at the end of section 1 of the blue file. Clearly that route should be substituted for the one shown on the plans filed with the petition.
51. That gas pipe will pass through the churchyard and it will therefore be necessary for an archaeological watching brief to be kept in relation to the excavation of the trench for the pipe.
52. The usual directions will apply in relation to the appointment and work of an archaeologist, namely:

- (1) Notice to an archaeologist to be given within 7 days.
 - (2) The said archaeologist is to be notified of the date for commencement of work not less than 3 weeks before the date of commencement of any works of excavation.
 - (3) The Petitioners and their contractors are to cooperate with the archaeologist to enable him/her to do his/her work. This will include examination, recording and photographing.
 - (4) Copies of the Archaeologist's final report shall be sent by him/her within 14 days of completion of the report to the following bodies:-
 - (i) The Parochial Church Council (for keeping with the church log book)
 - (ii) The Diocesan Advisory Committee (for its records)
 - (iii) The Diocesan Registry (for placing with the faculty papers)
53. There is the possibility that human remains will be disturbed in the course of the excavation of the trench and so if there is any disturbance of human remains, the work is to cease forthwith and the advice and directions of the Archdeacon shall be obtained. The Petitioners are to be at liberty to continue work in accordance with the advice and directions of the Archdeacon. The parties are to be at liberty to apply to the Court for directions should the same be necessary.
54. I note that as yet there has been no application for planning permission to demolish the present boiler house. It will be a condition that prior to the commencement of any work to demolish the boiler house the petitioners shall either obtain any necessary planning permission from the local planning authority and file the same in the Registry or shall obtain in writing and file in the Registry confirmation from the local planning authority that such permission is not required.
55. So much for external matters, I also need to impose conditions relating to internal matters.
56. Prior to the commencement of work the petitioners shall take a full set of photographs (in colour and in black and white) of the interior of the church as it is prior to any alteration. These photographs shall be kept in the Church's log book as a record, and a copy sent to the Secretary of the DAC for its records. The name of the church and the date on which each photograph was taken must be written on the reverse side and, where appropriate a description of the picture. The photographs shall be so taken and placed before works are started.
57. The Petitioners shall consider with their architect the possibility of replacing the remaining half pew on the north side with a full length pew, and if feasible shall so do.
58. The pews that are removed shall be securely and appropriately stored in the church and if this is not possible in some other place to be approved by me, the place of storage being noted in the log book and inventory.

59. I will allow 6 months for completing the work.
60. Clearly this petition has involved the Registry in considerable expense and I can see no reason why the usual order should not prevail namely that the Petitioners should pay those costs. If they wish to make representations as to that issue then they should do so in writing within 21 days. In due course a description of the work done by the Court and in the Registry will be prepared by the Registrar and submitted to the Chancellor for approval. There will be liberty to the Petitioners to apply in relation to quantum.

Peter Collier QC
Chancellor

17th October 2006