

In the matter of All Hallows, Bardsey

## Judgment

1. By an undated on-line petition submitted on 11 April 2019, a faculty is sought for:

1. fitting of hand rails various locations in the church;
2. removal of pew frontals in north and south aisles, one to be re-used in the northwest corner and the remainder to be disposed of);
3. removal and disposal of two pews in northwest corner and the turning of a third pew;
4. fitting of pendant lights in northwest and southwest corners.

It is the removal of the pew frontals which has proved controversial, and to which this judgment is principally addressed. There are no parties opponent. On 12 July 2019 the petitioners consented in writing to the disposal of the matter on written representations. There are, however, a number of observations by interested persons which have been made in the course of consultation to which the Court must have regard when considering whether the burden of proof has been discharged in respect of proposed changes to a listed church.

### **Background**

2. All Hallows Church is a grade I listed building, Anglo-Saxon in origin. It sits on a large site in the centre of Bardsey village. Its listing statement reads as follows:

Anglo-Saxon tower between 850-950 raised later C10, parapet early C20, north aisle Norman, c1100-1125; south aisle Transitional, c1175-1200; aisles widened C14 with Perpendicular windows inserted C15; chancel early C14; much restored north chapel c1520, now the vicar's vestry; south chapel built as the Bayley family pew c1724 now choir vestry; roof raised C19; restored 1909 by Charles R. Chorley and Son (Leeds) (Linstrum, p374). Red sandstone coursed rubble to tower and aisles; hammer-dressed gritstone to clerestorey, chancel and south transept; ashlar porch and dressings to restored windows; stone slate roofs. West tower, aisled nave with clerestorey, south porch, north and south chapels, chancel. Slender tower embraced by aisles gives the west front an unusual appearance as if the tower were rising out of a gable. Long and short work on this face: 8 courses of large dressed quoins; masonry disturbed from insertion of 2-light Perpendicular window matching flanking windows set in west end of aisles with C12 lancets set between tower; earlier roof line of aisles clearly discernible as is steeply-pitched gable on tower, thought to indicate the presence of an original pre-Conquest porch (Pevsner, p90). West and north faces of tower have a small light under lancet and inserted 2-light Perpendicular belfry windows with clock-face to north; south face has two C12 two-light baluster belfry windows; east face has traces of herringbone masonry; embattled parapet with corbel table (restored). Nave: 3 bays. Gabled porch set in 1st bay protects repositioned fine-carved Norman south doorway: 3 orders, outer with beakhead ornament, chevron, plain inner, carried on 2 engaged columns with decorated capitals and moulded impost. Aisles, with offset buttresses, and clerestorey have 2-light windows; north doorway has pointed arch. North chapel: single bay, extension of aisle with buttress between. South chapel, at right angles has coped gable flush with aisle, offset buttress, set in apex is stone carved with 5 blind trefoils, gable stack. Its right return has 2-light window (restored). Lower single-bay chancel: has angle buttresses and 3-light east window

with round-headed lights, Y-tracery filled with mouchettes; on south, priest's door to left of original C14 two-light window with cusped lights in deeply-chamfered surround. Interior: base of tower has round-arched doorway with stilted-arched window above in north and south faces. Original 4 angles of the pre-Conquest nave still remain: projecting corners with large dressed quoins to west and ½ columns on tall square bases with different capitals. Western tower-arch altered, (enlarged) in line with chancel arch, has 3 discernible roof lines: a flat roof, 2 steeply-pitched roof lines before present slightly flatter-pitched roof. North arcade has short cylindrical columns with scalloped capitals and round-arched arcade. South arcade taller with bell-shaped capitals with curled-leaf corners and pointed arches with hoodmoulds. Chancel: north Tudor-arch blocked by organ inserted c1867 (replaced 1934) with small cusped light to left; south wall has two C14 pointed-arched windows with a lower cusped light. Sanctuary: 3-niche sedilia with ogee lintels of C19 character, C15 piscina has trefoil-cusped arch. Memorials: chancel: carved stone tablet to Charles Lister c1684 decorated with winged-head angel spandrels; memorial to Richard Capstick, flat obelisk marble tablet by J. Parker c1685; good wall tablet to Elizabeth Thorpe wife of Baron Thorpe c1666, strapwork cartouche with broken pediment with heraldic lozenge; 2 funeral tablets to the Lane-Fox family of Bramham (q.v.). Base of tower has 2 upright medieval grave slabs, one decorated with a cross. Royal Coat of Arms c1819 and Benefactions board in south chapel. C19 king-post roof of heavy scantling.

The church is of considerable importance. The tower is probably the oldest Saxon work in Yorkshire and the only example in the county of the former evidence of a west porch, the tower being erected over it as at Monkwearmouth and Corbridge. It is prominent within the village and has a remarkable visual appearance, the tower curiously thin in proportion to the rest of the church. Illustrated in: R. A. Carter, *Yorkshire Churches*, (1976) p6. D. Linstrum, *West Yorkshire Architects and Architecture*, (1978) p158. E. Pontefract and M. Hartley, *The Charm of Yorkshire Churches*, (no date) p15. N. Pevsner, *Yorkshire West Riding*, (1974) pp 89, 90.

### **The petitioners' case**

3. The petitioners declined the Court's invitation to respond to the written observations of those not wholly supportive of the proposal. This has delayed the disposal of the petition as I sought to navigate and cross-reference the documentation created over a lengthy process of consultation.
4. The petitioners' case is to be found dispersed in the Statement of Needs, the Statement of Significance, a short statement from Mrs J Smith dealing particularly with the need for handrails to assist the elderly or infirm, and a further short statement from the Reverend Angela Hannafin [or 'Lewis' on the petition] (parish priest and first petitioner) focusing on the various uses of the church which are ruled out by the regimented and immovable arrangement pews, and the difficulties posed for wheelchair users. The photographs and plans are sufficiently illustrative of the interior to render a site visit unnecessary. There is an additional document responding to a DAC comment, whose provenance is unclear, but its component parts have been helpfully reproduced with the petitioners' responses conflated. Finally there is a letter dated 12 July 2019 from Mrs Elizabeth Otty, the third petitioner, following (though not fully answering) the Court's invitation for further representations.
5. The Statement of Needs includes the following (emphasis added):

To improve access to certain areas of the church for all and especially for those with disabilities.

To make areas within the church suitable for wheelchair users to move easily within: to make areas suitable for the parking of wheelchairs and pushchairs; to extend the areas where special events can be held, e.g. children's events, music groups, serving of food, group meetings

To improve the lighting in the north and southwest corner of the church.

6. The justification is expressed as follows (emphasis in original):

The church has minimal circulation space where events can be held. Perhaps only a visit to the church would really allow the reader to appreciate the limitations that the layout of pews presents. At a recent wedding the bride's mother had dementia and was in a wheel chair. The current layout of the church meant that her chair had to be placed between the pulpit and the pew frontal. No space at either side meant that her carer had to sit behind her causing her much distress which was expressed verbally during the service.

[...] the aisles are narrow. The southwest corner, which at the time it was created, to form a children's area, was then filled with a large solid table, which takes over a significant section of this area, so reducing available space. Children use this area during services.

The northwest corner was reworked some years ago to create a servery, though sadly the pews in this area were not removed at the time so in practice food is only prepared and not served from this area. After preparation food and drinks have to be carried through the tower, past the toilet and into the southwest circulation area. Refreshments are served after all services in the southwest corner, meaning that any children's activities taking place there have to be quickly curtailed.

The southwest corner is used during our very popular children's Saturday Church events, which are held every six weeks. Usually around 20 to 40 children attend, plus parents. This space in this area is far from adequate so activities have to extend into the choir vestry, the chancel and sometimes the sanctuary – which is not always a satisfactory option, especially for the supervision of these activities.

*The removal of pew frontals and the pews in the northwest corner would increase accessible space for church events and extend opportunities for mission.*

Increasing number of wheelchair users now join us for special services, especially weddings and funerals and it is very embarrassing having to place them and their carers at the rear of the church where little involvement in the service can be made. Removal of the pew frontals will increase space at the front of the church.

Removal of the front row of pews was considered with the re placing of the pew frontal one row back. This was rejected due to:

- a) The loss of around 24 places for seating. The church, though registered in some publications as having seating for 200 (see *Ripon and Leeds Directory 2009*) can only actually seat 165. Losing 24 out of 165 is something we would not be able to accept, and
- b) The frontals, though arguably of aesthetic beauty, have little other use, wobble badly and just take up valuable space, restricting circulation and usage of the front of the church.

The shortening of two central pews was also considered for wheelchairs but rejected as it would 'corral' the wheelchair user and carer in one place. We wish to welcome those with disabilities into our church and give them space to move, not to tie them into a 'special place' for those of 'difference'.

We wish to extend our events, especially those for children - we currently find that space for crafts, activities, serving of refreshments and talking to people in small groups is severely limited. Removal of the pew frontals would help here - tables could then be placed in front of the first row pews to create a sitting area with tables and chairs in front for when activities were taking place. See attached Nave seating plan 2 for how we would achieve this.

Removal of two pews in the northwest corner and the turning of the third would create another area for activities, especially for the serving of refreshments.

Activities that take place at the rear of the church are done in semi-dark as the lighting is poor in both the north and south west corners. Lighting needs to be upgraded.

We do not believe that these proposals will harm the significance of the church, though there may be some local concern regarding the changes to the pew arrangements. This would be outweighed in terms of greater usage of the building by older and disabled people and children and their parents would therefore contribute to pastoral wellbeing and increase our role of worship and mission.

7. 7. Reverend Angela Hannafin's addendum to the Statement of Needs reads:

The Archbishop of Canterbury, the Most Reverend Justin Welby, was quoted in the Church Times (18<sup>th</sup> July, 2018) that "accessibility should trump heritage". Whilst much of our daily work is devoted to the maintenance of our building, the Archbishop's comments reflect the need to take a progressive view of church growth. Put bluntly, in order to grow as a church, our physical space must be duly adjusted. It is my strong belief that these pew frontals must be removed.

8. The 'response to DAC comment' includes the following:

- *'The pew frontals are of fine quality and are integral to the furnishings'*

We would entirely agree that the woodwork is very fine and we are exceedingly appreciative and cognisant of its value and beauty and as such we intend to refit part of the removed frontal in the North West corner of the church as part of the proposed scheme. We would also point out that we will still have a church full of very fine woodwork and we have no intention of asking for the removal any more.

- *That their removal may be disproportionate to the occasional need to accommodate wheelchair users in the particular space.*

We would challenge the word 'occasional' and ask how often 'occasional need' is? We regularly have wheelchair users at all our occasional offices, which during 2018 for All Hallows amounted to twelve weddings, thirteen funerals, and fifteen baptisms. Furthermore we have one wheelchair user who attends most on most Sundays. Therefore we would contend that wheelchairs are regularly seen in All Hallows rather than occasionally. We must show wheelchair users that we welcome them.

- *That it may discourage people from sitting on the front pews'.*

It is very rare for anyone who attends a church service or any type of meeting where there are pews or seats to sit on the front row whilst there are other seats available. Front rows are only filled when the rest of the seating is taken and we can assure you that this will be the case at All Hallows, regardless of if the pew has a frontal or not. Therefore, in our opinion, this argument does not hold weight.

- *And finally*

I fear that the DAC has taken our requirement for increased space at the front of the church entirely for wheelchair users only and ignored our needs to use this space for other activities. In our original statement of needs, written in November, we mentioned that the space could be used for our children's Saturday church events. Since then, Christmas events have shown how increasingly we need space for drama and music. So to conclude our need is not just show our care and concern for wheelchair users but to create a new space and develop its possibilities, in line with our church's mission to grow and develop the congregation.

Furthermore we would also point out again that the need to retain items of historical interest and beauty should not necessarily been viewed as more important than the need to create space to develop and grow our church and its mission to our community.

9. The penultimate paragraph of Mrs Otty's letter of 12 July 2019 reads:

The petitioners accept that the proposal to remove the pew frontals could be seen by some to cause harm to the significance of All Hallows as a building of architectural and historic interest, but believe that the widening of areas of access and the extension of areas for mission and worship and liturgical freedom would far outweigh any perceived harm.

### **Other relevant opinion**

10. The position of the amenity societies and other consultee bodies can fairly be summarized as follows:

11. The Victorian Society states in a letter of 31 October 2018:

The historic benches in All Hallows are unusual and aesthetically striking. The same could be said of the building as a whole: it is a remarkable thing. According to the Statement of Significance the benches were designed by the noted local practise *Chorley & Connon*. They are certainly a very good set, and to reduce them at all would be regrettable. Nonetheless, we would raise no objection to the modest adaptations now proposed, with the exception of the loss of the two frontals, which play a quite significant role in defining the block of nave pews and the space in the main body of the church. These should, in our view, be retained.

We have no comments to make on the other aspects of the proposals.

12. In a letter to the Court dated 7 June 2019, confirming it does not wish to become a party to the proceedings, the Society reinforces its position with the statement.

We maintain that none of the decorative frontals should be disposed of.

13. Historic England's views are to be found in a letter of 25 February 2019 sent to the petitioners, which it does not wish to describe as "a letter of objection". See its subsequent letter to the Court dated 28 May 2019. The salient part of the substantive letter reads as follows (with emphasis added):

Historic England recognises the importance of keeping historic places of worship in active use so that they can continue to be valued by this and future generations. We therefore have no objection to the majority of the works proposed, including the introduction of wrought iron handrails in five internal locations, additional light pendants to the rear of the church and also the removal of three pews from the north-west corner to create a café area. This is the logical place in the interior to create this type of flexible space, close the existing kitchenette area and discretely away from the main worship areas.

We do however have concerns about the impact upon the significance of the Grade I listed building that would be caused by the removal of the nave pew frontals. The frontals form an integral part of an extensive re-ordering scheme and decorative internal treatment in 1909 by Connon and Chorley, Architects of Leeds and made by J Tomlinson of Leeds. They contribute to the distinctive character of the interior and share decorative detailing with other furnishings, for example seating in the Chancel and the hymn board on the south eastern window reveal. Care and attention has been paid to using these details as a feature for the kitchen counter top edges and the panelling against the north side of the tower wall. They are also fine quality pieces of woodwork in their own right.

Pew frontals make an important contribution to framing and defining the block of seating. The removal of the pew frontals would dilute the strong formal design qualities of both blocks. The coffered panelling on the frontals is the same as the panelling on the back of the rear pews. As such they form a composition. They also retain their prayer book / kneeler shelf and hat hooks underneath.

We understand the desire to create space for wheelchairs / pushchairs as well as a meeting space. In terms of wheelchair / pushchair use, we question whether consideration has been given to adapting any of the four seats 324C. The sides could be hinged to open and the seats

hinged to lift up. This would create flexible seating spaces in the heart of the congregation for regular use, rather than forcing wheelchair users to site at the front. It is noted in the 'Additional document responding to the DAC comments' that it is rare for people to site at the front when there are other seats available. This would be improving and enhancing accessibility whilst at the same time maintaining the heritage value of the church and its important historic features that make it special.

With regards to the creation of flexible space, has consideration been given to making the frontals moveable by adding sliding runners in the floor? This would maximise the number of ways of using the space. The seating capacity, character and fabric of the frontals could be maintained whilst when meetings are happening, the frontals could be slid back to create an open space. You might find it useful to refer to some case studies where this solution has been achieved successfully in other churches across the country. These are listed in 'Pews Benches and Chairs' by Trevor Cooper (July 2011). The DAC should have a copy available for you to consult. If not, please let me know and I can send you further details. Please also do feel free to share these comments with the DAC.

14. The Church Buildings Council, in an email from Dr David Knight dated 30 May 2019, responded to the Court's request for its opinion in the following terms:

After carefully considering the proposals this is a case where the Council is content to defer to the advice of the DAC.

This is because it considers that the parish has a strong need for a place for accessible seating in the building and that the overall impact will not cause significant harm to the character of the listed building.

15. The Diocesan Advisory Committee recommended the proposal in its Notification of Advice dated 5 February 2019, and expressed its collective opinion that the work proposed is likely to affect the character of the church as a building of special architectural or historic interest.

### **The law**

16. The Chancellor's General Directions for the Diocese of Leeds (Issue 2) summarises the legal test which petitioners are required to satisfy when pursuing a petition such as this:

5.3 The burden of proof lies on the proponents of change and must be discharged on the balance of probabilities. However, where changes to a listed church are proposed, a more rigorous approach is adopted. Consistory Courts now follow the framework and guidelines commended by the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158, by asking itself a series of questions:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is no, the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. 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 will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed.

17. Whilst the petitioners choose not to take advantage of the opportunity which the Court afforded them to make systematic representations based on the *Duffield* approach, a thorough reading of the papers is just sufficient to enable the factors identified in the guidelines to be addressed and resolved. For ease of reference I have extracted what I consider to be the relevant material and recorded it *in extenso* in this judgment.
18. Before proceeding to address the *Duffield* questions, this is a timely opportunity to remind the present, and future, petitioners that the purpose of the Consistory Court is not to rubber stamp a Notice of Advice from the DAC, which is advisory only. Further, litigation of the Consistory Court is not adversarial in the conventional sense. It follows that the absence of a party opponent does not lead inevitably to the petition being granted. The Court must still examine with care whether a faculty should be granted. In the absence of robust consideration and review by the court, the ecclesiastical exemption would become nugatory.

#### **Discussion and disposal**

19. For the purposes of determining this petition, I adopt the *Duffield* approach.
20. As to question (1), Dr Knight of the Church Buildings Council, who has considerable experience of the care, preservation and conservation of heritage sacred buildings states expressly that “the overall impact will not cause significant harm to the character of the listed building”. There is an apparent dissonance between this view and that of the DAC which certified that “the work proposed is likely to affect the character of the church as a building of special architectural or historic interest”. But in truth (as the highlighted words make clear) the causing of significant harm is necessarily a negative feature where something that affects the character of a building may be advantageous or disadvantageous.
21. Historic England speaks of the dilution of the strong formal design qualities of both blocks of nave pews, suggestive that there might be some degree of harm but on my reading (supported by the disavowal of the term ‘letter of objection’) I infer from the tone and content of its representations that it does not consider that the threshold of “harm to the significance of the church as a building of special architectural or historic interest” has been satisfied.
22. That then leaves the views of the Victorian Society, which regards the reduction of ensemble of pew benches to be “regrettable” but offers no objection in respect of the particular adaptations proposed describing them as “modest”. But the Society argues for the pew frontals to be retained since they “play quite a significant role in defining the block of nave pews and the space in the main body of the church”.

23. Whether harm to the significance of the church as a building of special architectural or historic interest is made out, must be a matter for the Court to decide on a case to case basis. A chancellor cannot abrogate his assessment to one or more experts although he will be guided by expert opinion in evaluating the likely effect of the proposal in question. Harm is a matter of fact and degrees, as also is the qualifier, “as a building of special architectural or historic interest”.
24. Considering the totality of the evidence in this case, I find myself in agreement with the view expressed by Dr Knight. Further, I am narrowly persuaded that there would not be harm to the significance of the church as a building of special architectural or historic interest. That finding would lead to the presumption against change being more readily rebutted and, in the circumstances of this case, particularly having regard to the advice of the DAC, I would be content for a faculty to pass the seal, subject only to one caveat to which I will return.
25. The foregoing is sufficient to be dispositive of this petition, however in deference to the matters properly raised by the Victorian Society during the consultation stage, it is appropriate that I consider the remainder of the *Duffield* questions on the hypothesis that my assessment of likely harm is erroneous.
26. Considering question (3), were I to be satisfied that relevant harm would be likely, I would assess it as being minor in respect of the church building overall. With regard to question (4), I consider that the argumentation of the petitioners, albeit dispersed amongst the documents and expressed in generalities, is probative of a clear and convincing case for the proposals. In the circumstances, I would resolve the balance of discretion at (5) in favour of granting the petition, for the reasons of mission and liturgical freedom advanced by the petitioners. I would give particular weight to the issue of accessibility and accommodating the elderly, infirm and disabled, particularly wheelchair users.
27. Whilst the citation, without context, of a newspaper article (even one as reputable as the *Church Times*) in which a soundbite from the Archbishop of Canterbury is quoted, again without context, is an unconventional method of making representation to the Consistory Court, the petitioners can take comfort that reported archiepiscopal sentiment is consonant with the *Duffield* approach and the working of the faculty jurisdiction more generally. But each individual disposal is, of course, fact-specific.
28. This brings me, finally, to the caveat heralded at paragraph 24. One feature not mentioned in the documentation is reversibility, namely the practice whereby otherwise harmful proposals can be permitted on the basis that the change can be reversed (in whole or in part) in the event that a future generation takes a view different from the current one. The language of the Victorian Society is, in my view, significant. It argues that the frontals should be “retained” and, elsewhere that “none of the decorative frontals should be disposed of”. I consider that there are powerful arguments for the retention in storage of some or all of the pew frontals. I note that the intention that some of the frontals be re-used elsewhere in the



building, a proposal which finds favour with the DAC. I require that this element of the proposal be subject to further consideration.

29. Accordingly it will be a condition of the faculty that the works are not to commence until the Court has given directions as to the retention in storage of such of the pew frontals as are not legitimately required for re-use elsewhere in the church. I would invite the parish to consult with the inspecting architect, the DAC secretary and the archdeacon in maximising the retention of the frontals, and in finding an acceptable location (on or off site) for their long-term storage.

30. The costs of the petition are to be borne by the petitioners. It will be a further condition of the petition that the works are not to commence until those costs have been paid in full.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Leeds

5 August 2019