

# RE-ORDERING HISTORIC CHURCHES

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## 1. INTRODUCTION

Being given a title is like being given a very broad question in an examination paper. At first sight it seems obvious what should be put forward by way of answer and on closer inspection one becomes less sure! So I tender my thoughts for inspection, conscious that some will feel there are gaps and perhaps others who will think I am stating too much of the obvious.

I start with a reminder of how the Church of England perceives the role of church buildings at the present day.

‘Church buildings are first and foremost places with a religious purpose. They are signposts to belief, symbolising the presence of God; buildings with a spiritual witness reflecting the faith of many centuries. They are not inward-looking—they do not “belong” exclusively to those who regularly worship in them. Church buildings work properly by reaching out. They welcome those who come as visitors, or those who turn to the Church only at times of national crisis or family rejoicing or mourning. They are community buildings owned and managed locally and increasingly used for wider community purposes.’<sup>2</sup>

In terms of the control over alterations to church buildings which is the function of the faculty jurisdiction there are, I suggest, three themes or principles to be extracted from that statement:

- first, the primary use of a church is as a place of worship—and this influences the kind of changes which may be regarded as appropriate and acceptable;
- secondly, successive generations have an interest in the church building which they inherit from the past, hold as trustees for the present and pass on to the future so that the building is not the exclusive property of the congregation who worship there at any particular point in time;
- thirdly, the church as a community building is a feature in town or countryside and there is a wider interest in how the building is cared for and what changes are to be made to it externally or internally so that those ‘wider interest’ views have to be taken into account.

So what are the practical implications of these themes or principles? How have they worked out in practice and what can be done to help church buildings to perform a dual role as ‘signposts to belief’ and ‘community buildings’ in the twenty-first century?

## 2. WHAT IS A HISTORIC CHURCH?

There is a tendency to equate ‘historic churches’ with listed churches. The general statistics of about 16,000 church buildings in use in the Church of England and

<sup>1</sup> This was the first of the renewed London Lectures given on 23rd February 2000.

<sup>2</sup> *Developing the Partnership between Church and State over the Ecclesiastical Heritage. A Submission by the Church of England to Her Majesty’s Government.*

nearly 13,000 on the list maintained by the Secretary of State under the Planning (Listed Buildings and Conservation Areas) Act 1990 give one picture. Another picture is that of the 3,000 or so unlisted churches, which also have a history in the eyes of their congregations and local communities. History after all is a record of past events. Some buildings have a much longer record than others. Some have greater architectural design, decoration and craftsmanship or have some special historic interest socially or in connection with nationally important people or events. These criteria applied to listing can lead to additions from time to time to the Secretary of State's list. After all, in the twenty-first century our grandchildren are going to regard the twentieth century as history!

From the point of view of the faculty jurisdiction which controls alterations to churches, whether listed or not, the 'listing' identifies those buildings which are recognised both in secular planning law and in ecclesiastical law as having special features, and there are now settled principles to be applied to proposals to change such buildings. However, it must not be forgotten that the attachment of regular worshippers and even occasional visitors to their church, as they have known it all their lives, can be just as strong in respect of an unlisted church as a listed church.

I had personal experience of this in 1998 when I held a five day consistory court in the Diocese of London in relation to a petition for a faculty to carry out an extensive programme of re-ordering of the interior of Emmanuel Church, Northwood. There were sixteen objectors as formal parties opponent.

This is an unlisted church built in 1903. As I recorded in my judgment,

'A century in the history of Emmanuel Church was celebrated in 1996. The village of Northwood was expanding rapidly at the end of the last century and a new Mission Room was opened in 1896. It was a building of wood covered with corrugated iron sheeting. As the most interesting historical booklet, produced in 1996, explains "The Iron Church was inevitably dubbed 'The Tin Church'!" It was enlarged in 1901 but this was simply a stop-gap, as the continuing rapid expansion of Northwood was the catalyst for considerable enthusiasm for a new brick church to be built next to the Iron Church. The decision was made to call the enlarged Iron Church 'Emmanuel Church' ('God with us') and the name naturally passed to the new brick church constructed in 1903.<sup>3</sup>

I can assure you that feelings ran just as high in relation to the proposal to re-order this unlisted church as they did in relation to the Grade 1 listed church of St Mary the Virgin, Langham (parts dating from the twelfth to fourteenth centuries) where some thirty-seven formal objections resulted in my holding a consistory court in the Diocese of Chelmsford.<sup>4</sup>

So I simply urge caution in relation to the interpretation of 'historic' in dealing with churches within the faculty jurisdiction. Listed building consent is only required in the secular law for schemes of alteration to listed buildings. Unlisted buildings, whatever their 'history', do not require such consent. But the 'history' and all other circumstances relating to a particular church have to be considered by the chancellor in the consistory court in deciding whether or not to grant a faculty for the proposed 're-ordering'. The listing may or may not give rise to additional issues. For example, at St Mary the Virgin, Langham, English Heritage had given approval to the re-

<sup>3</sup> *Re Emmanuel, Northwood* (15th June 1998) 5 Ecc LJ 213, Cons Ct.

<sup>4</sup> *Re St Mary the Virgin, Langham* (19th July 1996) (unreported), Cons Ct.

ordering scheme (construction of a ringing floor and organ gallery, removal of various pews, etc) and the local planning authority, Colchester Borough Council, had no adverse observations but asked me to 'give very careful consideration to the many concerns expressed by parishioners and other local people' which, of course, I did.

### 3. THE PRINCIPLE OF RE-ORDERING

Re-ordering the interior of a church to serve mission and community is not a novelty which arose in the twentieth century. As the former distinguished Chancellor of the Diocese of Southwark, the Revd Garth Moore, pointed out in 1977 in considering an enlargement of a church:

'Views on such matters vary from age to age, and what is today considered decorous in a church is more in accord with the views of our medieval ancestors than with those of our Victorian forebears.'<sup>5</sup>

Examination of the church handbook of a medieval church will undoubtedly reveal a series of changes which have taken place both in relation to the total envelope of the building and as to how the interior has been used and adapted from time to time. It is apparent from a number of cases in the nineteenth century that change was not always accepted without argument. The much cited passage from the judgement of Lord Penzance in 1892 is confirmation of this. The relevant sentence reads:

'The appellants have put forward their attachment to the old church and its interesting connection with times gone by; but they seem to forget that the sacred edifice has a future as well as a past.'<sup>6</sup>

So there is nothing really new about the desire of those responsible for leadership in liturgy and mission to wish to introduce change, and nothing new about the role of the chancellor in weighing up arguments and exercising a discretion in favour of or against the grant of a faculty. Lord Penzance again:

'I am far from saying that the wishes of the parishioners have no place in that balance of opposing considerations which is involved in the exercise of a judicial discretion—but the weight to be given to them depends upon many and various circumstances.'

What has been superimposed upon the parishioners' 'attachment to the old church and its interesting connection with times gone by' is the conservation interest flowing from the secular planning legislation and the listing process. 'Conservation' has undoubtedly been treated at many levels within the Church as a pseudonym for being 'against change'. Despite the efforts of archdeacons and registrars (to say nothing of chancellors) it has been abundantly apparent to me from the often irate letters which accompany a petition for a faculty that the conservation bodies (including the Diocesan Advisory Committee) have been, and in some quarters probably still are, regarded as fettering a 'right' of the parish to change the parish church in order to advance mission.

There is, of course, no question of a right to make changes. But it is easy to understand that a minister and parochial church council who have devised a plan for their

<sup>5</sup> *Re St Ann's, Kew* [1997] Fam 12 at 17, [1976] 1 All ER 461 at 465, Cofts Ct.

<sup>6</sup> *Nickalls v Briscoe* [1892] P 269 at 283, Ct of Arches.

church can find it daunting and exhausting to have to deal possibly with opposition from within part of the congregation and in addition critical comment from the Diocesan Advisory Committee and also from English Heritage and one or more of the national amenity societies. Yet this is the consequence of being guardians of so many buildings, which are regarded as a priceless part of the nation's heritage, and which are increasingly in receipt of public money to keep them in repair and in use. Some 4,000 parish churches are listed Grade 1, representing thirty-five per cent of all (both secular and ecclesiastical) buildings of this grade. It is not surprising that 'conservation' issues do loom large.

However, neither secular nor ecclesiastical law decrees that no change is permissible when a listed building is involved. Listed building consent is the procedure whereby consent is given for works which will affect the character of the secular listed building, and one of the criteria in relation to the giving of consent is the objective of keeping the building in use for the purpose for which it was originally designed.<sup>7</sup>

The parallel approach in the exercise of the faculty jurisdiction is to be found in *Re St Luke the Evangelist, Maidstone*, where the Dean of Arches said:

'Respect for the past and for the fabric of the building has an important part to play when a decision is to be made about proposed changes to any listed building, secular or ecclesiastical, but preservation does not preclude all alteration; otherwise no listed building consent would ever be given. Whilst taking full account of the characteristics of the building which have justified the listing, it is always necessary to bear in mind that the primary purpose of a church is for the worship of Almighty God and the making of changes to meet the justifiable requirements of the present generation of worshippers can sometimes be the best way of securing the continuing use of the building for that purpose.'<sup>8</sup>

As a court we continued on the same theme in this case in deciding that a faculty should be granted for removal of the pews by saying:

'There is a possibility that if this congregation and this church is not able to develop its worship and mission, and continues to be inhibited by the seating arrangement, it will seek to move elsewhere. An abandoned church is of little use to the church or to conservationists.'<sup>9</sup>

That is, of course, an extreme scenario and certainly not intended to be an encouragement to parishes to adopt a threatening approach. I have to say, however, that as I sat in the bomb-blasted church of St. Helen's, Bishopgate in 1993 listening to arguments which would have prevented the building from being re-ordered in a way which would advance the ministry and mission of the church, it crossed my mind that the congregation might pursue the route of redundancy and move elsewhere. The Corporation of London were insistent that they did not want to see St Helen's declared redundant. Fortunately that spectre disappeared. I was able to say at the end of my judgment:

'The carrying out of the works under this faculty will be the beginning of a new chapter in the life of this church. It is a monument to seven hundred years of architectural and artistic craftsmanship. It is now to be lovingly and skilfully altered

<sup>7</sup> Policy Planning Guidance PPG 15, especially paras 3.3, 3.4 and 3.10.

<sup>8</sup> *Re St Luke the Evangelist, Maidstone* [1995] Fam 1 at 5, [1995] 1 All ER 321 at 325, Ct of Arches.

<sup>9</sup> *Re St Luke the Evangelist, Maidstone* [1995] Fam 1 at 14, [1995] 1 All ER 321 at 333, Ct of Arches.

and restored by modern craftsmen to the same end as their forebears, “LAUS DEO”.<sup>10</sup>

It has naturally given me great pleasure to go to St Helen’s and find it teeming with people, to hear hymns being sung with gusto to the accompaniment of the splendid organ. It is a building truly vibrant with worship and fulfilling its role as it has done through the centuries.

All re-ordering is not, of course, as radical as that which was requested for St Helen’s. In the last ten years or so of the twentieth century there was, in my experience, a notable acceleration in the number of petitions to remove pews or choir stalls and to remove chancel screens. Previously there had been a movement in favour of introducing a nave altar but without necessarily making irreversible changes to the fabric. Congregations and conservationists largely accepted such a change, but a great deal of energy, time and paper has been expended on the more recent and continuing trend of more radical and irreversible, or less reversible, changes.

#### 4. CONSULTATION WITH THE PARISH

I have already referred to the fact that a proposal for re-ordering a parish church can precipitate opposition within the congregation or within the parish at large. This is not surprising because it is human nature to be suspicious of change in something which is familiar and, subconsciously, reassuringly permanent. What has surprised me is the fact that, in putting forward their opposition to change, opponents frequently seek to use inadequacy of consultation as a weapon to attack the minister and parochial church council.

The importance of consultation cannot be emphasised enough. Although a criticism about inadequate consultation was raised at Langham I was able to point to the fact that a question and answer document was produced by the parochial church council to inform the villagers about the proposed scheme; that the rector wrote an explanatory letter to those on the electoral roll; that a public meeting was held at which drawings were used to explain the scheme and details of cost and fund-raising plans explained to those present. After discussion at the next annual parochial meeting the parochial church council considered all comments and prepared a detailed response which was again circulated to all those on the church electoral roll. I commented that:

‘The document is a model of its kind and demonstrates the responsible attitude which has been adopted by the Langham Parochial Church Council throughout the development of its Renewal Strategy.’

The purpose of the consultation process is to inform, not to suppress opposition, but if well done it can have the beneficial effect of persuading some opponents to say ‘Well, I am not in favour, but I am not going to stand in the way if that is what the majority want.’ For those who choose to continue with their opposition it has to be on the merits of the petition, because they will not be able to argue that they have been disadvantaged procedurally through inadequate consultation. As for those opponents, I can repeat what I said in my Langham judgment:

‘I believe it is necessary for me to point out that the process of communication and consultation is designed to enable people to express their views. It does not mean

<sup>10</sup> *Re St Helen’s, Bishopsgate* (November 1993) 3 Ecc LJ 256, Cons Ct.

that a parochial church council has to secure unanimous support within the parish before putting forward a petition for a faculty. Like any other body given legal powers and responsibilities the parochial church council has to make decisions about what it regards as being in the best interest of the parish church at any particular time. One of the primary functions of the parochial church council under section 2(2) of the Parochial Church Council (Powers) Measure 1956 is to cooperate with the minister "in promoting in the parish the whole mission of the Church pastoral, evangelistic, social and ecumenical".<sup>1</sup>

In contrast to the procedure adopted in Langham, I was compelled to find in *Re Emmanuel, Northwood*<sup>11</sup> that the promotion of the scheme fell within the well known adage 'More haste, less speed'. It was a major scheme for refurbishment and improvement to cost well over £500,000 but the congregation was not adequately informed about the details and there was a substantial amount of ill-feeling and opposition generated against the parochial church council.

For the benefit of other parishes in the diocese of London I gave the following guidance:

'that in contemplating re-ordering parishes should address at least three core questions (a) Why? (b) How? (c) When? Under 'Why' the parochial church council should address the perceived problems and need for change and produce a written document identifying them. Under 'How' there should be a feasibility study with drawings and approximate costs based on a detailed brief, which tackles the identified problems and needs and offers alternatives, if any. Under 'When', consideration should be given to whether the changes could or should be introduced in stages for cost or other reasons, and the extent to which experimentation would be appropriate or desirable. The congregation can be informed as each question is examined (this can usefully be done through the parish magazine or an informative leaflet) and there should be an opportunity for the congregation to consider the results of the examination of all three questions before any final decision is made by the parochial church council to proceed with a re-ordering scheme.'

It seems to me essential that the congregation and those with an interest in the church who will be likely to be asked to contribute to the funds to bring about the proposed re-ordering should be kept well informed, and that the parochial church council, in collaboration with the minister, can demonstrate that they have approached the matter in a businesslike way.

Those who are assiduous readers of the Rule Committee's publication *Making Changes to a Listed Church* will appreciate that there is an overlap between my core question 'Why?' and the Statement of Needs which is advocated in section 5 of that document. It is there recommended that the Statement of Needs should only be agreed by the parochial church council after discussion with the archdeacon. This may seem like an extra burden for the overworked archdeacon but in practice it is my firm belief (and that of the Rule Committee) that if the archdeacon is involved at the outset there is the prospect of ironing out many potential problems. The parochial church council can also be encouraged along the proper course for consultation. In the end the archdeacon may be saved time later if there is no need to mediate between opposing points of view.

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<sup>11</sup> *Re Emmanuel, Northwood* (1998) 5 Ecc LJ 213.

## 5. THE THREE QUESTIONS

My formulation of three questions in *Re St Helen's, Bishopsgate* arose out of my concern to have some criteria against which to test the plethora of evidence produced by all concerned. Having been approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone*,<sup>12</sup> they have become the standard questions to be addressed by any chancellor faced with a petition proposing re-ordering or the making of changes to the interior of a listed church which will make a significant difference to its appearance.<sup>13</sup>

The first question is critical so far as the proponents of change are concerned, because the burden of proof of rebutting the presumption against change rests upon them.<sup>14</sup> I remind you that the first question is:

'Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral wellbeing of [the church] or for some other compelling reason?'

Some concern was expressed that this question imposes a stricter criterion in relation to a listed building than would apply under the secular planning law, but Charles George QC, the Chancellor of the Diocese of Southwark, has drawn attention to the use of the word 'necessitated' in the Secretary of State's current Guidance (PPG 15) and pointed out that any previous apparent difference in approach has lessened. He has also usefully interpreted the words 'necessity' and 'necessary' in the first question as meaning:

'something less than essential, but more than merely desirable or convenient, in other words something that is requisite or reasonably necessary.'<sup>15</sup>

The question obviously has to be applied to the facts of the case. If the answer to the first question is 'No' then the second and third questions do not arise. In *St Helen's* I found that the changes proposed were necessary for the pastoral and physical wellbeing of the worshipping congregations (on weekdays and Sundays). I then proceeded to the second question:

'Will some or all of the works adversely affect the character of the church as a building of special architectural or historic interest?'

If I had answered this question 'Yes', then, as I made clear, I would have exercised my discretion in the petitioner's favour (the third 'balancing' question) because of 'the overriding case of necessity for the works'.

In contrast I had to adjudicate last year on a major scheme for re-ordering St Mary's, Ealing,<sup>16</sup> a Grade 2\* church remodelled in the mid-nineteenth century by the leading high Victorian architect Samuel Sanders Teulon. The reordering scheme involved the removal of all the pews, the creation of glazed meeting rooms in the gallery and the removal of the choir stalls from the chancel and various incidental alterations. The first

<sup>12</sup> *Re St Luke the Evangelist, Maidstone* [1995] Fam 1 at 9, [1995] 1 All ER 321 at 328, Ct of Arches.

<sup>13</sup> *Making Changes to a Listed Church*, paras 2.4 and 8.1.

<sup>14</sup> See *Peek v Trower* (1881) 7 PD 21 at 27, and *Re St Helen's, Bishopsgate* (November 1993) 3 Ecc LJ 256, Cons Ct.

<sup>15</sup> *Re St John the Evangelist, Blackheath* (26th September 1998) 5 Ecc LJ 217, Cons Ct

<sup>16</sup> *Re St Mary's, Ealing* (August 1999), Cons Ct.



two items were not objected to, although it was clear that the appearance of the interior of the church would be substantially altered by the works. It was accepted by the various 'conservation' bodies that the changes were necessary to revitalise the church and enable the congregation to use it effectively for mission. The controversial issue was the removal of the choir stalls, the Victorian Society contending that:

'it continues to believe that the adverse effect on the architectural and historical character of the church is not outweighed by pastoral necessity.'

After considering the evidence I concluded that the petitioners had not made out a case that removal of the choir stalls was a necessary part of their strategy. For completeness I considered the second and third questions as well. I found that the removal of the choir stalls would adversely affect the character of the church and that in view of my finding on the first question the petitioners had failed to produce evidence that the necessity for the proposed change was such that I should exercise my discretion in their favour. On that element of the scheme I refused a faculty.

I cite this example because it illustrates the critical importance of the petitioners' giving detailed attention to their arguments supporting their claim that they need to make changes. It is the task of the chancellor to look objectively at the evidence. Neither I nor any other chancellor can properly reach a conclusion contrary to the evidence!

I am aware that chancellors are often regarded as part of an excessive bureaucracy burdening the parishes. However, I should emphasise that if control of listed churches were to be handed over to local planning authorities the 'bureaucracy' would be no less burdensome. The Secretary of State has made it clear that 'Applicants for listed building consent must be able to justify their proposals'.<sup>17</sup> So all that I have said about early attention to the question 'Why?' has a basis in principle as well as a model of good practice.

## 6. REVERSIBILITY AND RE-USE

One of the factors which influences English Heritage, and to some extent diocesan advisory committees, is the scope for reversing features of reordering in the future if fashions in liturgy and use of church buildings were to change again. It is easy to understand why a scheme involving partitioning off part of the west end of a church building can be acceptable to English Heritage because the architect designs a structure which is free-standing and involves minimum interference with the fabric. This could be removed in fifty years time. What is often more problematic is the desire to retain furnishings, either elsewhere in the building or in storage, in the event of a possible demand for them in the future.

English Heritage are almost certainly operating in accordance with the guidance in PPG 15 in relation to church buildings outside the ecclesiastical exemption. Paragraph 8.11 advises

'Where extensive re-ordering takes place, some examples of the replaced furnishings should be retained wherever possible, and, where appropriate, material such as panelling should be re-used within the building or offered for re-use in a similar context, rather than destroyed.'

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<sup>17</sup> Policy Planning Guidance PPG 15, para 3.4.



It is important to note the words ‘wherever possible’ and ‘where appropriate’ because it would be wrong for an English Heritage officer to treat the requirement of retention as absolute.

In my own dealings with parishes which have been perplexed as to how to retain, for example, some choir stalls or pew frontals when they will not fit into the re-ordered church and there is no spare storage elsewhere, I have suggested looking outside the church. One parish in the Diocese of Chelmsford successfully arranged for choir stalls to go to the chapel of a local school on permanent loan. It is usually no good offering items to other churches as so many have the removal vans waiting at their own doors!

Generally in relation to ‘re-cycling’ I am being proactive in encouraging adaptation of items which are not of such intrinsic quality that they have to be retained somewhere. In *Re St Mary’s, Ealing* I said:

‘There is much to be said for adopting an environmental approach to surplus pews and recycling the wood and using it to make items for the church, church hall or other community projects. Well seasoned Victorian wood should be capable of adaptation and skilled joiners within the congregation (or within the local community at large) would be challenged to use their skills to reform the wood into useful or ornamental items.’

I have made it a condition of the faculty that the pews shall not be removed from the nave or gallery until the petitioners have submitted proposals to the court for their disposal for other uses for the benefit of the church or wider community. It seems to me that this is a way in which churches can not only be seen to be environmentally friendly but can also use their surplus items for the benefit of others.

## 7. THE COST OF CHANGE

My final comments are on the subject of the cost of change. It has struck me for a long time that many parishes have not taken account of the overall cost of a re-ordering scheme from the outset. This is standard practice for a developer in the secular field who wants to alter a secular listed building and knows that there will be hurdles to be overcome to obtain listed building consent. It is, of course, not just the cost of a design and the execution of work by a contractor which have to be budgeted for. It is the whole process of engagement of the architect and others in the consultation process, both within the parish and with conservation bodies. In addition, there is the cost of obtaining a faculty if there are contested issues to be resolved either by a consistory court hearing or on written representations. My third core question ‘When?’ to be addressed by the parish in early formulation of the scheme is the time to consider how much can be afforded at a particular time taking account of the overall estimated cost.

Despite the attempt of the Court of Arches in *Re St Mary the Virgin, Sherborne*<sup>18</sup> to clarify the position in relation to costs in the consistory court there continues to be widespread ignorance and misunderstanding on the subject. Basically the petitioners should always budget at least for court fees in estimating the overall cost of the works for which a faculty is sought, as they will not be able to recover them from objectors unless there is clear evidence of unreasonable behaviour by objectors which has unnecessarily added to the procedural costs prior to the hearing.

<sup>18</sup> *Re St Mary the Virgin, Sherborne* [1996] Fam 63 at 68, [1996] 3 All ER 769 at 774, Ct of Arches.

So that you may all be better informed, and thus able to advise parishes from your respective positions in the diocese, the Ecclesiastical Judges Association is about to publish a booklet addressing the points which not infrequently arise on the subject of costs. So look out for *Guidance on the Award of Costs in Faculty Proceedings in the Consistory Court!*