Neutral Citation No: [2024] ECC Oxf 1

Faculty *– Grade II* listed, medieval, Thames-side village church (restored by Benjamin Ferrey in 1860-1) – Internal re-ordering – Proposals for an accessible toilet within the west tower and the removal of the pews and re-flooring to facilitate the installation of an underfloor heating system and radiators – Net zero guidance – DAC not objecting to (but also not recommending) underfloor heating fuelled by a gas boiler and associated works – DAC recommending the other aspects of the works for approval – Faculty granted for all the works*

Application Ref: 2022-073416

IN THE CONSISTORY COURT

OF THE DIOCESE OF OXFORD

Date: Sunday, 21 January 2024

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the matter of:

Holy Trinity, Cookham

THE PETITION OF:

Norman Mark Stockdale

and Bernadette Clark

(Churchwardens)

This is an unopposed petition determined on the papers and without a hearing.

Objections were received from the Society for the Protection of Ancient Buildings but they did not elect to become a party opponent.

The following cases are referred to in the Judgment:

Re All Saints, Scotby [2023] ECC Car 3

Re Christ Church, Gipsy Hill [2023] ECC Swk 8

Re St Alkmund, Duffield [2013] Fam 158

Re St Laurence, Combe [2022] ECC Oxf 5

Re St Mary & St John the Divine, Balham [2023] ECC Swk 7

JUDGMENT

Introduction and background

1. This is an unopposed online faculty petition, dated 10 August 2023, presented by the churchwardens during a vacancy in the incumbency (although this has very recently been filled by the appointment of the Reverend Stephen Mills as the new Vicar of the Cookhams). The petition seeks a faculty permitting the re-ordering of the interior of Holy Trinity, Cookham, a Grade II* listed medieval village church building (restored by Benjamin Ferrey in 1860-1), by removing the remaining pews from the nave and the south aisle in order to install a new floor, with underfloor heating, together with new perimeter radiators, and the installation of an accessible toilet in the west tower. The parish consider that these significant changes are required to render the church a warm and welcoming space, accessible to all, and thereby advance the church's worship and mission. The parish say that the exterior will remain entirely unchanged, and there will be no impact on the more significant historic fabric of the interior of the church building. The estimated cost of the works is in excess of £725,000. The work is expected to take four months to complete (with a one month contingency).

2. I have carefully considered the very many documents that have been uploaded to the online faculty system (the **OFS**) in support of this application. These include many detailed plans and sections (both existing and proposed); a detailed, 25-page, illustrated revised Statement of Significance, dated 19 August 2022; and a detailed, 49-page, illustrated revised Statement of Need, also dated 19 August 2022. I have also visited and viewed the church, the churchyard, and the neighbouring parish centre, attending the church's celebration of the Eucharist at 11 o'clock on the morning of Sunday 22 October 2023. Having carefully considered the documents uploaded to the OFS, the consultation responses (referenced below), the Diocesan Advisory Committee's Notification of Advice, and having also viewed the church and its surroundings, I am satisfied that the only aspect of these proposals which calls for any detailed judgment is that which seeks faculty approval for a new, replacement gas-fired heating system for the church.

3. That part of these proposals falls to be determined against the background of the decision taken by the General Synod, in February 2020, that the Church of England should achieve the target of *'net zero'* carbon emissions by 2030. The debate that led to that decision recognised that the global climate emergency is a crisis for God's creation, which requires urgent action on the part of the whole church. Even at that time, 2030 was recognised to be an ambitious target, and one which would require significant effort to achieve. Since heating is the

major source of carbon emissions from most churches, the most significant *'net zero'* decisions that churches will need to make concern their heating systems. To this end, the Church Buildings Council (the **CBC**) have issued guidance on reducing carbon emissions (the ***'net zero'* guidance**); and, with effect from 1 July 2022, the Faculty Jurisdiction Rules 2015 (the **FJR**) have been further amended to require: (1) anyone applying for a faculty which involves works or proposals to which the *'net zero'* guidance applies (such as the replacement of a boiler or heating system) to explain how they have had *'due regard'* to that guidance, and (2) the Diocesan Advisory Committee (the **DAC**), in their Notification of Advice (**NoA**), to set out their opinion on the adequacy of that explanation; and, if their opinion is that the explanation is not adequate, their reasons for that opinion.

4. As a good place for churches to start when trying to move towards *'net zero'*, the Church of England published *'A Practical path to 'net zero carbon' for our churches'*. So far as material to the present case, the guidance on heating reads:

> *D4. If there's no alternative that does not run on fossil-fuels, then replace an old gas boiler or an oil boiler with a new efficient gas boiler.*
>
> *D5. If yours is a well-used church which you want to keep warm throughout the week, then consider an air or ground source heat pump. Ground source heat pumps are more expensive and invasive to install than air source heat pumps, but run more efficiently once installed, depending on ground conditions.*
>
> *D6. If you are doing a major reordering or lifting the floor anyway, and yours is a very regularly used church, then consider under-floor heating. This can work well in combination with a heat pump (above).*

5. At paragraph 36 of his judgment in Re All Saints, Scotby [2023] ECC Car 3 (in the Diocese of Carlisle), Deputy Chancellor Lander helpfully provided the following brief summary of the points identified in a further guidance document entitled *'Church Heating Principles'*:

> *(1) The need to balance five things:*
>
> *- comfort;*
>
> *- historic fabric;*
>
> *- affordability;*
>
> *- feasibility and appetite for change;*
>
> *- cutting greenhouse gas emissions;*
>
> *(2) The need to consider how, and how often, the space is used;*
>
> *(3) For the majority of churches, keeping people rather than spaces warm;*
>
> *(4) Acknowledging where we are (for instance with gas boilers) but moving to where we need to be, with net zero churches;*
>
> *(5) Acknowledging that getting to this point will take time. The document contains the following statement:*

> *The progress will be limited by the affordability of the equipment, the price of electricity vs gas, the existing supplies and electrics of the church, its listing, and many other factors. An options appraisal of some kind is vital. For some churches, having fully assessed their options, there may currently be no feasible solution other than replacing gas-with-gas or even, in exceptional cases, oil-with-oil, but they can try to be ready for a future retro-fit when technology and the grid has progressed.*
>
> *(6) Churches needing to have at least carefully considered the option of moving away from fossil fuel boilers;*
>
> *(7) The need for consultation.*

This guidance recognises that, applying these principles, different heating approaches and energy sources achieve different outcomes; and that each church will need to consider what balance they want to achieve between three key outcomes:

(1) Lower environmental impact and energy use;

(2) Warming the whole space; and

(3) Conservation of fabric.

The church building

6. The parish church of Holy Trinity, Cookham, in the Archdeaconry of Berkshire, stands within a conservation area in the attractive Thames-side village of Cookham, which was immortalized by the artist Stanley Spencer (who was born there in 1891). The church was first listed as a Grade II* listed building on 25 March 1955. The listing description describes the parish church as follows:

> *Dates from C12. Chancel, north chapel and north aisle, added early C13. North arcade of nave, and south aisle added late C13, chancel arch reconstructed at that time. Further altered in early C14. West tower added c1500, C17 and C18 repairs to buttresses and walls. Restored in 1860. Part chalk, part flint with chalk diapering; tile gabled roof. Chancel, five-bay nave, four-bay north aisle and two-bay north chapel. Six-bay south aisle and chapel.*

The listing description proceeds to describe the tower, the chancel, the nave, the south chapel, the interior of the church, and the monuments within the church building. There is no reference to the pews. Nor are these mentioned in the entry in the 2nd (2010) edition of the volume of *Pevsner's Buildings of England for Berkshire* (at pp 252-3); although the editors (Geoffrey Tyack, and Simon Bradley) do note that: *"The chancel floor was raised, and a nave altar introduced, in the late C20."*

7. The most recent, illustrated Quinquennial Inspection report, prepared by Mr Richard Oxley (of the historic buildings consultancy, Oxley Conservation Limited), is dated 10 November 2020, and extends to some 48 pages. The summary of findings notes that the church building has been subject to recent, and extensive, programmes of repair and improvement and, consequently, the church is in a much improved condition, in particular as regards the exterior, which has, rightly, being prioritised. The summary continues:

> *Much of the remaining work can, now much of the external fabric has had the benefit of repair, turn to improving the interior of the church, with particular attention to improve the*

presentation of the walls that have been stained by problems of damp and salt contamination. This can be implemented in conjunction with the renewal of the heating system, which is in need of improved efficacy.

8. The church is surrounded by a well-tended graveyard. Although this is now closed for burials, ashes are still regularly interred within the churchyard. Paths, including The Thames Path, lead through the churchyard to the River Thames, which flows within 100 metres of the church. The church estate also includes a paddock to the west of the church, and the Parish Centre (formerly a large vicarage), which the church bought from the Church Commissioners during an interregnum in the 1980s. The ground floor has a parish office, meeting rooms, kitchen, and toilets; and the upper floor has three flats, which are let commercially. A modern, brick-built vicarage to the south of the church was constructed in the 1980s. The Paddock hit the national news in August 2021 with the BBC headline: '*Queen Cynethryth's 'lost' monastery found next to Cookham church*'. A team from the Archaeology Department of Reading University carried out two weeks of excavations on the Paddock to provide practical experience for students. They dug several trenches and were delighted to unearth evidence suggesting that this was the site of the former Cookham monastery.

The evidence in support of the proposals

9. A 28-page study of the church heating, prepared by Chris Reading Associates Ltd (**Chris Reading**), and dated 22 April 2021, notes that the church previously had a gas-fired, warm-air, recirculating heating system, which supplied heated air to the nave. This system had come to the end of its working life, and a temporary oil-fired *'Marquee'* type fan unit had been connected to the heating ductwork to provide some background heat to the building. This temporary solution is unsatisfactory and unsuitable for long term use. It does not have the capacity, or the ability, to heat the space properly, or to provide comfort for a congregation with modern expectations. The report notes that there are extensive solid floor areas, with timber pew platforms, under the pews. Parts of the pew platforms have more recently been filled with concrete; and there is a long-term desire to remove the pew platforms and level the floor with a stone finish. A number of heating options are considered and evaluated with due regard to the requirement for a primary plant of approximately 68 kW to heat the church properly. The report concludes that the most practical solution would be a carefully designed, low-pressure, hot-water heating system; and, as the floor is to be renewed, that underfloor heating should be installed, with additional perimeter radiators. This would involve a significant capital investment, but would provide long-term benefits. It would be much more effective at heating the surfaces of the space than a convective system, would provide better comfort conditions for the congregation at lower temperatures, and would avoid, as far as possible, introducing additional draughts into the building. It would also be less susceptible to the effects of air change rate through the building. The report considers, and rejects, several *'green technologies'* for heat generation, such as heat pumps and solar panels. Sustainability is addressed, with the report advising against any increased reliance on electricity, and in favour of remaining with natural gas, since this has the best all-round characteristics, and much better, and more stable, running costs. The report concludes:

> *… a ground source heat pump system is not recommended at this time on the basis of capital and running cost, space requirements, and system matching. The siting of bore holes and the trenching of the churchyard would attract archaeological investigations, as well as a high capital cost but should still be considered for the future. The carbon efficiency of a heat pump system, now that electricity is less carbon intensive, would make*

> *it attractive enough to consider as a background heat provider if underfloor heating is installed. Hopefully carbon efficiencies will improve both for heat pumps and gas boilers (as hydrogen gas is introduced). There currently remain many inhibitors to adopting heat pump technology for historic buildings … A 'heat the people and not the building' pew based heating scheme is not proposed as there are already large expanses of the building without pews and the current pew area is only 24% of the building plan area, clearly this would not work.*

10. At a meeting of the Parochial Church Council (the **PCC**) held remotely (by Zoom) on 16 May 2022, the PCC resolved to submit a formal application to the DAC to proceed with work to install underfloor heating in the nave, with radiators there and in the east end of the church, and also an accessible toilet in the tower, all as a single project. Nine members were in favour of the proposal, with one member against (although it may be that this sole dissent was directed to the installation of underfloor heating rather than the overall concept of the proposals). The PCC have discussed alternative arrangements for services while the church is closed for the proposed works to be carried out. For normal Sunday and midweek services, there is a long room in the Parish Centre that would be suitable, with the added advantage of toilets across the corridor and coffee available after Sunday services. The PCC have already contacted Holy Trinity Primary School about using the school for any special services, where the parish would expect a larger congregation, such as Easter services, if the work were to take place during Eastertide. The Bishop of Reading is said to be aware of the parish's proposals, but they are awaiting the court's decision on the faculty application before consulting her formally.

11. This case is one of the first that the DAC have had to deal with following the *'net zero'* faculty changes coming into effect. On their initial consideration of the parish's proposals, the DAC were sympathetic to the urgent need to replace the temporary heating system. The DAC considered that the proposal for underfloor heating, with a stone floor above (with details of the stone finish to be agreed), and supplemented by perimeter radiators, was entirely acceptable in principle. They were concerned, however, that the parish had not carried out enough investigations concerning the viability of an air source heat pump before discounting this on what the DAC felt were fairly generic grounds. Although the revised statement of need had helpfully addressed the non-viability of both hydrogen and solar photo-voltaic technology, it still dismissed air source heat pumps on the grounds that these were not capable of producing high enough temperatures to feed the radiators. However, the parish did not appear to have explored whether an air source heat pump could be connected to the underfloor heating, with the radiators being fuelled by a smaller gas boiler, or some similar hybrid system. The DAC therefore advised that a more detailed investigation into the different possible permutations for the configuration of an air source heat pump within the proposed heating system would be needed before this could properly be discounted; and that this was something that the amenity societies were bound to require as well. Several recent case studies were said to demonstrate that carefully-designed air source heat pump installations could work well in historic churches if a tailored, and holistic, approach was taken to their design. The DAC also drew the parish's attention to hybrid systems, some of which had been installed in historic buildings, which use heat pump technology backed up by a gas boiler, with the latter kicking in when the heat pump could not achieve the required temperature.

12. This led to the production of a nine-page paper, dated 11 August 2022, in which Chris Reading considered the use of a heat pump for the new heating system. Using a ground source

heat pump was not considered viable on archaeological grounds, so the only option was said to be an air source heat pump to power the underfloor heating. The paper concluded that an air source heat pump would be *'a viable addition'* to the heating scheme, but it would not be without technical difficulties, it would require early renewal of the air source heat plant (after about only 10 to 15 years), and it would involve additional capital and expense costs, running into the tens of thousands of pounds over a 25 year period at then current fuel prices.

13. Shortly thereafter, a 22-page energy and decarbonisation survey of the church, dated 27 October 2022, was carried out by Inspired Efficiency Ltd as part of the wider environment and parish support programme within the Diocese of Oxford. This was entirely separate from this faculty application, and was intended to provide advice to the church on how it could become more energy efficient, provide a sustainable and comfortable environment, and move towards *'net zero'* carbon. This concludes (at page 11) that:

> *The proposed underfloor heating does not suit the current usage of the church nor is it able to provide comfortable heating. Given the extensive construction and mechanical works required to install this, and the environmental impact (as well as the cost) of such work, its value should be very carefully considered and debated. If underfloor heating were to be determined to be a wise addition to this church, it would be very well suited to an air to water source heat pump system, and this should form part of any proposal rather than using gas … The removal of all the pews presents a very real challenge to provide thermal comfort to this church given its dimensions and usage profile. The church should very seriously consider the option of retaining the core block of pews at the front section of the nave. The pews to the south aisle and the rear of the nave could be removed. This would allow under pew electric panels heaters to be installed to the retained pews with an air-to-air source heating solution to the side aisle and rear areas which are in closer proximity to the perimeter walls. Such a solution is the recommendation of this report.*

I appreciate that the present proposals for the reordering of this church, and for the new heating installation, were developed before the parish had received the advice contained within this energy audit, which was therefore unable to inform those proposals.

14. A seven-page response from one of the churchwardens (and petitioners) was uploaded to the OFS on 27 April 2023. Because of the reliance the petitioners place upon this paper, it is necessary to cite this document in full:

> *<u>Our starting point</u>*
>
> *Our mission is to secure the future of the Church in Cookham as a living and thriving Christian community. Within reason, anything else is subsidiary to that. Sadly, over the past couple of years, the much-loved church building has in many ways proved an obstacle rather than an asset to our mission.*
>
> *We are pleased that the DAC has responded positively to most aspects of our proposal to instal a toilet in the tower of Holy Trinity Church, remove the pews (and possibly reinstate some in the south aisle), and to instal underfloor heating in the nave and supplementary radiators in the nave and east end of the church. However, we are disappointed that the DAC opposes our use of gas to power the new heating system, in the face of expert advice from our own expert heating engineer and this remains our proposed solution in the short term. As a church we are fully committed to implementing*

the national Church of England net-zero carbon goals, which cover buildings and transport, by 2030 and although we propose to instal a gas-powered heating system in 2023/24, we would commit to converting to a green alternative, such as hydrogen, by 2030.

Spells of cold weather in November and December 2022 brought into focus our need to address our heating problems before winter 2023/24. The stark reality is that we have a church which has no heating, no toilets and the historic Grade II listed building is deteriorating rapidly. Some of our older congregation have reluctantly stayed away from church during winter months on health grounds. We have failed to meet any of our 2016/20 Mission Action Plan targets which were predicated on installing a toilet and heating, and for the same reasons we are losing community support in the form of concerts and events. The church, in physical terms, is neither welcoming nor comfortable. This creates a significant barrier to its wider use by the congregation and the community.*

Temporary heating system

Our temporary heating system is unsustainable. The oil powered external boiler on the north side of the church, has to be filled from a storage tank behind the Parish Office and it takes two people to pull the bowser from the storage tank to the boiler. The boiler's fuel tank only allows the boiler to run for around 10 hours so when, as happened in January, we needed to heat the church for a Requiem Mass and Memorial Service on a Saturday, followed by two Sunday services, the boiler needed to be refuelled. The organ has also suffered from the cold weather and the church needed to be heated ready for expensive retuning.

Short term solutions

The DAC challenged our thinking that we need to remove the pews, as leaving them in place would enable us to fit under-pew electric heaters at a fraction of the cost. We have considered this proposal. It would meet the objective of heating the church (or at least the nave and south aisle) but it would fail to meet our broader and more ambitious Mission Action Plan aspiration to create a more flexible space for concerts and other creative events. Our view is that the under-pew electric heaters option is a short term 'patch' solution which would simply cost money for no long-term benefit and push our missional aspiration down the line by 10 or 20 years. It would be left to the next generation to address.

Reviewing our proposal to instal an efficient gas-powered underfloor heating system with supplementary radiators

Since we embarked on this project, we have so far spent £22,000 judiciously on getting expert consultancy advice. We have spent our resources carefully. We have consulted with two heating experts. The second, Chris Reading, was recommended by our conservation consultants and was engaged because he had proven knowledge and experience in ancient buildings. He is also an adviser to the Gloucester DAC[1]. We looked at a variety of heat

[1] Since this judgment was handed down and published, Gloucester DAC have advised the Head of Church Buildings of this Diocese that Mr Reading is not a heating adviser to the Gloucester DAC; and they have asked for a correction to that effect to be made to this judgment. When approached about this, Mr Stockdale (one of the petitioners) has explained that he was acting under a genuine misapprehension. He was pretty sure that

sources, including air source, ground source, natural gas and electricity. It was concluded that the most practical, efficient and affordable, in the specific context of Holy Trinity Church, Cookham, was gas. Our consequent plans were based on a detailed analysis of the comparative merits of the different sources. The heating proposals contained in our Faculty Application were subjected to detailed scrutiny and were deemed to best and most cost effectively meet the needs of the church in Cookham, without materially damaging Church of England's policy targets. They are supported by detailed professional heat calculations.

We are concerned that the criticism we received from DAC experts of Chris Reading's proposals seems largely based on supposition or conjecture and lacks the evidential rigour of our plans. DAC comments such as 'I wouldn't have thought', or 'there may be different views', or 'I am surprised that' may sow some seeds of doubt but in our view, they do not give an evidence-based case for an air source heat pump (ASHP) installation. We have already spent £22,000 on this project and are reluctant to spend money on further consultancy advice on what our experts have already told us is not the best option for our church. Chris Reading, our heating consultant, advised in August 2022 that the capital cost of adding a heat pump to the system is not just the cost of the pump itself, but how it integrates with other parts of the system. The additional capital cost for a small 15kW heat pump integrated into the heating system in order to drive the underfloor heating, would be about £20,000.

It would be really helpful if the DAC would spell out their objections to Chris Reading's recommendations and exactly how would their proposals equal or improve on them. Since we have to bear the costs and consequences of the final heating solution for our church, what assurances are the DAC able to give us that their suggestions would meet our needs and budgets?

<u>Running costs</u>

The 'Future Heating Costs' attachment sets out our estimated running costs for an underfloor heating system and supplementary radiators, using various means of providing the heat, based on needing heating for 26 weeks a year. Based on our current church tariff these are:

Gas boiler	*£11,093.36*
Hybrid ASHP and gas boiler	*£14,257.97*
ASHP and electric boiler	*£18,113.41*

We may not need heating for 26 weeks each year, but the figures do show how running costs rise dramatically as we move from gas only through a hybrid solution to an all-electric solution.

<u>Examples of churches that have successfully installed an ASHP powered underfloor heating system</u>

Mr Reading was the heating adviser to a diocese but clearly it is not Gloucester. He does, however, appear to have, or have had, a connection to the Winchester DAC. – Chancellor 1 March 2024

In preparing this further submission, we have looked for examples of churches broadly similar to our own, that have successfully installed an ASHP powered underfloor heating system with supplementary radiators. Knowing about such churches, or similar historic buildings, would give us confidence to consider such an installation for our church, but we have struggled to find any. It seems that we are currently being asked to try and prove that our own proposals and the advice of our expert consultant are wrong. Please would the DAC direct us to a similar building that can show us a positive and cost-effective outcome?

The Church of England has very helpfully produced a database that can be interrogated to find listed churches that use a variety of heating systems:

https://facultyonline.churchofengland.org/renewables.

This shows that there are currently no listed churches in the Diocese of Oxford that use ASHPs. We have come across three examples of churches outside our diocese using ASHPs but none of them closely match our situation. These are detailed and discussed in an annex, but the headline message is clear: an ASHP may provide background heat, but it will need to be supplemented by some other form of heating. So far, the research we have done only encourages us to agree with Chris Reading's original and factually well supported proposals. Clearly some church in the diocese needs to be the first to embrace ASHP technology and we have no objection to Holy Trinity, Cookham, being the first, but only if we are persuaded that this is the best way forward for our church.

Our net-zero carbon aspiration

As mentioned earlier, we are fully committed to implementing the national Church of England net-zero carbon goals by 2030, and the PCC will be invited to adopt an outline strategy for reaching these goals later this year. I hope the DAC will understand that since our Vicar retired in January, much of our time over the last few months has been taken up with planning how our two churches operate during the vacancy and drawing up our Parish Profile. I am pleased to report that we are on track, working to an ambitious timescale, which should result in a new incumbent taking up post at the end of this year, assuming we find a suitable applicant.

During the last few months, we have implemented a number of changes, all of which contribute to our net-zero carbon aspiration. We have replaced an old gas range cooker in the Parish Centre kitchen with a new electric range; we have paid a premium price for new recycled plastic seats in the Parish Centre, which have proved very popular; and we have replaced our four churchyard floodlights with much more effective LED bulbs.

We have just completed our Energy Footprint (see attached). Although this shows us on 90% for our net CO_2 percentile and 80-90% for emissions/square metre adjusted percentile band, we are on an impressed 0-10% for our church usage adjusted percentile band. The notes explain that this highlights where our net footprint lies relative to other churches once we take into account how many people typically make use of the building and how long the building is open for. Holy Trinity Church is open daily from 09:00 to 17:00 and longer when there are early or late services.

Energy Audit conducted on 27 October 2022

I have attached a copy of the revised Energy Audit report, which was received on 2 February 2023. This suggested some alternative ways to heat our church. One recommendation was to instal under-pew heating which would be relatively simple to fit, but it would not deliver on our Mission Action Plan aspiration to remove the pews and provide a more flexible space for community use. We are reluctant to instal a heating system which would constrain future flexibility. Another suggestion was to instal 14 Herschel infra-red halo heaters, and we did take this idea further. A Herschel salesman advised that we would need only 12 units to heat the whole church. We have discussed this further. Unlike the under-pew heating solution, it would not commit us to retaining the pews, and has the advantage of being relatively simple to instal. However, we decided against this option for two main reasons. Firstly, we understand that underfloor heating works by heating people from the feet up, and if people have warm feet, they feel warm all over. The halo heater works on an opposite heat-down approach, and when it was suggested, our congregation were not happy with the idea. Secondly, the lighting in the church is mounted high up and is unobtrusive, whereas the hanging halo heaters would be very visible. Those in the nave would interfere with the signal from a beam-mounted AV projector onto a screen over the chancel arch, although the salesman did say that it may be possible to fit a motor to raise them up. Although the Energy Audit did give some interesting ideas to consider, we remain convinced that the church will best be heated by underfloor heating and wall-mounted radiators, however powered.

<u>Conclusion</u>

Now that we have further reviewed our heating proposal and remain convinced that a gas installation is the best way forward for Holy Trinity Church in the short term, please would the DAC now either issue a Recommend Notification of Advice for the Chancellor or send a refusal, whatever form that takes. That would enable us to consider how best to proceed. We would be happy for the Chancellor to be recommended to endorse our proposal with a caveat on us complying with the net-zero carbon goals by 2030.

We cannot afford to delay our plans beyond next winter. While donations have kept surprisingly stable, if our congregation see that there is no prospect of a rapid improvement in the heating, then we would expect these to fall off rapidly.

I would be very happy to meet face-to-face with DAC members at Church House if that would be helpful. If that would be a useful way forward, please would you suggest some suitable dates, before I go on holiday from Sunday 11 June to Thursday 6 July.

The three case studies discussed in the annex are St Egelwin the Martyr Church (in the Diocese of Leicester), Newcastle-upon-Tyne Cathedral, and Holy Ascension Church, Oddington (in the Diocese of Gloucester).

15. **The revised Statement of Significance** acknowledges that the project to install underfloor heating in the nave, radiators in the east end of the church, and an accessible toilet in the tower impacts upon two particular aspects of the church's heritage. The first concerns Benjamin Ferrey's restoration of 1860-1, and the second concerns the Paddock. As regards the first, when the church was re-ordered in 1860-61, the pews in the nave and south aisle were fixed to wooden platforms over bare earth. Some are becoming loose, and in places the wooden platforms have rotted away and are a serious health and safety risk. The Cookham pews are not considered to be particularly fine examples of his work. Some work to the floor around the front

of the nave (date unknown but within last 50 years) has left an unsightly mess of wood, tiles and basic concrete. In the 1980s, the rood screen and choir stalls were removed and a cream-coloured floor was added, although the Victorian and medieval tiles around the stepped high altar were retained. A heavy but portable modern altar facilitated west-facing celebration of the Eucharist, and wooden chairs with red fabric covers replaced the choir stalls. Later, the flooring to the north and south in the east end was replaced with further cream coloured material. This has left the interior of the church as a building with two halves: a flexible east end space, and a nave and south aisle dominated by the Ferrey pews. Laying a new cream-coloured stone floor in the nave and south aisle would remove the mess around the front of the nave.

16. Although the Paddock is not directly impacted by the proposals to install underfloor heating in the nave, radiators in the east end of the church, and an accessible toilet in the tower, it does affect, or at least restrict, the options for generating heat. The parish were earlier attracted to a ground source solution and had thought that the Paddock would make an excellent site to sink a series of buried pipes to extract the energy from the sun that has warmed the ground. However, since August 2021 the parish have had to rule this option out in view of the significant early medieval archaeological findings, and their intention to allow Reading University to undertake further work over the next few years. The ground source option is also made difficult by the proximity of the River Thames and the level of the water table.

17. The removal of the 1860-61 pine pews in the nave and the south aisle, and their replacement with moveable seating is addressed further at section 5.3 of the revised Statement of Need. The parish do not believe that the pews are particularly fine examples of Victorian woodwork, and having once removed them to install a modern heating system, it is simply not feasible to reinstate the pews once they have been lifted. The parish recognise that many people regard the pews as part of the traditional architecture of the church, but for its first 800 years the church had no pews. They were only installed in 1860-61. Furthermore, the way in which they were fitted has materially spoiled the medieval look of the church: the bases of some of the columns were boxed in. The parish would certainly retain the Victorian tiled aisles, but they wish to replace the pews with moveable chairs or benches. This would give the church a brighter appearance, as well as give us far more flexibility. The parish have been developing this project over the three years prior to August 2022; and they have shared their vision of what the church could look like with the congregation and the wider community, with new floors in place of the rough wooden pew platforms, and more flexible seating. Mock-up photographs and drawings have been on display throughout this time. The parish have built up a groundswell of support for the church to be restored to something nearer to its original appearance during its first 800 years or so. The parish are looking to being able to enhance the church's heritage, and to provide their successors in the congregation, and the local community, with a church building that better fits their needs, and can be adapted in the future.

18. Following discussions at the July 2022 DAC meeting, the parish were asked to consider retaining the seven pews in the south aisle, as shown in the computer-generated image at page 25 of the Statement of Need. This depicts what the nave would look like with its pews removed, and a new floor laid ready for moveable seating, but with the seven pews in the south aisle retained. I have reproduced this image at the end of this judgment. The strong preference of the parish remains to remove all the pews from the church in order to provide maximum flexibility, and for aesthetic reasons. The parish have also taken expert advice from a local carpenter and cabinet maker. It would not just simply be a matter of putting the pews back after laying the new

floor. The parish would need to shorten the length of the pews to accommodate wall-mounted radiators, and this would spoil the symmetry of the Benjamin Ferrey design as there are equally spaced, vertical strakes on the backs of the pews. The parish would not wish to bolt the pews to the floor, so as to permit some flexibility; but they would need to ensure that the pews were secure, and would not move in normal use. The parish have seen lockable castors fitted to pews at St James, Bix, and that would be a possible solution. They have been quoted £6,048 to shorten and reinstate the seven pews in the south aisle, and there would be an additional cost to fit lockable castors. This would therefore be possible, but at considerably more cost than modern chairs.

19. **The revised Statement of Need** explains the church's need to provide permanent and improved heating, and an accessible toilet, by installing underfloor heating in the nave, supplemented by wall-mounted radiators there and in the east end of the church, and an accessible toilet in the tower. This will benefit not only the existing, and future, congregation, but also the wider community, who use the church for a variety of purposes, which is something the parish are anxious to expand. A major renovation was carried out in the Victorian era to update the church interior in line with then prevailing aesthetic sensibilities. In the process, much evidence of prior interior decoration was lost. The parish are now seeking to update the church interior to meet their contemporary users' aesthetic and practical demands, whilst preserving the best of what has been done previously. The needs of the parish are spelt out in more detail in Section 4, but, in brief, the Coronavirus pandemic has focussed their minds on tackling what they believe to be the basic necessities for the church, against the backdrop of a declining congregation.

20. The old boiler broke down irreparably in 2019 and, since then, the parish have been limping along with a temporary heating system. Even before 2019, the existing system had only provided hot air near the south door. The nearest toilet to the church is in the Parish Centre, and this is far from convenient: the church needs a toilet within the church building for the congregation, and to expand community use.

21. Acting on the recommendation of the church's conservation advisers, the parish have employed an experienced heating consultant, with wide experience in working on ecclesiastical buildings, to propose an optimal heating scheme for the parish. The scope of the consultation brief was to provide the church with a system which would meet their urgent, and pressing, need to replace the old, failed heating system, taking into account the structure of this ancient medieval church building, and the option to be able easily, and cost effectively, to introduce an alternative heating source in the future, as new, but proven, environmentally beneficial fuels become available. In this context, the parish have looked at a number of alternative heat sources, including air and ground sourced heat pumps, hydrogen, and the retention of the existing gas-fuelled system. Taking the needs of the parish into account, and the status of the building, the preferred solution is to continue with gas, with the expressed intention of switching to hydrogen as and when this, or another *'green'* alternative fuel, becomes available. This proposal is said to be the cheapest in terms of building costs, the quickest to implement, and the most compatible with the building. The parish are obviously aware of the short-term spike in gas costs, but they have been advised that these pricing levels will not be sustained over the longer term. As a church, they very much aspire to be environmentally sustainable; but they are constrained by having a medieval church, and the current position with the availability of alternative fuel sources.

22. The parish's proposals necessitate the removal of the Victorian pine pews, and their wooden platforms, and their replacement with a cream-coloured stone floor to match the east end, and the introduction of free-standing chairs with a proven durability. A table at page 4 of the Statement of Need sets out the facilities needed in the church for their current, and proposed, activities, with the more community-centred activities especially needing more flexible space and seating. The justification for the proposals set out at section 7 includes developing the church's mission, engaging the community with the church and its heritage, and preserving and sustaining the historic church building, while emphasising the need for haste.

Consultation responses

(i) The Church Buildings Council

23. The Church Buildings Council (the **CBC**) are happy with the proposal for an accessible WC and are content to defer this element of the proposals to the DAC, although they suggest that the parish may wish to *'tweak'* the design so that there is easier access into the structure that will house the WC. They also suggest that the parish may wish to consider a servery in the nave, rather than a tucked away sink/counter in the base of the tower, as more convenient to use.

24. With respect to the pew removal, the pitch pine pews are considered to be of a plain design, and the CBC acknowledge that the parish have provided an assessment of them in their statement of significance. Full pew removal will enable the parish to have a much-needed, flexible layout. The CBC are content with the proposed pew removal, and to defer any detail on this to the DAC.

25. With respect to the heating, the CBC note that it is proposed to install underfloor heating in the sections of floor where the pews and platforms are to be removed, with a new stone floor laid above. The underfloor heating would be supplemented by perimeter radiators in the nave. The CBC are in support of the principle of the proposed heating installation. However, they express concern with the proposed choice of gas boiler to supply the primary heat, particularly in the current (October 2022) climate of energy price increases, and with the Church of England's *'net zero'* carbon target in mind. The CBC note that the parish has an energy audit to inform its choice of heating, and that the audit has found the site not to be appropriate for the use of heat pumps. In the report, an electric boiler is discounted on the ground of cost. With the change in the energy market in recent times, and the ongoing realignment of the relative costs of fuels, the CBC would encourage the church to revisit the choice of boiler. The running costs may initially be higher than a gas installation; but, over a number of years, it is expected that the cost would become cheaper than that of gas. With an electric boiler, there would also be the potential option for the parish to consider alternative energy sources, such as wind or solar, in the future so as to lower costs long term. The CBC consultation response concludes that they are happy to leave any further advice to the DAC.

(ii) Historic England

26. Historic England (**HE**) are broadly content with the current proposals, which would provide the church with community facilities and services necessary for sustaining its continuous use, thus securing the long-term conservation of the listed building. However, they comment that further consideration should be given to the configuration of a more sustainable and environmentally-friendly heating system to meet the *'net zero'* requirements established by the amended FJR.

27. The nave and aisle seating forms part of the mid-19th century re-ordering carried out by Ferrey. These are simple pine benches which are not remarkable in terms of design quality, and do not form part of a coherent, mid-Victorian church interior. On this basis, HE consider that the harm accruing from their removal to the significance of the church building would be low. This intervention would be required for implementing the congregation's coherent plans for using the building in a more flexible way than is done at present. Accordingly, any limited heritage harm that may accrue from the removal of the pews is potentially justified by the opportunity to open up the church to new community activities, which would ensure its long-term conservation. The proposal to re-floor the areas cleared of the existing timber bench platforms in stone, and to retain the Victorian tiled patterns in the aisles, appears a sympathetic, and aesthetically satisfactory, design solution.

28. With reference to the provision of an accessible toilet to support current and future use of the church, HE consider that the tower, which is currently enclosed by a rather unattractive late 19th or early 20th century screen, is an ideal location. HE are content that a previous proposal to create a mezzanine level, accessed by a staircase at the rear of the church, has been omitted, and they have no objection to the current scheme. However, HE suggest siting the proposed macerator under the tower floor rather than outside so as to avoid any damage to any potential buried archaeology. It would also be preferable to relocate, rather than to cover up, the existing ledger stones falling in the areas of the proposed facility in order to prevent their deterioration.

29. Regarding the heating overhaul, HE note that it is proposed to install a low-pressure, underfloor hot water heating system in the nave and the south aisle, with additional perimeter radiators. Both systems would be powered by a gas boiler in the short-term, to be replaced by hydrogen as it becomes commercially available. This is considered by the PCC heating consultant to be the most opportune system for this church in terms of capital cost and heating efficiency. However, HE consider that, whilst the proposed use of underfloor heating and radiators would be acceptable in principle from a heritage perspective, alternative, and more environmentally friendly, energy sources should be explored to address the new guidance for *'net zero'* compliance required by the amended FJR. In particular, HE support the advice provided by the DAC heating adviser regarding the possibility of a carefully configured, ad-hoc hybrid system tailored for the church's specific needs and characteristics. This could include installing underfloor heating served by air source heat pump technology, while using a small gas boiler for the supplementary radiators. HE's consultation response concludes by stating that any unamended application for a faculty for this work can be determined without further reference to them.

(iii) The Victorian Society

30. The Victoria Society are content to defer consideration of this case to the DAC.

(iv) The Society for the Protection of Ancient Buildings

31. The Society for the Protection of Ancient Buildings (**SPAB**) responded to these proposals on 21 November 2022. Although their response was received well outside the formal deadline for consultation responses, since it substantially pre-dates the online application, and the parish have had the opportunity of responding to the points made by SPAB, I consider that I should take it into account. SPAB acknowledge that the Statement of Need, and the Statement of Significance, are useful documents which are well written. Whilst fully supporting the introduction of the accessible WC and storage, SPAB are unable to support the removal of all the pews and the existing floor as they do not feel that these harmful aspects of the proposals

have been fully justified. SPAB believe that there are better ways of heating this church rather than underfloor heating, and that these require further consideration. They suggest contacting the DAC's heating adviser, and possibly getting other independent opinions for comparison.

32. SPAB acknowledge that the base of the tower seems to be a sensible location for the accessible WC as drainage, and a connection to the water supply, are already located in this area. They understand that a new macerator will need to be installed, and that this would be in a pit below the floor of the tower, so there would obviously be an archaeological element to this work. Details of the extraction system, including the external vent, would also need to be provided. SPAB are generally happy with the new storage, but they do not want to see any pews being broken up and recycled to form parts of the new cupboards. They point out that it is vital to ensure that there is enough storage for future needs.

33. Given that there is a large parish hall which could be used for events, SPAB consider that it is far from clear why the church need to remove all the pews to create more flexible space. The documentation presently provided does not clearly show how a flexible interior would be used. If the pews (or a good portion of them) were retained, they could almost solve the heating problem by using a combination of under-pew heaters with wall-mounted fan heaters. This would bring warmth into the heart of the church, although the Chancel and the Lady Chapel would remain cold unless some means could be found of incorporating heating sympathetically into these spaces.

34. Since the pine pews date from 1860-61 and were installed by Benjamin Ferrey when he undertook repairs, SPAB defer to the Victorian Society over their significance. However, the pews add to the internal character of the church, so removing them completely would have a significant impact. The Statement of Need suggests that some pews could be reinstated in the south aisle. Whilst welcoming this, SPAB feel that might look a little unbalanced.

35. Should the wall plaster on the north wall need to be repaired before any heaters were installed, SPAB would not necessarily be against removing some of the pews from the north aisle to create additional flexible space. However, they would like to see a reasonable block of pews remaining in the centre of the nave, not only to retain some of the character of the Ferrey re-ordering, but also because this would significantly improve the options for successfully heating the centre of the church. Noting that the Statement of Significance states (at page 7) that although *'it would lose a significant Victorian addition* [the pews]*, it would restore the look of the church back to its medieval glory'*. SPAB believe that every era of a building is an important part of its history, and that undertaking conjectural works to take a building back to a specific period in time is never appropriate.

36. From page 5 of the Statement of Significance, SPAB infer that the rationale for the proposal to replace the remaining floor is purely to improve its appearance throughout the nave and the south aisle. Robust justification is required to replace an historic floor, and it should be demonstrated that the floor is beyond repair. No such justification has been provided in this case, and the photographs throughout the online application indicate that the floor is generally in a good state of repair, with red and black Victorian tiles incorporating heating grilles in the aisles. SPAB would be happy to see the areas of concrete repaired appropriately with tiles (subject to details), but there is nothing to suggest that the entire floor needs to be replaced.

37. SPAB point out that at present the church does not appear to have any background heating, and when the Lady Chapel and Chancel were re-ordered, no heating was incorporated

within them, resulting in the present wish to include radiators in these areas. This may be quite hard to do well in terms of running pipework and cabling through. SPAB fully appreciate that now the existing boiler has broken down, the church need a solution to their heating problems. However, SPAB are concerned that underfloor heating may not be the best option here. These systems are only financially viable if the floor needs to be re-laid or replaced due to its poor condition (as to which SPAB have seen no evidence), and if the church is to be in use for at least five or six days every week, and for at least five hours a day. From what SPAB understand, the church is currently used for Sunday worship, a small service on a Wednesday morning, and weekly choir practice, although it is not clear exactly how the parish hope it will be used in the future; but it is doubtful if it will meet the level of usage required to make underfloor heating financially viable. The proposals are to install underfloor heating into the areas where there are currently timber pew platforms. SPAB assume the underfloor heating would be run constantly to provide a low background heat of around 12 degrees, with the radiators boosting the temperature for services. This would all be run from a gas boiler and is going to be expensive. Having looked at the calculations, SPAB feel that the output of the underfloor heating system will actually be very low – 60kW of heat output is not enough to provide a reasonable background temperature – and it is likely to require more output to get to a comfortable temperature with the radiators (probably more like 80-100kW), or the radiators will need to be on at a higher temperature for longer.

38. If the pews are removed, there are very few options left to heat the entire volume of the church to a comfortable temperature, and the church will end up with a very cool space in the centre. The danger is that the church will end up as a flexible space, but one which cannot be heated to a decent level of comfort in the centre to allow it to be properly used, or that the cost of the heating will be so high that it will not be affordable in the long run. SPAB have seen many cases of churches creating large flexible spaces which are barely used as the parish cannot afford to heat them. The most sensible way forward would be to forget the underfloor heating and to use a combination of quiet fan heaters, which heat the space up quickly in around 20 minutes (powered from air-to-air heat pumps), along with under-pew heating to bring the space up to temperature when required. SPAB are also concerned that the proposals, as they stand, do not seem to be considering the Church of England's *'net zero by 2030'* proposals. Air-to-air heat pumps would be a good option here as there appears to be plenty of external space where these could be positioned, and there are now low noise units available which are very quiet.

39. SPAB therefore strongly advise the parish to give their heating proposals more thought since, at present, they cannot support them.

40. The petitioners have responded, stating that they have taken account of the SPAB's (late) response to the public consultation. For the most part, this was addressed in the note which the petitioners uploaded to the OFS on 27 April 2023, from which I have quoted extensively at paragraph 14 above. SPAB are said to have raised two main issues, one about the heating proposal, and the other about the removal of pews. The parish have already confirmed that they could keep some of the pews if the court should deem that to be necessary, although they are of poor quality and, as they are attached to wooden platforms, it would not be a simple matter of letting them stand on the new stone flooring. The parish could attach locking castors that would enable some of the pews to be retained within their overall desire to make the nave and the south aisle a more flexible space. The note of 27 April sets out the case for gas and also outlines some steps that the parish have already taken, and some that the parish are planning to take, in a

move towards reducing their carbon emissions. The churchwarden states that he participated in an online webinar run by HE in December 2022 which strongly advocated the use of heat pumps, but they failed to respond to queries he raised, in particular asking about comparable buildings that had gone down that route. In the end, the churchwarden contacted some roughly comparable churches in neighbouring dioceses to ask about their experiences with air source heat pumps, and he has annexed their responses to his note. Their experience, and that of the parish's own expert heating engineer, Chris Reading, have convinced the parish that air source heat pumps are not the best way to heat this church.

The Diocesan Advisory Committee's Notification of Advice

41. On 31 July 2023, the DAC issued their NoA. This was a split NoA, reflecting different advice regarding the heating and the other aspects of the proposals.

42. First, the DAC recommend for approval by the court the installation of the accessible toilet in the church tower, the removal of the pews, and the associated re-flooring in stone throughout the nave. This aspect of the proposals is to be subject to the following conditions:

(1) The precise floor slab layout, together with the choice of stone, its colour, and its finish, are to be agreed with the DAC sub-committee before any work begins on the floor replacement.

(2) The choice and finish of the replacement chairs are to be agreed by the church buildings officer before any of them are purchased.

(3) The ledger stones which will be obscured by the accessible toilet are to be moved to the chequered walkway in the tower.

(4) A photographic record and measured drawings are to be made of the part(s) of the church affected by the works before any work begins, and copies are to be deposited with the DAC and placed within the church log-book.

(5) Since these proposals may have a direct impact on burial archaeology, the advice of the Diocesan Archaeological Adviser must be followed with regard to the discovery of any human remains or significant archaeological deposits. Cases involving a planning application may need to follow the requirements of any planning condition relating to archaeology, on which the Diocesan Archaeological Adviser can also advise. No spoil is to leave the churchyard; and any charnel must be reburied with all due reverence.

43. Secondly, the DAC do not object to the court approving the overhaul of the heating, to include underfloor heating fuelled by a gas boiler and associated works. This is to be subject to the condition that a detailed specification and precise radiator layout are to be agreed with the DAC's heating adviser. The DAC's principal reasons for advising that it does not object to this aspect of the proposals are:

(1) Since the DAC had previously agreed that it ought not to mandate modes of decarbonisation in specific cases, anything which is prescriptive could be problematic; and

(2) The DAC could not assure itself beyond reasonable doubt that installing an air source heat pump would be the right option in the instant case, but nor could it disprove unequivocally the advice of the parish's heating engineer against installing one.

The reasons the DAC agreed not to issue a notification of advice recommending this aspect of the proposals are:

(3) Concerns about the viability of the proposed background heating given current and projected usage patterns; and

(4) The DAC's heating adviser and the energy audit had reservations based on the belief that non-fossil fuel options would be possible here.

44. The NoA records, that in the opinion of the DAC, the petitioners' explanation of how, in formulating their proposals, they have had due regard to *'net zero'* guidance is adequate. The DAC minutes record that they recognize that this has been a transitional case in terms of the application of the new FJR and *'net zero'* requirements, as the project has been in planning since before these came into operation. The DAC agree that the PCC have now demonstrated due regard for the *'net zero'* legislation, having consulted an independent heating engineer, and commissioning and beginning to enact the advice of an energy audit.

45. The DAC minutes record that although the parish have offered to commit to switching to a more environmentally-friendly fuel source by 2030, the DAC do not agree that it would be fundamentally right to put *any* sort of condition on the NOA to this end, believing that if permission were to be granted for a gas boiler, consideration ought to be given to the embodied carbon in that system, in addition to the toll on the PCC of being required to plan another major overhaul so soon after the first. Moreover, with technology continually advancing, the DAC consider that the legislation would also be likely have progressed to a point requiring the PCC to make a more environmentally friendly change in any event at the point that their system no longer works.

46. In the NoA, the DAC advise that the proposals are likely to affect the character of the church as a building of special architectural or historic interest, and also archaeological remains existing within the church or its curtilage. Since, in the DAC's opinion, FJR 9.9 applies to the proposals, notice of them was published on the diocesan website. No objections have been received in response either to this notice, or to the display of the usual public notices (which took place during the period from 3 August to 2 September 2023).

Consideration of the petition

47. After I had worked through the many documents uploaded to the OFS relating to this application, I finally came across SPAB's email consultation response, dated 21 November 2022, summarised at paragraphs 31 to 39 above concluding with their strong advice to the parish to give their heating proposals more thought since, at present, they could not support them. In light of that advice, I felt constrained by rule 9.3 (1) (b) of the FJR to direct that 21 days' special notice of this faculty application should be given to SPAB in accordance with rule 9.5. I directed that the special notice should be accompanied by copies of the document setting out the parish's case for a gas boiler (as recited at paragraph 14 above) and the DAC's *'split'* NoA. I was satisfied that there was no need to give special notice of this application to the CBC, HE, or the Victorian Society. On 2 January 2024 the Registry informed me that special notice has been given to SPAB via the OFS, and that the deadline had passed, with no further response having been received.

48. Since this is an unopposed faculty petition, I am satisfied that it is expedient in the interests of justice, and in furtherance of the overriding objective of the FJR, for me to determine the petition without a hearing, and on the basis of the considerable volume of written

and illustrative material that has been uploaded to the OFS and is available to the court. As previously noted, I have viewed the church and its surroundings. In determining this faculty application, I have had regard to all of the consultation responses, and the views of the parish, as well as the DAC's observations and advice.

49. I apologise to the petitioners and the parish for my delay in processing this application, and delivering this judgment, which has required the most anxious and prayerful consideration.

50. At this point, it is convenient for me to set out the legal framework by reference to which this faculty petition falls to be determined.

The legal framework

51. Since Holy Trinity, Cookham is a Grade II* listed church building, I have necessarily had regard to what have become known as the *Duffield* guidelines (named after the decision of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158), as explained and expanded in later cases. It is sufficient for me to refer to (and paraphrase) the following summary of the relevant principles (as they apply to a Grade II* listed church) taken from my recent decision in this Diocese in the case of *Re St Laurence, Combe* [2022] ECC Oxf 5 (at paragraph 19):

> *… for the purposes of the present case, which concerns a Grade [II*] listed church building, I must consider:*
>
> *(1) The degree of harm that these proposals, if implemented, would cause to the significance of the church as a Grade [II*] listed building of special architectural or historic interest; and*
>
> *(2) Whether the petitioners have demonstrated a clear and convincing justification for their proposals, in terms of any resulting public benefits which would outweigh that harm.*
>
> *In doing so, I have to bear in mind:*
>
> *(a) That the burden rests on the petitioners to demonstrate a sufficiently good reason for making any changes to this listed church building;*
>
> *(b) That the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted;*
>
> *(c) Since this building is listed Grade [II*], only exceptionally should serious harm be allowed; and*
>
> *(d) Whether the same, or substantially the same, benefits could be obtained by other works which would cause less harm to the character and special significance of this church building.*

52. I have already indicated that the only aspect of the petitioners' proposals which calls for any detailed judgment is that which seeks faculty approval for a new, replacement, gas-fired heating system for the church. I have also explained that this falls to be determined against the background of the ambitious target set by the Church of England of achieving *'net zero'* carbon emissions by 2030. It is therefore necessary for me to consider recent cases in which Diocesan Chancellors have had to consider the challenges that this presents when considering a faculty application seeking authorisation for such a heating system.

53. In *Re All Saints, Scotby* [2023] ECC Car 3, the petitioners urgently wished to install a new gas boiler in the church, to replace the existing gas boiler (which was 35 years old and had been condemned) and to make improvements to the heating system and boiler room. The DAC had not approved the proposal, taking the view that the petitioners had not fully considered the alternatives to using fossil fuel. Deputy Chancellor Lander (in the Diocese of Carlisle) granted a faculty. He was satisfied that the petitioners had in fact considered all available alternative heating systems, and that the system proposed was the only viable option that the church could afford. The faculty was to be subject to a condition that the church should either switch to a green gas tariff or enter into a separate arrangement with a carbon off-setting scheme to offset the carbon emissions from all non-renewable gas used.

54. In considering the role of the consistory court (at paragraphs 21 to 32), the Deputy Chancellor rejected the notion that the consistory court should take what might be described as a *'hands-off'* approach, leaving it to petitioners to judge how the aim of carbon neutrality was to be addressed, in favour of a more interventionist approach, which would require the court to consider the environmental implications of any works or proposals to which *'net zero'* guidance applies, whether or not the petitioners had already done so. In Deputy Chancellor Lander's judgement, the effect of the amendments to the FJR to which I have referred in paragraph 3 above *'is clearly to enable, and indeed to require, the Chancellor to make a decision on whether they* [i.e. the petitioners] *have actually had due regard to the guidance'*. The Deputy Chancellor adopted, as the correct definition of the phrase *'have due regard'*, the explanation contained in a note produced by the Church of England Legal Office (seeking to clarify the position in the context of safeguarding):

> *The legal duty to have due regard means that the person to whom the guidance is directed is not free to follow the guidance or not as he or she chooses. As a matter of law, the guidance should be given great weight and must be followed unless there are 'cogent reasons' for not doing so …*

Deputy Chancellor Lander set out his conclusion, in the context of *'net zero'* guidance, at paragraph 32, thus:

> *To draw these points together, I consider that the proper role of the Court, in deciding whether petitioners have had due regard to the net zero guidance, is to determine whether the guidance has been followed or, if not, whether the petitioners have established any cogent reasons for not following the guidance."*

At paragraphs 40 to 45, the Deputy Chancellor distilled five key points from the *'net zero'* guidance *'which generally need to be considered in an application of this nature'*, namely:

(1) The first is that churches need to be properly heated.

(2) The second is that in assessing whether a church building is properly heated, it is necessary to consider the proposed and likely uses for the building.

(3) The third is that any proposed heating system must be affordable.

(4) The fourth is that the list of types of heating system available for churches is finite.

(5) The fifth is that once there has been a determination as to the appropriate type of heating system or, more specifically, whether the proposed system is appropriate, it is necessary to

consider whether any conditions should be imposed when granting the faculty. *'In particular, it is necessary to consider the ways in which any carbon emissions from such a system may be offset, however imperfectly, by other methods.'*

55. Having considered (at paragraphs 46 to 66) these five key points, at paragraphs 67 and 68, Deputy Chancellor Lander set out his conclusions:

> *67. In the light of the above, I consider that the Petitioners have had due regard to the guidance. Indeed, they have followed the guidance and carried out a thorough appraisal of the options available to them. It is not therefore necessary to consider whether the Petitioners have shown cogent reasons for not following the guidance.*
>
> *68. The conclusion of the Petitioners that a replacement gas boiler is the only viable option seems to me to be correct on the basis of the available evidence. The rather unfortunate reality is that it is the only affordable option which meets the needs of the church.*

Thus far, I would accept, endorse, and adopt, the Deputy Chancellor's analysis.

56. At paragraphs 69 to 75, Deputy Chancellor Lander considered the ways in which the carbon emissions from a heating system which was not in itself carbon neutral might be offset. At paragraph 72, he considered

> *… that when giving permission for a new fossil fuel burning boiler it is necessary to adopt a robust approach when considering conditions. If this, or indeed any, church is to continue to operate a gas boiler then in my judgment the starting point, when considering conditions, ought to be that it should take steps to mitigate the effect of that.*

At paragraph 75, he proposed

> *… to order that it will be a condition of the faculty that the church either switches to a green gas tariff or enters into a separate arrangement with a carbon offsetting scheme to offset the carbon emissions from all non-renewable gas used.*

57. However, in two recent judgments handed down in the Diocese of Southwark, Chancellor Petchey has decided that in circumstances where a faculty is granted to replace one fossil fuelled heating system with another, it is not generally appropriate to impose a condition requiring the purchase of offsets. The Chancellor also made it clear that he was not discouraging the purchase of offsets, which was one of the ways that parishes might seek to achieve carbon neutrality by the target date. The first judgment is *Re St Mary & St John the Divine, Balham* [2023] ECC Swk 7, where the petitioners wished to replace the church's existing three gas heating boilers with three new gas boilers. Whilst the amended FJR provided that due regard must be paid to the Church of England's *'net zero'* guidance, the petitioners had been unable to find any alternative system at reasonable cost; and the proposed new boilers would be more efficient than the old ones. The DAC had accordingly recommended the proposed system. Chancellor Petchey granted a faculty. Although, in similar cases, some Chancellors had imposed a condition relating to carbon off-setting, in order to meet the challenge of meeting carbon neutrality, Chancellor Petchey decided not to impose such a condition. The Chancellor adopted a similar approach in the contemporaneous case of *Re Christ Church, Gipsy Hill* [2023] ECC Swk 8, where the petitioners successfully sought permission to replace a gas-fired cabinet heater in the church with a new condensing gas heater. I note that in both these cases the DAC had not recommended any condition requiring the purchase of offsets.

58. Chancellor Petchey considered the possibility of carbon offsetting at paragraphs 8 and following of his judgment in the *Balham* case. Whilst respecting the judgments of Chancellors who had taken a different approach, and accepting that the circumstances of any particular case might indicate the imposition of a condition, for pragmatic reasons Chancellor Petchey nevertheless continued to prefer the alternative approach of leaving decisions about the purchase of offsets to be taken, both carefully and prayerfully, by individual parishes. At paragraph 17, Chancellor Petchey said this:

> *I can see that the approach that I have adopted might be seen as letting the parishes 'off the hook': that a church, given the option of doing nothing, will do nothing. But this is belied by the strenuous efforts being made by churches across England to achieve carbon neutrality by reference to a very challenging target. I think that if it is achieved it will be by 'bottom up' rather than 'top down' efforts. In principle also one wants to encourage local effort; and not impose requirements which may be perceived to be unfair or prejudice a parish's ability to pay its parish share.*

59. I tend to favour Chancellor Petchey's approach. Like him, in general terms, and subject to the individual circumstances of the particular case, I do not think that it is realistic to expect churches which are already bearing the cost of installing new heating to seek both to make provision – as they need to do - for seeking to achieve carbon neutrality whilst also purchasing carbon offsets. If the DAC state, in their NoA, that they are satisfied with the petitioners' explanation of how, in formulating their proposals, they have had due regard to the *'net zero'* guidance, yet they do not recommend the inclusion of any condition requiring the petitioners either to switch to a green gas tariff, or to enter into a separate arrangement with a carbon offsetting scheme, then I do not consider that the Chancellor should impose such a requirement as a condition of granting the faculty. Certainly, it would not be fair or sensible to do so without inquiring as to the particular financial circumstances of the parish in question, so as to determine whether this would be affordable for the particular parish; but the Chancellor is ill-fitted to undertake such a multi-factorial assessment. If such a condition is to be imposed, in my judgement it would be preferable for this only to be done pursuant to a recommendation to that effect from the DAC in their NoA, and then only after the DAC have specifically considered the issue of its affordability.

Analysis and conclusions

60. I am entirely satisfied that this church needs an internal WC, and that the tower affords the most suitable and appropriate location for this. The existing toilet provision in the Parish Centre, some distance away, is entirely inappropriate and inadequate. The introduction of this amenity will necessitate the relocation of the ledger stones which will be obscured by the accessible toilet to the chequered walkway in the tower. It will also necessitate the removal of the two wooden benefactors' boards, which are presently affixed to the north and south interior walls of the tower, and their relocation to another suitable location within the tower. I am satisfied that this part of the proposals will cause no harm to the significance of this church as a Grade II* listed building of special architectural and historic interest; and that the petitioners have demonstrated a clear and convincing justification for these works.

61. I am satisfied that the present, temporary solution for heating the church is unsatisfactory and unsuitable for long term use. That was apparent on my visit to the church, which was cold even on a dry and sunny day in late-October. The petitioners have demonstrated

a clear need for a new heating system. I am entirely satisfied that the evidence establishes that under-floor heating below a new stone floor, and supplemented by perimeter radiators, is the appropriate heating solution for this church. This will require the removal of the pews that remain in the nave and the south aisle. I am satisfied both that this pew removal will cause only moderate, if any, harm to the significance of this church as a Grade II* listed building of special architectural and historic interest; and that the petitioners have demonstrated a clear and convincing justification for this pew removal, in terms of the public, congregational and community benefits which will ensue, and which will greatly outweigh any such harm. Indeed, I consider that the removal of the pews is itself likely to enhance the significance of this fine church interior. I find that the pews are of poor quality. They are cramped and uncomfortable. I agree with the petitioners' assessment that the earlier, partial re-ordering has left the interior of the church as a building of two halves: a flexible east end space, and a nave and south aisle dominated by these pews. Their removal will enhance the appearance of the medieval interior, providing a brighter, more coherent, and flexible, interior space, far better suited to the church's missional aims; creating order out of the present unsightly and chaotic mixture of pine, Victorian tiled, and concrete flooring at the front of the nave; and resulting in a unified church interior. The computer-generated image at the end of this judgment shows what the nave should look like with the pews removed and a new floor laid ready for moveable seating. In my judgement, this will be a massive improvement upon the pew-dominated appearance of the present nave, and will succeed in showing the fine medieval features of the interior of the church to their full advantage. I note that the CBC are content with the proposed full pew removal, which will enable the parish to have *'a much-needed, flexible layout'*. I note also that HE consider that the present, simple, mid-C19th pine benches are unremarkable in terms of design quality, and that they do not form part of a coherent, mid-Victorian church interior. On that basis, HE consider that the harm to the significance of this church building resulting from their removal would be low. On the basis that *'this intervention would be required for implementing the congregation's coherent plans for using the building in a more flexible way than is done at present'*, HE consider that *'any limited heritage harm that may accrue from the removal of the pews is potentially justified by the opportunity to open up the church to new community activities, which would ensure its long-term conservation'*. I do not agree with SPAB's assessment that these pews add to the internal character of the church, so that removing them completely would have a significant adverse impact upon this church interior. I do not favour the suggested retention of a token seven rows of pews in the south aisle. In my judgement, they would look out of place; and I agree with SPAB's suggestion that they *'might look a little unbalanced'*. I agree with the reasons advanced by the petitioners for rejecting the suggested retention of the pews in order, through the installation of pew heaters, to provide an alternative means of heating the church. I am satisfied that to ignore the rationale and justification for the proposed pew removal, simply in order to provide a solution to the problem of heating the church, would be a situation of allowing the tail to wag the dog.

62. However, all three consultees have expressed serious concerns about the installation of a new, replacement gas-fired system to heat the church. The CBC express concern with the proposed choice of gas boiler to supply the primary heat, particularly in the current climate of energy price increases, and with the Church of England's *'net zero'* carbon target in mind; and they would encourage the church to revisit the choice of boiler. HE consider that, whilst the proposed use of underfloor heating and radiators would be acceptable in principle from a heritage perspective, alternative, and more environmentally friendly, energy sources should be explored to address the new guidance for *'net zero'* compliance required by the amended FJR. In

particular, HE support the advice provided by the DAC heating adviser regarding the possibility of a carefully configured, ad-hoc hybrid system tailored for the church's specific needs and characteristics. This could include installing underfloor heating served by air source heat pump technology, while using a small gas boiler for the supplementary radiators. SPAB express similar views, strongly advising the parish to give their heating proposals more thought since, at present, they cannot support them.

63. I am satisfied that the parish have considered all of the presently available, alternative sources of heating, including electricity, hydrogen, solar photo-voltaic technology, infra-red halo heaters, under-pew heaters, air and ground sourced heat pumps, and the retention of the existing gas-fuelled system. Electricity, hydrogen, and solar technology are not presently viable options. I accept the parish's reasons for rejecting the under-pew heating solution because this would not fulfil the aims and aspirations of their Mission Action Plan of removing the pews and providing a more flexible space for community use. I also accept the parish's reasons for rejecting the installation of infra-red halo heaters. I agree that a ground source heat pump is not a viable option on archaeological grounds. This leaves an air source heat pump to power the underfloor heating, with a small gas boiler for the supplementary radiators, as the only viable alternative to a fully gas-powered heating system. The parish have further reviewed their heating proposals, in consultation with their heating consultant, and they remain convinced, for the reasons set out in the paper from which I have quoted at length at paragraph 14 above, that a gas-fuelled heating installation is the best way forward for their church at the present time.

64. I have already made it clear that in my judgement, when deciding whether petitioners have had due regard to the *'net zero'* guidance, the proper role of the court is to determine whether the petitioners have actually followed that guidance or, if not, whether the petitioners have established sufficiently cogent reasons for not doing so. In performing this task, I have borne in mind the five key points identified at paragraph 54 above. With some hesitation, I have concluded that the petitioners have indeed had due regard to the *'net zero'* guidance in the present case. They have sought and obtained the advice of a suitably qualified and reputable heating consultant; they have manifestly carried out a thorough appraisal of the options he has presented to them; and they have applied, and sought to follow, the *'net zero'* guidance. All of this has led the parish to the conclusion that a gas-fuelled heating installation is the best way forward for this church at the present time because it is currently the only viable, and affordable, option which satisfies the heating and missional needs of their church. Should I be wrong in that assessment, then I am satisfied that the petitioners have shown cogent reasons for not following the *'net zero'* guidance in the present case.

65. In my judgement, the petitioners' conclusion that, at present, a replacement gas boiler is the only viable, and affordable, heating option which will meet all the relevant needs and aspirations of the church is one that is properly open to them on the basis of all the available evidence. I share the concerns expressed by the DAC about the viability of the proposal for underfloor heating given the current, and even the projected, usage patterns for this church. But I acknowledge that the contrary view is one that is both genuinely held by, and is properly open to, the petitioners on the available evidence; and it is not one which this court should properly ignore. I also recognise the reservations raised by the energy audit, and entertained by the DAC's heating adviser, that a non-fossil fuel option **may** be possible here. But I am also satisfied that the DAC were right to conclude that they could not assure themselves, beyond reasonable doubt, that installing an air source heat pump would be the right option in the present case. Nor

could the DAC unequivocally disprove, or discount, the views of the parish's heating engineer advising against the installation of an air source heat pump in the present case. The DAC are a specialist body mandated by s. 37 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to advise the Chancellor on matters relating to the grant of faculties. Whilst I should not simply *'rubber-stamp'* the advice proffered to me by the DAC, nor should I disregard their considered and reasoned views without proper evidence and good reason. In the present case, I am not satisfied that there is sufficient evidence, or sufficiently good reason, to enable me to disregard the conclusions reached by the parish, and supported by the analysis and advice of their heating consultant, that an air source heat pump, whether or not supplemented by a gas-fuelled boiler, is not the appropriate heating solution in the present case. In my judgement, the parish are entitled to follow that advice. As the parish have rightly pointed out, it is they who will have to bear the costs, and the consequences, of the final heating solution for their church. In relation to such a matter, I consider that they are entitled to a reasonable margin of appreciation.

66. At paragraph 45 of his judgment in *Scotby*, the Deputy Chancellor referred to *'a determination as to the appropriate type of heating system or, more specifically, whether the proposed system is appropriate'*. In expressing himself in this way, I do not understand the Deputy Chancellor to have been lending any credence to the notion that, provided the proposed system is appropriate, the court should authorise it in preference to an alternative heating system that ranks higher, in order of desirability, from the perspective of reducing carbon emissions. However, the requirement to follow the *'net zero'* guidance involves a multi-factorial, and evaluative, balancing exercise, requiring consideration of many matters concerning which reasonable disagreement is possible. This is inevitable in any developing field of technological knowledge, where research is still actively ongoing, and, at any point in time, there may be no definitive *'right answer'*. In my judgement, adherence to the *'net zero'* guidance does not mandate the court to prefer one heating solution over another merely because it **appears** to offer an immediate reduction in direct carbon emissions, and without regard to wider considerations, such as affordability, technical issues, and the effects of embedded carbon in the context of earlier replacement of the heating installation. If I am wrong in that approach, then I am satisfied that such considerations may afford cogent reasons for not following the *'net zero'* guidance in any particular case. I agree with the DAC that, at the present time, and in the present state of scientific knowledge and the development of *'net zero'* technologies, anything which is unduly prescriptive could prove problematic; and it is this consideration which underlies, informs, and justifies, the DAC's view that it ought not to mandate modes of de-carbonisation in specific cases.

67. For these reasons, and after careful, anxious, and prayerful, consideration, I have determined that it is appropriate to authorise the installation of a new, replacement gas-fired system to heat this church, notwithstanding the concerns expressed by the various consultees, and the reservations held by the DAC. Should the parish wish to substitute an air source heat pump, whether with or without a supplemental gas-fired boiler, I would also be content to endorse, and authorise, that course.

68. I agree with, and endorse the views of, the DAC that although the parish have offered to commit to switching to a more environmentally-friendly fuel source by 2030, it would not be right to put any sort of condition to this effect on the grant of this faculty both because of the embodied carbon in the new gas boiler, and because of the burden that would fall on the parish of being required to plan another major overhaul so soon after the first. Moreover, with technology continually advancing, I agree with the DAC that matters are likely to have

progressed to a point requiring the parish to make a more environmentally friendly change in any event at the point when their new heating system needs replacing. Following the approach I have outlined at paragraph 59 above to the imposition of conditions concerning carbon offsetting, or the entry into renewable energy tariffs, I impose no such condition upon the grant of this faculty. I will leave that to the collective conscience of the PCC, who will no doubt give prayerful consideration to the effects of climate change, which have been felt so recently in this very parish. In this connection, I note that following Storm Henk, in the first week of this new year, Cookham was cut off from surrounding areas by the closure of the three main roads serving the village, and was left without electric power, when river levels rose, and the River Thames burst its banks, causing extensive flooding. This parish have every reason to wish to guard against the effects of climate change.

Disposal

69. For these reasons, the court will grant a faculty for the proposed works as sought. The faculty will be subject to the following conditions:

(1) The precise floor slab layout, together with the choice of stone, its colour, and its finish, are to be agreed with the DAC sub-committee before any work begins on the floor replacement. In the event of any disagreement, the petitioners may apply to the court.

(2) The choice and finish of the replacement chairs are to be agreed by the church buildings officer before any of them are purchased. In the event of any disagreement, the petitioners may apply to the court.

(3) The ledger stones which will be obscured by the accessible toilet are to be moved to the chequered walkway in the tower.

(4) The two wooden benefactors' boards are to be removed to another suitable location within the tower, to be agreed with the DAC sub-committee. In the event of any disagreement, the petitioners may apply to the court.

(5) A detailed specification, and precise radiator layout, are to be agreed with the DAC's heating adviser before any work begins on the installation of the new heating system. In the event of any disagreement, the petitioners may apply to the court.

(6) A photographic record, and measured drawings, are to be made of the part(s) of the church affected by the works before any work begins; and copies are to be deposited with the DAC and placed within the church log-book.

(7) Before commencing any works, the parish are:

> (a) to satisfy the DAC sub-committee that they have secured sufficient funding to complete the works; and
>
> (b) to notify the church's insurers; and they are to comply with any recommendations or requirements they may make or impose.

(8) Since these proposals may have a direct impact on burial archaeology, the advice of the Diocesan Archaeological Adviser must be followed with regard to the discovery of any human remains or significant archaeological deposits. Cases involving a planning application may need to follow the requirements of any planning condition relating to archaeology, on which the

Diocesan Archaeological Adviser can also advise. No spoil is to leave the churchyard; and any charnel must be reburied with all due reverence.

(9) The petitioners are to follow the current diocesan guidelines on electrical installations.

(10) Should the terms of any grant funding require the parish to display a plaque recognising their contribution, the parish is to seek the approval of the DAC sub-committee to the proposed location and fixing method of the plaque. In the event of any disagreement, the petitioners may apply to the court.

I give the petitioners permission to apply to the court, by letter to the Registry, for any further or necessary directions as to the carrying-out of this faculty, or for the variation of this faculty in the event of any unforeseen difficulties presenting themselves.

70. In the first instance, the period allowed for these proposals to be implemented will be twelve (12) months from the date of the grant of the faculty. This is to allow further time for any further necessary fund-raising and grant applications, to commission and schedule the works, and to enable them to be carried out at a suitable time of the year.

71. In the usual way I charge no fee for this written judgment. The petitioners must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with this application.

72. In conclusion, I must thank the parish, the DAC, the church buildings officers, and the consultees for the evident care and attention they have devoted to this faculty application. Their work has certainly contributed to a fully informed analysis and decision. I must also apologise to the petitioners and the parish for the length of time it has taken me to produce this judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Third Sunday After Epiphany

21 January 2024

Existing view east down the nave showing Victorian tiled floor and plain pine pews:

Reproduced from page 9 of the Statement of Significance

Floor at the front of the nave showing the mix of pine, Victorian tiles and concrete

Computer-generated picture showing what the nave would look like with the pews removed and a new floor laid ready for moveable seating but with seven rows of pews retained in the south aisle:

Reproduced from page 25 of the Statement of Need