

IN THE CONSISTORY COURT

OF THE DIOCESE OF BATH AND WELLS

**Re: The Church of Saint Peter and Saint
Paul, Bath (Bath Abbey)**

JUDGMENT

Introduction

1. Bath Abbey, as it is universally known, occupies a commanding position in the centre of the City of Bath, a UNESCO World Heritage site. The Abbey is a Grade I listed building, and was rightly described in the course of the proceedings as one of the architectural gems of England. It is also a focal point for worship and community activity in and beyond the City boundaries.

2. Notwithstanding its importance, the Abbey has experienced a somewhat chequered history. Construction of the present Abbey began in the late 15th century; it replaced an earlier building almost all of which is irretrievably lost. The new church, with an impressive open nave leading to the chancel set aside for monastic use, was of a layout common to many religious foundations. The dissolution of the monasteries left the nave unroofed (either because it had never been completed or because it was stripped of valuable lead) but the Abbey church was saved from destruction through its acquisition as a parish church. The nave remained unroofed until the early 17th century. Seating was confined to the chancel, where at some stage box pews were constructed.

3. By the 18th century the largely empty nave had acquired a fresh purpose. The development of Bath as a fashionable spa resulted in the nave becoming the

favoured place of burial both for residents and for those visitors who ended their lives in Bath. Numerous tombs were constructed haphazardly in the floor of the nave, interments being recorded by monuments laid over the tombs or attached to the walls or pillars. These monuments (the ledger stones being 891 in number) constitute an outstanding collection surpassed only at Westminster Abbey.

4. Between 1859 and 1874 Bath Abbey underwent a major restoration directed by Sir George Gilbert Scott. Amongst Scott's modifications were the stabilisation of the nave floor and the provision of a full set of pews. Scott's seating arrangements comprised choir stalls; the "Corporation Pews" replacing the box pews in the chancel; and pews (described at the time as benches) throughout the nave. The nave pews were fixed to platforms covering the monuments set into the floor but (following the stabilisation works) no longer marking graves. Scott also transferred to the walls the monuments previously fixed to the nave pillars.

5. The current proceedings specifically concern the nave pews, which the Petitioners seek to remove in their entirety and replace with chairs. The significance of these pews is considered in greater depth in a later part of this judgment. (Paragraphs 42 - 52.)

The Footprint Project

6. Since 2005 the Abbey Footprint project has evolved as an endeavour to address comprehensively the future needs of the fabric of the Abbey and the community which it serves. The project, which has many facets, includes the upgrading of heating, lighting and ancillary facilities; the refurbishment of "support spaces" such as meeting rooms, offices and vestries; and internal reordering to provide flexible use of the nave. The reordering is associated with the pressing need to stabilise, repair and refurbish the floor, Scott's underfloor works having subsided and developed dangerous voids. The failure of the underfloor areas is evidenced by irregularities in the surface.

7. The magnitude of the Abbey Footprint project is evidenced by its estimated total cost of £19.3 million. A petition comprising the majority of the

works was lodged on May 21st 2015. In the exercise of the new case management powers contained in Rule 1.4 of the Faculty Jurisdiction Rules 2015 I ordered that a faculty (dated November 30th 2015) should issue for the generality of the works, with directions being given for the determination of contentious issues relating to potentially controversial aspects of the proposals. Fortunately many of these issues, including the complex methodology for stabilising the floor, have been resolved by agreement.

The Present Proceedings

8. Paragraph 5(j) of the faculty of November 30th 2015 was in these terms:-

"Provision of new furniture: Choir stalls, altar furniture and nave chairs (including replacement of pews with chairs)

Work shall not commence until the petitioners have applied for and obtained a Further Order under this faculty. Special notice of the application shall be given to Historic England, The Victorian Society, the SPAB and the local planning authority each of whom upon giving notice of objection may exercise the full rights of objectors in respect of the proposal. The CBC shall have leave to give evidence in connection therewith.

Pews or pew platforms may be removed to a place of safe keeping in the course of the project only pursuant to a specific direction of the Court."

The temporary removal of the pews in the North aisle had previously been permitted to facilitate exploratory works to the floor.

9. Public notice elicited no objection to this or any other feature of the works. On July 29th 2015 the Diocesan Advisory Committee had recommended in principle the replacement of the nave pews with chairs subject to its consideration of designs and materials and finishes, and subject to the recording of displaced items.

10. Special citation to the relevant amenity societies and the local authority prompted the Victorian Society (which had previously expressed opposition to the loss of the nave pews) to enter an objection and to become party opponent.

The nub of its opposition to the proposal is set out in the following paragraphs of the letter of February 20th 2017.

"1 . Our grounds of objection are set out in our previous letters of August 2015 and November 2015. Our principal objection is to the substantial harm which would be caused by the removal of the nave pews. The Scott work, including the furnishings, floor arrangements and decorative fan vaulting, makes a major contribution to the character of the interior. These additions add richness, character and interest to the abbey interior.

2. The proposals will erode the significance of the Scott scheme, which is one of the best surviving examples of a Victorian seating scheme of this scale in England. The intact nature of the scheme enhances its significance. The loss of the nave pews and floor grate arrangement would significantly disrupt the hierarchy of furnishings. The removal of the nave pews will cause significant harm to the character of the church without sufficient public benefit to justify this harm.

3 . Bath Abbey is not a struggling parish church, it is a major church in the heart of a popular tourist destination. It receives a steady stream of visitors and donations. The Abbey's annual accounts show that giving per person is rising and the church has a surplus of income. Given the Abbey's strong financial position, there is a weak case for the proposed re-ordering."

Paragraph 3 is probably an allusion to the decision of Chancellor Collier Q.C. in re Holy Trinity Hull [2017] ECC Yor 1 in which a substantial reordering with the loss of pews was permitted on the basis of financial rather than liturgical need.

11. Although they did not become parties opponent, both Historic England and the Society for the Protection of Ancient Buildings indicated their support for the Victorian Society. S.P.A.B wrote on March 9th 2017,

"We defer to the Victorian Society for a more thorough argument on the detail and significance of the pews and continue to support them in their objection."

12. Historic England was more circumspect; it reiterated in its letter of March 8th 2017 a passage from earlier correspondence:-

"With regards to the proposed removal of the pews, we stated in our letter of 30 November 2015 (to Synergy Construction): "we remain unconvinced by the removal of the pews. Whilst we accept that in the hierarchy of the Victorian furnishings, we can see that there is a deliberate ranking of the pews within the interior of the Abbey, that give a significance to the way all the pews act as a single entity, having been designed and fitted as a set piece. However, we are also mindful of the benefits to the Abbey from their removal for visitors and to attendees at non- worship functions. The new seating proposed does not, in our view, rival the special craftsmanship embodied in the unique design and execution of the existing pews. The main issue for us will be the loss of the pews without any form of commensurate mitigation. On the basis that the proposed chairs are mass produced and not of the same distinctive character as the pews, we would expect to see replacements of a more bespoke form that would then help to mitigate against the loss of the pews. We, therefore, continue to endorse the position taken by the SPAB and Victorian Society in seeking further investigations into the issue of pew removal from the Abbey."

13. Given the importance of the matter I directed that there should be a hearing in open court. The hearing took place in Bath Abbey on October 4th and 5th 2017. The Petitioners, (the Rector, a Churchwarden and the Footprint Project Director) were represented by Mr. Cain Ormondroyd, while Mr. Mark Blackett-Ord represented the Victorian Society. I am grateful to both counsel for their assistance.

14. At the hearing Mr. Blackett-Ord modified the stance of the Victorian Society by indicating that it would accept the permanent removal of the pews in the North aisle coupled with the removal of some pews to accommodate a nave

altar and the loss of four rows at the rear of the nave. For his part Mr. Ormondroyd continued to contend for complete clearance of the nave.

The Law

15. Counsel are agreed that the correct approach is to adopt the guidelines given by the Court of Arches in *re St. Alkmund, Duffield* [2013] Fam 158 at 199G. In *re St. John the Baptist, Peshurst* [2015] PTSR D40 the Court of Arches summarised its "Duffield" guidelines as follows:-

"For those chancellors who would be assisted by a new framework of guidelines, the court suggested an approach of asking:

"(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

(2) If the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals Questions 3, 4 and 5 do not arise.

(3) If the answer to question (1) is "yes", how serious would the harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed

grade I or II*, where serious harm should only exceptionally be allowed.

In re St. John the Baptist, Penshurst the Court added this commentary:-

"We make four observations about these questions:

(a) Question (1) cannot be answered without prior consideration of what is the special architectural and/ or historic interest of the listed church. That is why each of those matters was specifically addressed in Duffield paras 57-58, the court having already found in para 52(i) that "the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change".

(b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in Duffield para 56 the court's analysis of the effect on the character of the listed building referred to "the starting point . . . that is a grade I listed building".

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see Duffield paras 85-86). That is why the document setting out the justification for the proposals is now described in rule 3.3(1)(b) of the FJR 2013 as a document "commonly known as a "statement of needs"" (italics added), in recognition that it is not confined to needs strictly so-called.

(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article."

The above represents the approach which I have adopted.

16. Mr. Ormondroyd submitted that the first "Duffield" question called for a balance to be made between harm and benefit to the special architectural and historic interest of the listed building. The effect of such a heritage balance might be to leave only a residue of harm, to be justified under questions 3, 4 and 5, thus reducing the burden of proof resting on the Petitioners.

17. Mr. Blackett-Ord resisted this submission. He was correct to do so. At least in the case of an important Grade I church, it is preferable to carry out the balancing exercise under questions 3, 4 and 5, under which any heritage matters offsetting the harm may form part of the cumulative justification alleged on behalf of the proposals.

The Evidence

18. Although my findings on the evidence will appear in subsequent sections of the judgment, some general observations about the witnesses are included here.

19. The Petitioners relied upon the Rector, Prebendary Edward Mason, and Bishop Stephen Platten as witnesses of fact. Their expert evidence comprised reports from Mr. Geoffrey Rich, the lead architect of the Abbey Footprint project, and from Dr. Chris Miele, a specialist in listed building matters. Their reports are respectively dated August 31st and September 1st 2017, and both gave oral evidence. The Victorian Society's witnesses were Mr. James Hughes, their Senior Conservation Adviser, and Dr. Geoffrey Brandwood, an independent architectural historian.

20. Although the directions for the hearing dated June 27th 2017 made provision for expert evidence complying with Rule 11.5(3) and (4) of the Faculty Jurisdiction Rules 2015, neither Mr. Hughes nor Dr. Brandwood made statements fully compliant with those requirements. Their evidence nevertheless contained matters of opinion based upon their expertise. No point was taken at the hearing upon the form of their evidence, and I am satisfied that it was properly adduced. The rules of evidence are applied in the Consistory Court. They include Section 3(1) of the Civil Evidence Act 1972, which provides:

" ... where a person is called as a witness in any civil proceedings his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence."

21. This provision enables the court to give due weight to the opinion evidence in non-expert witness statements of those closely connected with a party (such as Mr. Hughes) or of connoisseurs whose enthusiasms go beyond the bounds of objectivity. Such witnesses are unfettered by the constraints, formulated in *The "Ikarian Reefer"* [1993] 2 Lloyd's Law Reports 68 at 81 and repeated elsewhere, in relation to the duties and responsibilities of expert witnesses.

22. Dr. David Knight gave evidence on behalf of the Church Buildings Council. He was called as a judge's witness, being unconnected with either party. Unfortunately Dr. Knight was placed in some difficulty in explaining whether the contents of his statement represented his own evidence or whether he was simply transmitting the collective view of the membership of the Church Buildings Council. In future it would be helpful for this question to be addressed in the statement itself. On this occasion, however, having heard Dr. Knight I am satisfied that his evidence represents his own assessment of the case, even if his draft statement was also approved (subject to minor amendment) by the Council.

23. In the event the factual evidence adduced by the witnesses was largely undisputed, although they were in disagreement about the inferences to be drawn from the factual background and about the answers to be given to the "Duffield" questions. I am satisfied that all the witnesses were attempting to give an honest and truthful account, and to assist the court in reaching its conclusions. I have, however, heeded Mr. Blackett-Ord's warning that a witness, particularly when expressing an opinion, should not be allowed to trespass upon the court's decision-making function. The conclusions expressed in the following paragraphs therefore represent my evaluation of the evidence as a whole and not the view of any particular witness or group of witnesses.

24. In addition to the witness statements I have been provided with a wealth of written material in the form of publications, surveys and technical reports. The absence of express reference in the judgment to most of this material does not detract from its value in providing background information.

25. One aspect of the documentation does, however call for comment. The Victorian Society relied upon the responses to an online petition initiated by it, which produced numerous responses antagonistic to the Petitioners' proposals, both from within the United Kingdom and overseas. Such material, described as a memorial, was held in *re Emmanuel Church Bentley* [2006] Fam 39 at 50G to be admissible where there is proof of the signatures and evidence of the representations made to those who sign.

26. Although the Petitioners did not dispute the admissibility of the memorial, little evidential weight can be attached to it. Many of those responding had no proper interest in the proceedings. The responses of parishioners or others having a proper interest ought to have been in the form of letters submitted after public notice. Furthermore, the invitation to respond was couched in terms of protest, of which the words,

"...we ask you to sign our petition to urge Bath Abbey to halt their destructive scheme"

are a specimen. The objectivity of the signatories is inevitably open to question. Wisely, Mr. Blackett-Ord did not put the online petition at the forefront of his case.

The Petitioners' Justification for the Proposals

27. In the first place the Petitioners seek to remove the pews in order to facilitate greater flexibility in styles of worship. Prebendary Mason explained in his evidence that, for example, celebration of the Eucharist at a nave altar was severely constrained by the presence of the fixed pews on their platforms. Likewise experimentation in different patterns of seating for particular forms of

worship was impossible. The availability of chairs would permit a variety of configuration to meet the contemporary needs of the congregation.

28. Prebendary Mason is soon to retire as rector. I do not accept, however, that his departure will affect the evolving styles of worship at the Abbey, or any diminution in the need for the flexible worship space which he has described.

29. The second aspect of the Petitioners' case arises from the alleged inconvenience of the nave pews. They are said to be a tripping hazard, uncomfortable for prolonged sitting, and (whatever may have been the position in the Victorian era) ill-suited to the human form of today. They are, furthermore, an impediment to the involvement in worship of disabled people, whose wheelchairs have to be segregated in a separate area potentially remote from their friends, relatives or carers. The accommodation of small children within the pews also creates difficulty. At the end of the first day's hearing I took the opportunity to test the comfort of the pews when attending the Abbey's evening service. My experience suggests that the criticisms made by Prebendary Mason are likely to be well- founded.

30. The third feature of the Petitioners' justification concerns the use of the nave for a wide variety of social and cultural purposes, including concerts, art exhibitions, university degree ceremonies and charity events such as the "Great Bath Bake Sale". Where prolonged sitting is involved at these events, the discomfort of the pews is alleged to be accentuated. In the case of charity sales, displays or exhibitions, the available floor space is constrained by the presence of the pews. In all, according to Prebendary Mason, the hospitality which the Abbey wishes to offer to the community is diminished by the presence of the nave pews.

31. Although Prebendary Mason was challenged in cross-examination upon all these matters, the correspondence at Appendix 6 of his witness statement, as well as the notable absence of any objection from parishioners (or others having proper interest) in response to public notice, lend support to the practical grounds which have been advanced by way of justification.

32. This part of the Petitioners' case is further supported by the evidence of Bishop Platten, who was able to speak of the success of a similar reordering exercise carried out at Wakefield Cathedral. Bishop Platten's account of the liturgical and community benefits derived from the absence of fixed seating confirmed that the Petitioners' objectives were no mere "pipe dream". Of particular importance was his observation that the enhanced availability of Wakefield Cathedral for community purposes had the effect of encouraging attendance at worship.

33. In all I find the evidence in favour of change on the grounds of liturgical and community needs to be persuasive. The weight to be attached to those needs in the context of the "Duffield" guidelines is considered later in the judgment. (Paragraphs 57 - 60.)

34. The remaining element of the Petitioners' justification is the heritage benefit which removal of the nave pews is alleged to secure. First, it is said that the absence of the pews and their platforms will enable the now concealed ledger stones to be seen and appreciated. Secondly, the point is taken that the absence of the blocks of pews will enable the proportions and architectural scheme of the nave properly to be appreciated. The effect of the nave without pews is illustrated in the engravings of Vertue (1750) and Grim (1788) annexed to Dr. Miele's report.

35. While these matters properly stand as a potential benefit in the cumulative justification asserted by the Petitioners, they may each be offset by practical considerations. As regards the exposure of the ledger stones, the Victorian Society argues that the inscriptions and the integrity of the surfaces will be put at risk by the movement of chairs, and the footfall of the many visitors (of the order of 400,000 per year). Although protection from the chairs may be achieved by cushioning those parts in contact with the floor, addressing the footfall of visitors is less straightforward. I am satisfied, however that much of the wear now seen on the stones in the aisles is attributable to irregularities in the floor surface and the fact that pedestrian movement has for the past 150 years been channelled into relatively narrow corridors. Mr. Rich has given satisfactory evidence that the future risk of erosion may be addressed by a combination of strategies including

the placement of vulnerable stones in protected areas, the careful levelling of the floor and the creation of appropriate visitor routes.

36. According to the Victorian Society any benefit to the visual appreciation of the volume of the nave will be diminished by the presence of chairs. Prebendary Mason suggested that about two-thirds of the stock of some 600 chairs might normally be set out. The bulk and extent of even 400 chairs would however be less than the pews, as illustrated in the visualisation of the nave with chairs at Appendix 3 of the report of Mr. Rich. Moreover the chairs would be a fluctuating presence, with fewer in place at times when extra floor space might be required for functions or an influx of visitors was expected. Even if allowance is made for an element of obstruction to sight lines created by the chairs, there would remain an overall improvement in the perception of the nave as a notable example of the perpendicular style.

The Proposed Chairs

37. The Petitioners wish to replace the pews with the 'Theo' design of chair, the winner of a Church of England competition in 2012. The chair incorporates a wooden seat, is stackable, and is equipped with runners which spread the load across the floor. Although a specific design is not yet available, it would be a straightforward matter to fix cushioning upon the runners so as to afford extra protection to the ledger stones. The chair may be stained and finished to match other woodwork within the building.

38. In his letter of October 29th 2015 Dr. David Knight wrote on behalf of the Church Buildings Council that,

"... any new seating will necessarily need to be of a good quality commensurate with the Abbey building and the remaining furnishings in the choir and chancel".

The Council agreed that the 'Theo' chair was a suitable proposal for the location.

39. The Victorian Society questioned how books and service sheets might be accommodated. When the book slot was demonstrated in court it was then argued that its use detracted from the flexibility sought by the Petitioners because with the book slot in place the chairs had to be fixed in rows. Prebendary Mason's answer to the problem was that, in practice, the use of books and service sheets was progressively being superseded by portable display screens. My conclusion is that if any inconvenience were to arise from the lack of a shelf for books and papers, it would not be a long term problem. Likewise the absence of a space for storing hassocks could be met by issuing hassocks before a service to members of the congregation desiring them.

40. When not in use off-site storage space is available for the chairs, and powered trolleys would be used to transport them. Thus the presence of unsightly stacks of chairs in the nave would be avoided.

41. If the pews are to be replaced by chairs, the 'Theo' chair is in my judgment of a suitable quality and design, and appropriate for the expected requirements of worshippers.

Evaluation of the Pews

42. Before addressing the "Duffield" questions it is necessary to consider the evidence concerning the nave pews themselves. Assertions about the quality and significance of the pews are at the heart of the Victorian Society's case.

43. All the witnesses dealing with the significance of the pews are agreed as to Sir George Gilbert Scott's pre-eminence in the field of Victorian architecture. Dr. Miele, for example, described him as

"undoubtedly the leading architect of his generation and ... today widely recognised as one of the most important and influential architects practising in nineteenth century Europe."

44. Part of Scott's success is attributable to his ability to communicate his ideas of design and aesthetics to associates in his professional practice as well as

to chosen contractors. In this way Scott was able to delegate to others the task of designing elements of a scheme which eventually blended together as an authentic expression of his vision. His work in Bath Abbey is no exception, as Dr. Miele has demonstrated from relevant documents in the Bath and North East Somerset Archive.

45. There is no evidence that Scott personally designed the nave pews, nor approved their design by signing the plans. (The only seating plan signed by Scott is a preliminary drawing of the general layout.) Instead, there was a chain of delegation running from Scott's office assistant, King, to the clerk of works J. T. Irvine and thence to William Brock of Bristol, the contractor for the seating. The correspondence suggests that an idea emanated either from Scott or King for the bench ends to follow mediaeval designs from Somerset churches. It was Irvine who selected examples from the churches of St. Cuthbert, Wells and Wootton, and produced drawings (no longer extant). Brock proceeded to construct the pews, which are machine made. The carving was produced in the first instance by steam driven machinery but (according to Dr. Brandwood) finished by hand. The carved front and back panels of the blocks of pews received similar treatment. The unusual lack of obvious repetition in the work is an indication of the attention to detail, although Brock was obliged to use inferior 'wainscot' oak in place of the seasoned English oak desired by Scott.

46. The design and construction of the more elaborate chancel seating, comprising the choir stalls and the Corporation stalls (the latter having behind them some rows of seats matching those in the nave) followed a somewhat different route. The chancel seating is more elaborate, producing a hierarchy of design extending from nave to chancel. The Corporation stalls, uppermost in the hierarchy, were designed in Scott's office and were to have been constructed by Farmer & Brindley, his preferred contractors.

47. Thus the nave seating, albeit not the work of Scott himself, bears something of his imprint or brand and forms the subsidiary part of a coherent seating scheme. Despite its pedigree Dr. Miele has been critical of some of its features. His observation that the bench ends are anachronistic, as being based on

somewhat earlier mediaeval work, appears somewhat harsh, while the suggestion that

48. More generally, however, the size and density of the blocks of nave

"The seating scheme is not, in my view, well considered from an architectural perspective"

or the volume of the nave space.

is more the result of the need to maximise seating space than the product of inferior design.

49. Dr. Miele, Dr. Brandwood and Mr. Hughes are agreed that the nave

48. More generally, however, the size and density of the blocks of nave pews create a strong visual impact, which does not produce a wholly felicitous effect in the context of the surrounding perpendicular architecture or the volume of the nave space.

evidence in this respect cited in the survey of published material reviewed by

49. Dr. Miele, Dr. Brandwood and Mr. Hughes are agreed that the nave pews are high quality specimens of their kind. I accept Dr. Brandwood's assessment that they represent in his experience the best set of their type attributable to Scott. More weight is to be attached to Dr. Brandwood's evidence in this respect than to the survey of published material reviewed by Dr. Rowena Tulloch in her written assessment of September 2016. Dr. Tulloch, while concluding that

scott's, most especially in the nave area."

"Scott's seating at Bath Abbey is one of the few examples of his work in cathedral or abbey churches . . . in which his new work remains, most especially in the nave area."

added the caveat,

examples, and more research would confirm this."

"It is important to stress that there might be further similar examples, and more research would confirm this."

50. Mr. Hughes and Dr. Brandwood were asked by me to relate the

50. Mr. Hughes and Dr. Brandwood were asked by me to relate the significance of the nave pews to the building itself. Their answers, as noted by the Petitioners, were as follows:-

"Hughes

C: Presumably you are saying the defining aspect is the reordering of Scott and that removal of the pews will harm this aspect. Because there will be serious harm to this aspect, there will be to the building as a whole and its significance?

H: Yes.

Brandwood

C: Do you agree with Mr. Hughes that if you remove from the Scott ensemble the nave pews, then that has a serious effect on the ensemble of pews as a whole, and that has a knock on serious effect on the entirety of the building?

B: Yes it does."

51. While it is understandable that the removal of the lowest level in the hierarchy of seating would seriously diminish the seating scheme, the contention that the character of the building itself is likewise diminished presses the argument too far. In my judgment the significance of the nave pews, put in the context of the perpendicular interior of the Abbey, is moderate. The principal reasons for reaching this conclusion are the limited involvement of Scott himself in their design; the largely mechanical methods of production used; the quality of the timber; and the adverse visual impact arising from the need to fill the nave with the maximum amount of seating, to the disadvantage of the surrounding architecture.

52. Although I have been careful to draw my own inferences from the evidence, my assessment coincides with that given by Dr. Knight at paragraph 14 of his statement, and with the references to the nave pews in paragraphs 3.1.3 and 3.3.6.2 of Bath Abbey Conservation Plan Volume 1.4 prepared by McLaughlin Ross LLP (consultation draft July 23rd 2015).

53. `Apart from the significance of the nave pews, account may conveniently be taken here of their physical impact upon the surrounding fabric. Although the

pew platforms have protected the concealed ledger stones from wear, in other respects their presence has been less beneficial. Mr. Rich identified several relevant matters. Contact with the wood has caused the ledger stones to become stained through exposure to oak tannins. Protection of some areas has been at the expense of concentrating footfall and resultant wear in others. The voids beneath the plinths have their own levels of moisture, potentially contributing to the delamination of some of the ledger stones. Finally, the weight of the platforms may have contributed to the subsidence of the sub-floor and associated cracking of the ledger stones. While some of these effects may be capable of remedy (for example, by the provision of membranes between oak and stone) allowance must be made for a residual risk of damage to the floor inherent in the continued presence of the pew platforms.

The First "Duffield" Question

54. The relevant "Duffield" questions will now be considered in turn. The principal significance of the Grade I Abbey arises from its outstanding quality as an example of late mediaeval perpendicular architecture. Although its architecture is well preserved, the building has been subject to two major accretions, themselves of significance. The first is the assemblage of ledger stones and other monuments. The second is Scott's restoration work, which has not transformed the mediaeval character of the interior but rather has applied a Victorian overlay to it. The loss of part of the Scott scheme would result in some harm to the building. Given this finding, the second "Duffield" question does not arise.

The Third "Duffield" Question

55. The third question requires the severity of harm to be assessed. In addressing this question the Grade I listing is highly relevant, but the Listing Particulars themselves afford only limited guidance. Mr. Hughes, to whose attention the Listing Particulars were directed, was understandably critical of them. The Scott restoration receives only passing mention, and no evaluation of its quality or importance is offered. The Listing Particulars do, however contain a brief comment about the memorials,

"The monument-crammed interior is of very considerable note for its historical interest too."

56. Accepting as I do that the Listing Particulars undervalue the contribution made by Sir George Gilbert Scott, the remaining evidence must provide a guide as to the degree of harm inherent in the loss of the nave pews. In my evaluation of these pews I have already rejected the approach adopted by Mr. Hughes and Dr. Brandwood, that serious harm to the seating scheme should be equated with serious harm to the building itself. Finding, as I have, that the value of the nave pews (taken in isolation as pieces of furniture, or as a component of the Abbey's interior) is moderate, the harm arising from their loss would also be moderate. In the present context "moderate" is intended to signify less than serious but greater than insubstantial.

The Fourth "Duffield" Question

57. In deciding whether the justification for the removal of the nave pews is "clear and convincing" its cumulative effect has to be considered.

58. The Scott seating plan was the product of its age, when worship was essentially a static activity, and seating space was at a premium so that large congregations could be accommodated. The mediaeval use of the nave for secular purposes had long been abandoned. By contrast, flexible styles of worship involving smaller congregations have now become widespread, and the revived use of churches for appropriate secular purposes is recognised as both a service to the community and as an aid to the mission of the church. The Petitioners' aspirations to meet these objectives are appropriate and realistic.

59. It has been necessary to consider with care whether the Petitioners' objectives are compatible with the retention of some or all of the Scott nave seating. The Victorian Society proposed that the pew platforms be abandoned so as to enable the pews to be moved. This suggestion was properly investigated by the Petitioners, but I accept the evidence of Mr. Rich that the weight of the pews and their unsuitability for stacking renders this arrangement impracticable. I have also concluded that the preservation of an isolated block of pews in the

nave would serve no useful purpose, especially as the Corporation pews with the benches behind them preserve a visible example of Scott's work as well as providing a suitable area for traditional services.

60. When the Petitioners' legitimate needs for open space in the nave, available for multiple liturgical and other purposes, are combined with the aesthetic and historic benefits arising from the restoration of the volume of the nave as originally conceived, and the uncovering of the ledger stones, the cumulative effect of the justification for change is indeed clear and convincing.

The Fifth "Duffield" Question

61. The final question requires the public benefit arising from the replacement of pews by chairs to be balanced against the resultant harm, namely the loss of part of the Scott seating scheme. In terms of public benefit the advantages of innovative liturgical use of the nave, the availability of comfortable seating adaptable to the requirements of the disabled or very young, the ability to put the nave to multiple community purposes, and the opportunity to appreciate the original architectural form of the nave and the collection of ledger stones make a formidable combination. Against that is the harm (the effect of the works on the character of the Grade I listed building) arising from the removal of the pews.

62. I have already described such harm as moderate. It is mitigated by the continued presence of the more distinguished elements of the Scott scheme, and by conditions designed to preserve the memory of the nave pews which may be attached to the court's order.

63. In my judgment the balance falls firmly in favour of granting the order sought by the Petitioners, even after the listing of Bath Abbey and the strong presumption against change are properly brought into account. Bath Abbey is in many respects an exceptional building. Even if, contrary to my findings, the disposal of the nave pews were to be viewed as causing serious harm, the exceptional set of circumstances relied on by the Petitioners (including a significant element of heritage benefit) would have satisfied the "Duffield" criteria and justified the proposed change.

Conclusion

64. A Further Order under the faculty of November 30th 2015 will pass the seal for the removal of the nave pews and their replacement by chairs of the 'Theo' design. The court shall be notified in due course of the quantity of chairs required, and its approval sought for their introduction. Several successive purchases of chairs may be involved.

65. The Further Order will be subject to the conditions appended as a schedule to this judgment. The first condition will be for a full record of the existing nave pews to be prepared and made available for inspection by interested persons. The second condition concerns the disposal of the pews. Commendable attempts have been made in the past to utilise displaced pews by rehousing them (notably in Banwell church) or by re-use of the carved elements within the Abbey furniture. These should be repeated in relation to the considerable stock of pews (including those currently in storage) now available for disposal. Consideration should be given to the redeployment within the Abbey of the carved front and back panels of the blocks of pews and a representative section of the bench ends. Seasoned timber will be available for more mundane carpentry work. It may be possible to accommodate some pews, suitably cut down and modified, in vestries, assembly spaces or the like. Finally, other churches or public buildings may be willing to house some specimens. With these considerations in mind, I shall require the Petitioners to prepare a scheme for the future treatment or disposal of the pews, such scheme to be submitted to the court for approval.

66. As regards the chairs, they must be stained to match existing woodwork in the Abbey and equipped with protective cushioning upon the runners. A sample, prepared in this way, must be submitted to the Diocesan Advisory Committee for its consideration before the new chairs are introduced.

67. My provisional determination as to costs follows the principles laid down by the Court of Arches in *re St. Mary the Virgin, Sherborne* [1996] Fam. 63. Although in the event the Victorian Society's opposition has been unsuccessful, its involvement (supported by two other bodies) was reasonable and constructive. The proper order is therefore that there shall be no order for costs

as between the parties. The Court fees of and incidental to the Further Order shall be paid by the Petitioners, in a sum to be determined by me if not agreed. Each party will, however, have liberty to apply to vary the proposed costs order within 21 days of the date of the judgment.

Timothy Briden

Chancellor

18th December 2017

Schedule

The Further Order shall issue on the following conditions:

1. A full illustrative and descriptive record of the nave pews shall be prepared before their removal. Such record shall be kept in Bath Abbey Archive, alternatively in the Bath and North East Somerset Archive and shall be made available for public inspection.
2. Disposal of the nave pews (including those in temporary storage) shall not be undertaken until a written scheme for the display and/ or use and/or redeployment of a proportion of them has been submitted to the Chancellor for his approval.
3. Pending disposal the nave pews may be removed from Bath Abbey but shall be stored in a safe and convenient place pending the Chancellor's directions.
4. The replacement 'Theo' chairs shall be stained or coloured to match the existing woodwork in the Abbey interior, and shall be equipped with protective cushioning upon the runners.
5. Before the chairs are introduced into the Abbey a specimen, prepared in accordance with the foregoing condition, shall be submitted to the Diocesan Advisory Committee for its inspection and approval.

Form 7
(Rule 7.4)

Further Order

In the Consistory Court of the Diocese of Bath and Wells

Parish of Bath Abbey with St James

Church of St Peter and St Paul

**Timothy John Briden Master of Arts Master of Law Chancellor of the Diocese and
Official Principal**

To:

- 1. The Reverend Prebendary Thomas Mason - Incumbent**
- 2. Elizabeth Westbrook – Churchwarden**
- 3. Charles Curnock – Footprint Project Director**

A petition presented by you was submitted to the Registry of this Court together with designs, plans, photographs or other documents, requesting a faculty authorising the works or other proposals specified in the petition.

A public notice was duly displayed giving an opportunity to all persons interested to object and give reasons why a faculty should not be granted

And whereas until further order a faculty was issued on 30 November 2015 authorising you to carry out the works or other proposals in accordance with the designs, plans or other documents accompanying the petition and subject to the conditions set out therein.

The Chancellor held a hearing at which oral evidence was given and has decided for the reasons given in a judgment dated 18 December 2017 that a further order be issued

The Court now grants a further order to the faculty of 30 November 2015 authorising you to carry out the further works or other proposals described in the Schedule below

The works must be completed within 12 months from the date below or such further period as this Court may allow and the certificate of practical completion is to be sent to the Registry within the period allowed.

A copy of this further order is to be supplied by you to the architect or surveyor and contractors to be employed in respect of the authorised work before any work is commenced.

This further order is duly authenticated by the seal of this Court.

Dated 18 December 2017



Signature of Registrar



SCHEDULE

Description of works or proposals

The removal of the nave pews and their replacement by chairs of the 'Theo' design

This further order issues on condition that:-

1. A full illustrative and descriptive record of the nave pews shall be prepared before their removal. Such record shall be kept in Bath Abbey Archive, alternatively in the Bath and North East Somerset Archive, and shall be made available for public inspection.
2. Disposal of the nave pews (including those in temporary storage) shall not be undertaken until a written scheme for the display and/or use and/or redeployment of a proportion of them has been submitted to the Chancellor for his approval.
3. Pending disposal the nave pews may be removed from Bath Abbey but shall be stored in a safe and convenient place pending the Chancellor's directions
4. The replacement 'Theo' chairs shall be stained or coloured to match the existing woodwork in the Abbey interior and shall be equipped with protective cushioning upon the runners
5. Before the chairs are introduced into the Abbey a specimen, prepared in accordance with the foregoing condition, shall be submitted to the Diocesan Advisory Committee for its inspection and approval