

Neutral Citation No: [2017] ECC Dur 1

IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM

CHURCH OF ST MARY AND ST CUTHBERT

IN THE PARISH OF CHESTER-LE-STREET

JUDGMENT

Judgment:

1. In 883 AD the body of St Cuthbert was brought to Chester-le-Street by monks who came from Yorkshire but who had originally been driven out of the island of Lindisfarne; the body remained at Chester-le-Street until 995 AD when it was transferred to Durham. Whilst in Chester-le-Street St Cuthbert's body was kept in a Saxon cathedral built of wood (according to Symeon); that cathedral was probably situated in the area bounded by the present three pairs of arches counting from the east end of the nave: see Rutter & Atkinson *Chester-le-Street Parish Church A History and Guide* (2008). A stone church was built c 1056 AD by Bishop Egelric. According to Rutter & Atkinson the only parts of that church now remaining are the walls of the chancel and the stone encompassed within the present pair of nave pillars three from the chancel arch (see, too, Sadgrove *Landscapes of Faith* (Third Millennium Publishing, 2013) at pages 86-87), although according to Pevsner *County Durham* (Penguin, revised Williamson, 1985) at pages 125-126, the only remaining parts of that first church may be the large stones in the west wall and the foundations discovered in the anchorage some 40 years ago. In any event in the middle of the 13th century the nave, the foot of the tower and the east wall were extended. In 1286 AD the church became a collegiate church; this remained so until the Reformation when it became the local parish church. It still remains a place of pilgrimage because of its connections with St Cuthbert and there is an excellent *Lindisfarne Gospels Trail* (2013) for those visiting the church.
2. It is unsurprising that the church is listed Grade I. That listing states *inter alia*:
“Large parish church. Mid C13 chancel, nave arcade, lower stage of tower and possibly vestry ... aisled nave with south porch
West tower: ... 6-bay nave with high pitched roof Aisles have moulded plinths
Interior. Double-chamfered pointed tower arches on 3-shaft responds. Similar 5-bay nave arcade on cylindrical piers with octagonal cap[ital]s (2 west bays slightly later).”

However, the listing's rather dry description fails to catch the beauty of the church.

As Historic England stated in its letter dated the 5th February 2016:

“The survival at St Mary & St Cuthbert of large quantities of medieval fabric, primarily from the early to mid-thirteenth century, is a principal reason for the church's listing at Grade I. The fabric is found largely in the nave including the arcade columns The fabric contributes greatly to the character of the church's interior, which has a powerful solemnity due to the quantity of medieval and later sandstone, the balanced proportions and rhythm of the main volumes and the simple order with which the church is presented.”

Historic England then went on to draw attention to the church's sense of timeless composure and its calm visual atmosphere. (As will be seen, Historic England later described the church as an “exceptionally important grade I listed building”.) The petitioners' own statement of significance rightly recognises that “the church building and site is of high significance”. An early 19th century print, reproduced in Rutter &

Atkinson at page 12, demonstrates how the simplicity of the verticality of the nave pillars was at that time interrupted by the introduction of wooden cladding to the base of those pillars. This, of course, is no longer so.

3. On the 7th February 2016 the rector and two churchwardens petitioned for the installation of an LCD TV based multimedia display system:
 - To provide 4 LCD monitors (50 inch) fixed to the joints in the pillars of the nave.
 - To provide LCD monitors in the choir vestry (24 inch) and a confidence monitor on a wheeled trolley (32 inch) to face those leading the service.
 - To provide a Kramer seamless switcher to allow any VGA, HDMI, DVI or video source to be simply connected to the new system.
 - With all required cables, connectors, splitters.

Two monitors would be located on the two eastern most pillars either side of the nave and the other two on the third pair of pillars to the west. I have now granted permission to the petitioners to amend their petition in relation to the first bullet point so that it reads: Pivoting screens, using bespoke steel mounting plates with different fixing positions on each of the four columns to match different mortar joint levels. The size of these screens/monitors would remain the same. However, in order to understand what has occurred, it is necessary for me to set out the history of the petition as it originally stood.

4. The petition was based on what is described as “option 2” prepared by Clockwork Audiovisual Ltd dated the 21st June 2015 which reads:

“Each TV will need to be attached to the column using either direct fixing into the mortar, a band that encircles the column or a bespoke floor mount – none of which is ideal in this historic setting.

We have suggested using a 42” TV at either side of the church on the front columns and 50” TVs at the rear as the rear columns are wider.”

The petitioners have, however, decided to petition for four 50” screens and, unfortunately, the use of floor mounted screens (apparently even if bespoke) would have required the removal of pews. In the event on the 7th February 2016 the PCC voted 13 in favour and 5 against the scheme as then proposed.

5. The petitioners’ statement of needs emphasises the urgent need within the parish “to reach the marginalised and the unchurched” as a priority and the desire “to be more attractive to younger families”. It also sets out that “visuals” are already in use at all the 10 am family services; these family services have the largest attendances of the week. The present projector, computer and screen were put into the church “nearly 10 years ago”. The statement continues:

“At present, we put up a central screen by ropes every Sunday morning and on other occasions which is rather tiresome and time consuming. It seems to be creating slight damage to the rood screen as it rubs against it. Also, with the

length of the church and the obstruction of the pillars not everyone can see the screen.”

(I comment that, although no doubt tiresome and time consuming, I regard the former to be of very little weight in all the circumstances. As to the slight damage, now that it has been recognised I have no doubt that further damage can be prevented with care and, if necessary, with some judicious and discreet padding.) The statement goes on to refer to the large number of persons who attend baptisms and both primary and secondary school services and the wish to engage more closely with such people by the use of a small camera for close ups of such things as baptisms and nativity plays. (I will return later in this judgment to the questions of numbers and visual obstruction.) Having set out the need for a small LCD screen in the choir vestry so that those at the 10 am crèche may have better participation in the service, the statement of needs recognises that the proposal is quite controversial but states that _

“most of the PCC see it as part of seeking to engage people more in our mission and worship in a building where it is difficult for everyone to feel included. We recognize that some people, especially those who attend the more formal services on a Sunday, are concerned about the change in the look of the church. The majority of us feel the mission imperative of engaging people, particularly the younger generation, is more important.”

6. On the 7th December 2015 the DAC recommended the proposed works but with the proviso that the fixing should be into the joints between the stones and not by bands around the pillars. It also expressed the opinion that the proposed work was unlikely to affect the character of the church as a building of special architectural or historic interest. It did not recommend that the intending applicants should consult Historic England, the local planning authority or the Church Building Council. (I note that the form apparently used by the DAC seems to be that authorised by the Faculty Jurisdiction Rules 2013, and not that authorised by the 2015 Rules, as it incorrectly refers to Schedule 1 of the Rules rather than to Schedule 2. This does not, of course, invalidate the advice given.)
7. In spite of the DAC’s advice the incumbent did consult Historic England about the proposals and they clearly took a far more serious view of the effects of the proposed works upon the character of the church as a building of special architectural or historic interest. I have already referred to its description of the church. It then commented (on the 5th February 2016):

“This sense of timeless composure will be harmed by the proposals. Fixing four TV screens to the medieval pillars will introduce strident modern fittings in a space otherwise visually unencumbered by this type of intrusion. The screens will obscure detailed masonry, unnecessarily draw the eye from the architecture and intrude into the calm visual atmosphere of the church’s interior.

I am unconvinced by the justification for the works in the form proposed. I recommend you pursue a less visually intrusive technical solution which

allows all to take part in church activities but which concentrates on less permanent fittings which can be hidden as part of everyday site management. The design should take account of the visual atmosphere in the chancel, nave and aisles and should aim to be as visually discrete (*sic*) as possible. I would encourage you to give substantial weight to the great age of the church's fabric and the resultant character of the space as a potent reminder of the significance of Christian heritage in Chester-le-Street."

It therefore recommended a technical solution involving less permanent fittings the design of which was less visually intrusive and better respected the significance of the fabric and spaces in the church. The incumbent responded by sending Historic England a copy of the statement of needs. However, on the 16th February 2016, although acknowledging the desire to engage more people (and younger people in particular) in the parish's mission, Historic England remained "unpersuaded for the works in the form proposed"; it concluded by reiterating its view that "a less visually intrusive solution could be found which better respects the church's visual atmosphere as a Grade I listed building, whilst still achieving your engagement objective".

8. In response to a direction made by me the incumbent further responded to Historic England's comments on the 16th May, 2016. Having emphasised the petitioners' appreciation of the significance of the church building, he stated the need to balance that significance "with the need to make it function well for the mission and ministry of the 21st century, as an extremely active parish church". He then pointed out that the building had undergone many changes over the centuries including "a great variety of developments from its medieval simplicity". The pillars are already used for hymn boards and fittings for flowers and artistic decorations at church festivals. "We realise that the masonry of the pillars would be more obscured by the screens, but four of the eight pillars would have nothing on them at all. On the four pillars that would be used, the bulk of the stonework will still be visible." He emphasised that other options had had to be rejected and that fixing into the mortar was the method recommended by the DAC. "We do not want to damage a highly valued building; but we do want to be able to engage people at services in the building more effectively." He went on: "The average number of occasional offices in church is about 80 funerals, 40 weddings and 90 baptisms. We have hosted concerts for the community and displayed community artwork in recent years It is not an easy building in which to lead worship or for people to engage fully with what is taking place. The narrowness and length of the building and the pillars are difficult features."

9. Nonetheless, as a letter dated the 7th July 2016 makes clear, Historic England remained unconvinced:

"It's good to hear that the church is so regularly and busily attended, and I appreciate your mission to widen your appeal and engage even more people in church activities. That said, the proposal remains visually intrusive and will have a harmful impact on the special interest of the building. I acknowledge the effort that has gone into minimising the *physical impact* of installing the

screens, but it does not address our concerns about the *visual impact*. They will affect our ability to appreciate the aesthetic values of the building, but also the sensory experience that people have in a building of this age. The value is dependent on the historic fabric, aesthetics and the intangible atmosphere or character of a place.”

10. The public notice was posted on the 5th February 2016 and this prompted a number of persons to object to the proposals. The salient points of these objections (although I have taken into consideration all the points) may be summarised as follows:

- (a) Mr and Mrs Gray: Having set out the architectural and historic importance of the church, they stated their opinion that “the addition of screens within the fabric of the building will change the interest of the church, for (sic) which so many visitors have come to appreciate”. They felt that the screens would serve no useful purpose for the majority of the congregations and that it would be sensible to use the present screen in conjunction with a new computer system. They also stated their view that the permanent fixing of 50” LED screens and the associated cabling would in all respects destroy the beauty of the historic church building unnecessarily.
- (b) J. Stothard: In his view the ancient building did not lend itself to the installation of such large screens. “This will take away the serenity of this place and will detract from the ability to sit in contemplation and meditation, having large screens in your eye line you came to get away from the television or any kind of screen that dominates modern life (sic).” He also feared that members of the congregation would leave if the project were to go forward.
- (c) Mrs McDougall: She pointed to the cost and possible damage to the fabric. She felt that contrary opinions had been completely disregarded and that the screens are in any event unnecessary. She also queried whether others would be drawn in while yet others might leave.
- (d) Mr Walker: He accepted that a screen would be helpful in the vestry but felt that the present screen was adequate. He also was concerned about the financial implications.
- (e) Mr and Mrs Rutter: They objected on the grounds of aesthetics as in their view “the medieval aspect of the Church interior will be significantly marred ... particularly, as once installed, [the screens] will constitute a permanent feature”; in their view the present system is perfectly adequate. They also objected on the grounds of cost, the handling of the proposal and the potential structural damage. In addition, they challenged the rationale behind the proposal.
- (f) Mr and Mrs Stockdale: They objected that the proposals would damage the beautiful church building and its fabric. They were also concerned that the contrary views of some of the congregation were being ignored and that

some of the congregation might leave or stop giving to the church. In their view the present screen is perfectly adequate.

- (g) Mrs Brown: She objected on the grounds that the installation of the screens would “despoil an historic and beautiful building with out-of-character artifacts”. In addition, she queried the reverence of watching a screen during a church service, the cost and whether they would encourage or alienate worshippers.
- (h) Chester-le-Street Heritage Group: They expressed their concerns as: (i) damage to the pillars; (ii) damage by the wiring; and (iii) the change of character and ambience of “our ancient and beloved church” by the introduction of four large screens. Finally, they raised the question of the cost. (I have directed that the Heritage Group be treated as having a proper interest in these proceedings: see rule 10.1(g) of the Faculty Jurisdiction Rules 2015.)

(It is convenient for me at this stage to express the view that, as long as the PCC has sufficient funds to cover the cost of the proposals and the parish’s finances would not thereby be placed in jeopardy, the court should not in ordinary circumstances refuse a faculty on the grounds of costs: see *In re St Peter’s, Littleover* (1987) Ecc LJ (3) 31; *Re St Mary the Virgin, Ashford* (2010) 13 Ecc LJ 244; *In re St Mary’s Churchyard, White Waltham (No. 2)* [2010] PTSR 1689 at paras 61-64.)

11. On the 4th July 2016 the petitioners responded to the objectors:

- (a) The present screen is not visible to everyone in the church and is slightly damaging the rood screen.
- (b) It is difficult to engage people during services especially when the church is very full.
- (c) There are over 400 on the electoral roll and not everyone will agree. The majority of the PCC are in favour of the proposal.
- (d) The present screen cannot be seen by everybody because of the pillars and distances involved.
- (e) The cost of the proposals had been properly aired.
- (f) Strapping would be more likely to cause damage than fixing into the mortar.
- (g) They are occasionally asked for visuals at funerals. “At baptism services and school gatherings, which are our regular biggest attendances, the people want to see more clearly what is happening and screens could help enormously in this regard.” To neglect the value of the visual in learning and engaging people would be foolish. The Bishop of Durham had assumed that a screen could be provided for his Lent talk.
- (h) The fixings will not damage the pillars permanently and the wiring would only cause “very minor ‘damage’”. “The screens on the pillars will actually enable people to see the chancel and sanctuary more clearly than the present system, when at the largest service on a Sunday there is a screen erected centrally blocking some of that view.”

In the event none of the objectors wished to become parties opponent but in accordance with rule 10.5(2) I take into account their letters of objection and the petitioners' comments upon them when reaching my decision.

12. On the 29th November 2016 I directed in accordance with rule 9.6 that the views of the Church Buildings Council should be sought and in an email dated the 9th January 2017 it stated:

“This is a church of very considerable historic significance and there is no doubt that the introduction of fixed screens of this type have a detrimental impact on the interior. It would therefore be preferable for the parish to employ moveable screens of the castor-mounted type that could be stored away when not in use. However, in practice this is likely to be problematic in this densely pewed church and we therefore do not object to the proposals, noting that they are fully reversible and that the parish has stipulated that fixing should be into mortar joints, a condition which we would support.”

13. I also directed that the views of the local planning authority should be sought in accordance with schedule 2, paragraph 4(a) of the Rules. It responded with an email dated the 6th February 2017:

“Although we are sympathetic to the proposals and understand to some extent the need, the four TV Screens on the Columns would seem to have a harmful impact on the appearance and structure of this Grade I Listed Building and provide some cause for concern:

- A) The horizontal relatively large screens would disrupt the attractive arrangement of the columns; they would disrupt the rhythm and sense of symmetry of the columns, which is particularly striking when entering the listed church. There is a strong vertical emphasis of the structure within the listed church and the columns are particularly elegant, the relatively wide screens extending out at the side beyond the columns would jar and distract from the overall graceful verticality of the columns.
- B) The TV screens by using direct fixings into the mortar joints or a band that encircles the column (as previously recommended), would potentially cause some damage to the surface of the column by their weight and fixings, which could cause harm to the structure.
- C) The wiring to the TV Screens may detract from the appearance of the sandstone columns adding to the visual clutter and cause harm.

Having noted a lack of information necessary in their assessment they concluded that they could not fully support the petition _

“as the applicant would seem to have failed to fully justify the proposal and provided enough depth. Section 132 of the NPPF asks that great weight should be given to the conservation of the designated assets and any harm or loss should require clear and convincing justification. Substantial harm or loss of a Grade I listed building should be wholly exceptional.”

14. Having earlier visited the church in accordance with rule 20.1 of the 2015 Rules (see, too, *In re Shipton Bellinger* [2016] Fam 193 at paragraphs 27-32), I held a hearing in the church on the 18th February 2017. I will return to the evidence then given by the incumbent, the Reverend David Tully, but during that evidence he handed in papers proposing a different method of presenting the four proposed screens; apparently this had first been suggested by the DAC in February 2017 (see the letter from the incumbent to the diocesan registry dated the 14th July 2017). This involved a mechanism by which the screens might be pivoted so that, when not in use, they would no longer face directly west (thereby interrupting the verticality of the nave pillars) but would face south at right angles to the pillars on which they would be mounted. This would also necessitate a newly designed, cantilever mounting. In these circumstances I adjourned the hearing so that the objectors, the DAC, Historic England, the Church Building Council and the local planning authority might consider the details of the new proposals.

15. On the 12th March 2017 the incumbent circulated a document that is headed “Additional Responses” together with useful technical details, details of cable runs, plans and photographs. This document reiterated the difficulties associated with the present retractable screen and the various options that had already been considered and commented that _

“any of the options [would] have a degree of visual impact. The original proposal would certainly affect how the building looks, but it would still be a building of special architectural and historic interest”.

It pointed to past damage to the pillars and emphasised that “having the screens on the pillars will significantly help the church in its mission especially in relation to young people”. In addition, he argued that the proposed screens, when swung, would not be “so obvious when not in use” and that the wiring would be reasonably well hidden. He also set out in detail the petitioners’ justification for what they propose. In summary, he said:

“The compromise is that when in the [swung] position, anyone walking down the side aisle will be able to see all the cantilever arms, fixing plate and stretcher plate as there is nowhere to hide them. When in the unused position, the TV will lie parallel with the side aisle and there will be about 100mm space between the stone pillar and the back of the screen as the cantilever arms take up space when folded.

There is not going to be substantial harm or loss through the scheme, in that if the screens were taken down in the future we would only be left with screw holes on the external wall side of each of the 4 pillars, which could easily be repaired.”

16. On the 27th March 2017 Historic England responded:

“I appreciate the applicant’s efforts to explore other options and welcome the additional information that has been provided. What this information has shown is that any permanently fixed screens on the pillars will have a harmful

impact on the visual, and potentially physical, qualities of the building. The pivoting screens may help reduce the visual impact of the screens when not in use to some extent, but, by the very nature of their purpose, the screens of this size in this location cannot be both discreet (*sic*) and visible.

Historic England has throughout this process supported the aim of this application to aid the mission of the Church, but we have not been convinced that this can't be equally achieved by other means (the existing screen, hard copy handouts and/or smaller portable screens) or that the needs of 20-25% of the people 14 times a year is enough to warrant this level of visual intrusion. In heritage terms, there are no benefits that can outweigh the harm but I recognise that I am not best placed to assess the non-heritage benefits of this proposal. All I ask, therefore, is that great weight is given to the conservation of this exceptionally important grade I listed building, that the Chancellor is convinced that there is no way to achieve the applicant's aims other than this solution, and that the benefit that will be realised from it is enough to outweigh the harm that it will cause."

17. On the 3rd April 2017 the local planning authority also replied:

"Notwithstanding the further comments provided and having reviewed the additional information, that whilst the physical implementation of the new TV brackets may have reduced the impact on the surface of the column, possibly causing less harm to the structure, and that the impact of the wiring can be contained to some extent, it is considered that the proposal is still harmful in terms of its visual impact.

Following lengthy discussions with key officers in the County Council Conservation Team, it was unanimously agreed that the cantilevered arms and unused TV's sitting parallel with the side aisle would still be located in prominent positions on the Columns that would detract from the elegant and the overall graceful verticality of the columns of this Grade I Listed Building. It was considered that this would harm the character of this very important interior of this significant Listed Building.

In this respect, it is unlikely such a proposal could be supported by the Council in its current form."

18. On the 6th April 2017 the Church Buildings Council, having commented that when in their new proposed (resting) east-west axis the screens would be "less immediately obvious to those entering the church", remained unconvinced that the negative aspect on the interior would be materially reduced:

"Visitors to a church do not experience it solely from the point of entry; it is common practice to walk from west to east and then return via the side aisles. This is particularly likely at Chester-le-Street where many visitors will want to view the medieval effigies that line the walls of the north aisle – and the screens would be in full view of visitors standing in the aisles. The method of fixing of the brackets is also likely to cause greater harm to the fabric of the

building, as the supplier has warned, and is not fully reversible. The Council further noted that the illustration showing how a screen would look in situ is somewhat misleading as it uses the westernmost piers which are significantly larger than those to the east and which would therefore ‘hide’ the TVs more effectively when folded back

In summary, the Council was not convinced of the merit of the alternative proposals but, as with the original proposals, did not wish to formally object.”

19. On the 5th April 2017 the DAC expressed reservations with the proposals as then outlined to them but on the 12th July 2017 (before the final details were still apparently fully before them) it issued a further Form 2 which stated:

“Cable routes, brackets and fixings for digital display monitors as previously recommended.”

It was only at the second hearing on the 22nd July 2017 that the Archdeacon of Sunderland was able to elucidate that the DAC had not only considered, and recommended, the new proposals in their entirety (see also below) but that it continued in its view that the works were unlikely to affect the character of the church as a building of special architectural or historic interest.

20. The original objectors were also circulated with details of the new proposals and their replies indicate that their original fears had not been allayed. Indeed, two objectors went so far as to query whether in practice the screens would be retracted, for example, so that service and other information might be displayed. Other comments focussed upon whether the proposed screens would, in fact, contribute to increased numbers of those worshipping in the church; the views of those whom they believe are a silent majority against the proposals; and the cost. Mr Rutter went so far as to suggest that the proposed cantilevering mechanism “might mean [the screens] are more obtrusive. The main issue is that once they are in situ they effectively become a permanent eyesore”. (Some of the objectors also referred to a number of comments in support of the proposals canvassed by the incumbent after the hearing and then copied to the registry. However, as these comments do not form part of the formal evidence before the court (as I explained at the second hearing) and none of them have applied to give evidence (as they might have done under rule 13.1 of the 2015 Rules) I pay no attention to them nor to the responses that they have elicited. In any event the PCC represents the views of the parish and those on the electoral roll, save for those who have formally objected.)

21. At my direction the petitioners responded on the 7th May 2017 to the various continuing objections. This response pointed to the added benefit of the proposals to those seated in areas where the present screen cannot be seen and especially to those with poor eye sight. It also commented:

“We cannot deny that the proposal will have a visual impact. However, we believe that the considerable benefit to our congregation and parish of the

proposal far outweighs the change in the appearance of the building's interior."

It also responded to the various comments of the objectors who required their letters to be taken into consideration when I reach my decision. This included the questions of visibility of the present screen, the future use of the proposed screens, the proposed screen in the choir vestry, and the present and hoped-for congregations. It concludes:

"No-one is suggesting the "destruction of an old building". When the church is fairly full at some Sunday services, most Baptism services and most school services, it is simply impossible for a lot of people to see the present screen."

22. On the 14th July 2017 the incumbent wrote to the registry on behalf of the petitioners. This stated that they wished to make an amendment to the faculty petition so as to read :

"Pivoting screens, using Bespoke steel mounting plates with different fixing positions on each of the four columns to match the different mortar joint levels."

The monitors in the choir vestry/crèche and on the trolley would remain the same as in the petition as originally worded. The incumbent states that the amended proposals were described in the papers, drawings and photographs prepared by Clockwork and the church architect, Mr Ian Ness, dated the 3rd July 2017. I infer that these papers, etc. are the quotation from Clockwork Audiovisual Ltd dated the 3rd July 2017, together with the church plan (dated December 1992 but marked with the proposed locations of the TV screens), some further measurements made by Mr Ness dated June 2017, details of the mounting plates, screws and the precise locations of where they would be positioned and photographs; these items have been stamped and initialled on behalf of the DAC. (Strangely in the light of the Form 2 from the DAC dated the 12th July 2017, the incumbent also states that the DAC had approved the details of the amended proposal "received on July 11, 2017".)

23. Before turning to the second hearing it is convenient now to set out the basic arguments set out by the incumbent in support of the proposals. (I do not intend to repeat those arguments if they appear in more than one place.)

- (a) there is a need to upgrade as it is impossible to operate DVDs through the present system. This is frustrating when the parish has films from the diocese or charities/missions which it wants to show: see the incumbent's letter to the DAC secretary dated the 20th November 2014.
- (b) the present system is tiresome and time consuming. Some slight damage is being caused to the rood screen: *ibid*. When erected the present screen blocks some of the view of the chancel: see the petitioners' response to the objectors dated the 4th July 2016.
- (c) due to the length of the church and the obstruction of the pillars not everyone can see the present screen: see the incumbent's letter dated the 20th November 2014. This means that it is difficult to engage people especially when the church is full: see the petitioners' response dated the

4th July 2016. The church capacity is about 300 adults or 380-400 children: *per* the incumbent's oral evidence. The present screen can only be seen from about 75-80% of the pew seats and the length of the nave also inhibits the view, especially for those with poor eye sight; young families tend to sit at the back near the choir vestry/crèche and struggle to see the present screen. Newcomers tend to sit towards the back. Once there is a congregation of over 200 people the present screen cannot be seen by everyone. In 2016 there were 14 occasions when the congregation present exceeded 200; some were over 400, with people standing at the back; these 14 occasions included 6 baptisms, seasonal services and 4 school services: see the Additional Responses dated the 10th March 2017.

- (d) visuals are used at all the 10.0 am services which has the largest attendance in the week. (According to the incumbent's opening remarks this service averages about 100 people. However, numbers are declining at this service as at all services during 2016, save the 8.0 am service: see the petitioners' comments dated the 7th May 2017.) The parish wishes to engage with people better at baptism and school services by having screens everyone can see: there are Sunday baptisms each month (a total attendance of 3,490 in 2015) and there are many primary and secondary school services attended by children young people and adults." (December is a particularly busy month and in Advent 2015 there was a total of over 2,800 attending at school services): see the Statement of Needs. Baptisms and school gatherings provide the parish's regular attendances. Listening to God's message is important but everyone knows the value of the visual in learning and engaging people: see the petitioners' response dated the 4th July 2016.
- (e) the parish is occasionally asked to have a screen at funerals and all the local crematoria have screens: *ibid*. (According to the incumbent's evidence one family asked for a screen while another made enquiries about one: *per* the incumbent's evidence.) The average number of occasional offices in church is about 80 funerals, 40 weddings and 90 baptisms; in recent years the church has also hosted concerts and displayed community artwork: see the response dated the 16th May 2016 to Historic England. 200, 300 or 400 people may come to baptisms; the incumbent uses the screen but other ministers do not: *per* the incumbent's evidence. At the Christingle there may be 450-500 in the congregation: *per* the incumbent's evidence.
- (f) the choir vestry is used for a small crèche area at the 10.0 am service and there is a wish for parents and their children to be able to feel more part of the congregation and service: see the Statement of Needs.
- (g) many feel that visible screens for the whole church will help in mission to the marginalised, unchurched and the young, including younger families: *ibid*. The number of churches using screens increases month by month. It is possible to dismiss school activities and baptisms but they are a great

mission opportunity. The standard comment is “I couldn’t see what was going on” because it was jam packed. Such an opportunity is significant. No-one can say what mission impact there would be with the proposed screens but the PCC is convinced that they will help. “The key for me is that I believe in mission in church. That is to be balanced against slight damage and the appearance of the building. The look of the church does matter but the ability to share the faith is far more important. It is a very busy parish and mission is key”: *per* the incumbent’s evidence.

24. In addition, the incumbent dealt in his evidence, various letters and responses with the issues of damage to the pillars due to the erection of the proposed screens and the cost of the proposals.
25. At the second hearing which occurred on the 22nd July 2017 the incumbent on behalf of the petitioners formally asked for permission to amend the petition in the terms set out in the letter dated the 14th July 2107 (as set out above). In all the circumstances I did not feel it necessary that there should be re-citation and I therefore granted leave for the amendment to be made. The incumbent then resumed his evidence; however, once his evidence was completed he called no further evidence on behalf of the petitioners. In the absence of the chair of the DAC the archdeacon of Sunderland gave the elucidation of the DAC’s most recent advice to which I have already referred.
26. The test, or guidelines, that in law I must apply in reaching my decision is, or are, set out in the case of *Re St Alkmund, Duffield* [2013] Fam. 158 at paragraph 87:
 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 assumption 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 (see *Peak v Trower* (1881) 7 PD 21, 26-28, and the review of the case law by Chancellor Bursell QC, in *In re St Mary’s, White Waltham* (No. 2) [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.
 3. If the answer to question (1) is ‘yes’, how serious would the harm be?
 4. How clear and convincing is the justification for carrying out the proposals?
 5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* [1995] Fam. 1 at 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?
In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This

will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only be exceptionally allowed. Further assistance has been given in the case of *In re St John the Baptist, Peshurst* [2015] PTSR Digest D 40 (see paragraph 22 of the full judgment quoted in *In re St Peter, Shipton Bellinger* [2016] Fam 192 at paragraph 39) where the Arches Court of Canterbury made four observations:

- (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 this is a grade I listed building”.
- (c) In answering question (4), what matters are the elements which compromise 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 Faculty Jurisdiction Rules 2013 [now rule 4.3(1)(b) of the 2015 Rules] 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.

27. I should add that paragraph 132 of the National Planning Policy Framework (NPPF) referred to by the local planning authority does not directly apply to faculty proceedings but nevertheless may in appropriate cases provide some guidance to the approach to be taken by consistory courts in cases relating to works to listed churches: see *In re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraphs 34-48 in relation to the secular planning jurisdiction and its relationship to faculty cases. Bearing that in mind I note that paragraph 132 states in part:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be.”

In fact, the second sentence does no more than make specific what is already embraced within the chancellor’s duty to reach a decision on a balance of probabilities:

“ ... [I]t is not so much that a different standard of proof is required in different circumstances varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which the court has to take into consideration in deciding whether or not the burden of proof has been discharged: the more serious the allegation, the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it”: see 20 Halsbury’s Laws of England (LexisNexis, 5th ed.) at paragraph 775.)

It follows that more cogent evidence is required for petitioners to discharge the burden of proof placed on them to prove their case in a case involving a church listed grade I (such as here) than in a case involving a church listed grade II*; similarly, more cogent evidence is required to prove a case involving a church listed grade II* than in a case involving a church listed grade II. In the present case, of course, what is proposed would (in much the greater part) be reversible but there would nevertheless be a continuing effect on the heritage asset during such time as the screens were to remain in place.

28. As I have already noted the church of St Mary & St Cuthbert has been listed Grade I and, as such, “has been judged to be of national importance in terms of architectural or historic interest” (see the Planning Inspectorate’s Guidance Note entitled *Listed building consent* (version 3.3)). In this regard I note the direction of the Arches Court of Canterbury in *In re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraphs 37:

“Faculties involving alterations to listed churches require particular attention from chancellors because listing is proof, save in the most exceptional cases and then only upon compelling expert evidence, that the building is of national importance”.

I also bear in mind the direction in the same case (at paragraph 34) that _

“ ... on ordinary common law principles the weight given to an objection may be increased by the status and expertise of the body making the objection This does not mean, of course, that in every case an objection from a body such as the Victorian society will prevail But it does mean that a statutory amenity society’s objections should never be simply brushed aside.”

(See, too, *In re St Mary the Great and St Michael, Cambridge* [2017] ECC Ely 1 at 21.) The same consideration, of course, applies to the views of Historic England, the Church Buildings Council and the local planning authority.

29. Having carefully considered all the evidence, I unhesitatingly accept the view of Historic England that the church is an “exceptionally important grade I listed building”. I also entirely accept Historic England’s view stated in its letter dated the 5th February 2016 that _

“The survival at St Mary & St Cuthbert of large quantities of medieval fabric, primarily from the early to mid-thirteenth century, is a principal reason for the church’s listing at Grade I. The fabric is found largely in the nave including the arcade columns The fabric contributes greatly to the character of the

church's interior, which has a powerful solemnity due to the quantity of medieval and later sandstone, the balanced proportions and rhythm of the main volumes and the simple order with which the church is presented.”

I also accept Historic England's assessment when it goes on to draw attention to the church's sense of timeless composure and its calm visual atmosphere. Indeed, the view of the local planning authority (which I also accept) is remarkably similar when it refers in its email dated the 9th January 2017 to _

“ ... the rhythm and sense of symmetry of the columns, which is particularly striking when entering the listed church. There is a strong vertical emphasis of the structure within the listed church and the columns are particularly elegant”.

In my view the nave aisle and arcade with its tall, elegant piers contribute markedly to “the timeless composure and calm visual atmosphere” which is the essential character of the interior of this beautiful church. Although the petitioners' proposals do include some small damage to the nave pillars, it is their effect upon this character of the church that is by far the most important.

30. Against the background of this preliminary finding I now turn to answer the questions raised by *Re St Alkmund, Duffield* [2013] Fam. 158 at paragraph 87. The first question is: Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest? I have already noted that the DAC was, and remains, of the opinion that the proposed works would not result in any such harm. I have not been told on what basis that decision was reached (and I certainly make no assumptions) but I comment that it is true that the proposals, if implemented, would (apart from the slight damage to the pillars from the screws) be entirely reversible. Indeed, I very much doubt that the proposed screens will remain in situ even for 50-100 years and therefore *taking the long view* they would not harm the significance of the church as a building of special architectural or historic interest. Nonetheless, I do not accept that would be the proper approach, even if adopted. In my view the proper question is the effect of the proposals *while the screens remain in position*. For this reason I prefer, and accept, the views of Historic England, the Church Buildings Council and the local planning authority that the proposals, if implemented, would affect the character of the church as a building of special architectural or historic interest. I therefore answer the first *Duffield* question in the affirmative.

31. That being so I turn to the third *Duffield* question, namely: How serious would the harm be? I have already expressed the view that there would be some small permanent damage caused by proposals. This is because the four mounting plates require either four or six masonry screws to fix them to the pillars; each of those screws in their turn require a 4.9 mm hole to be drilled into the mortar joints of the columns and, as the smallest mortar layers are 2-3 mm thick, drilling of the required holes would marginally cut into the surrounding stone on two of the pillars. The cable runs on the pillars would be fixed into the present mortar layers. I therefore find that

the physical harm that would be caused by fixing the screens to the cantilever mechanism would be very slight.

32. As to the presence of the TV screens on the four pillars together with their cantilever mechanism I accept the views of English Heritage and the local planning authority. I find that the screens on their cantilever mechanisms would cause serious harm to the visual and aesthetic character of the building and thus to its significance as a building of both architectural and historic interest. I would have been very concerned about their effect on the church's character if the scheme as originally proposed had been proceeded with. This is because the four permanent screens would in my view have detrimentally detracted from the verticality of the nave pillars with consequential effects upon the visual and aesthetic character of the church as a whole. In my view the new proposals, if anything, increase that detrimental effect. I am unconcerned about their effect when in their west-east axis during services as that would be temporary but I am very concerned about their effect when in their north-south, resting axis during the rest of the time. Not only would the screens be very visible while sitting, standing or walking in the nave and side aisles but the screens would stand out, wing-like, from the four pillars detrimentally effecting the verticality of the pillars as well as the rhythm and sense of symmetry of the arches and arcade; it would also detrimentally effect the spaces between the four relevant nave arcades. I have no doubt that this would be increased if the screens were used to give information while in their resting position.
33. On the other hand, I find that the proposed provision of the LCD monitor in the choir vestry/crèche and a confidence monitor on wheeled trolley would cause no such harm. The same applies to the provision of the Kramer seamless switcher.
34. The fourth question is: How clear and convincing is the justification for carrying out the proposals? Unfortunately, it is here that the petitioners have seriously undermined their own position. I accept the incumbent's evidence that the numbers of people attending the regular church services (apart from the 8.0 am service) are declining. This, of course, underlines the urgent need for the mission of the Church to reach out for new members; indeed, the petitioners stress the priority of the Church's mission. However, as the consistory court is a court of law, it can only act upon evidence that is produced before it. In fact, in their collective response to the objectors dated the 7th May 2017 the petitioners state:
- “We cannot guarantee that the screens will ‘encourage new church membership’, but neither can [Mrs Browns] be sure that it won't help to do that.”
- Unfortunately for the petitioners the burden of proving their case rests throughout upon them and not upon the objectors to disprove it; it is therefore for the petitioners to produce evidence in support of their claim. I accept the incumbent's evidence that the number of TV screens being used in churches increases month by month. It would therefore have been possible for the petitioners to produce evidence in relation to the

mission effects of such screens in other churches; if there were such evidence, it would suggest that they would have a similar effect in Chester-le-Street. In the event, however, the incumbent only volunteered the view in evidence that _

“ ... no-one can say what the mission impact [of the proposals] will be but we are convinced it will help.”

I accept that this is the firm conviction of both the petitioners and the PCC but it cannot amount to actual *evidence* in a court of law. It follows that there is no evidence before me to show that the introduction of TV screens would be likely to *increase* the church's mission. Nevertheless, I accept that, when non-churchgoers come to Chester-le-Street for occasional services such as funerals, weddings and baptisms, depending upon where they sit their experience will be affected to the same extent as the regular congregation by an inability to see the present screen or to play DVDs and videos. To this extent the lack of the proposed screens may therefore have a *negative* effect upon mission.

35. The petitioners are therefore left with their arguments in relation to the inadequacies of the present screen and the need to rectify that position. I appreciate that the length of the church and the positions of the pillars can make it difficult for the ministers to conduct a service especially when the church is full. Nevertheless, this must (at least in great part) relate to where the various members of the congregation are sitting. I accept that the church's capacity is in the region of 380 adults or 380-400 children and that, when full, in the region of 20-25% of the congregation cannot see the present screen; however, as the largest service on Sundays is the 10.0 am family service (a service at which visuals are always shown) and the average number in the congregation is about 100 people, it follows that all the congregation could see the present screen if they chose to sit in a place enabling them to do so. I accept that families with children in the crèche often decide to sit near the vestry and that newcomers to the church tend to gravitate towards the rear of the church. Nonetheless, the former is the clear choice of those deciding to do so and, if sensibly welcomed and managed, I have little doubt that many of the latter could be persuaded to sit where they can see. Similarly, it should be possible tactfully to persuade those with failing eyesight to sit nearer to the screen.
36. It follows that the main problems as to visibility occurs when there are occasional services. In this regard I accept the evidence that there were 14 occasions in 2016 when the congregation exceeded 200 in number and that in consequence some 25% would be unable to see the present screen when in use. It would obviously be preferable if the whole of the congregation could see any DVD, film or words of hymns and songs that the minister or family wish to be shown but I note that they have not apparently been required at every such service, such as at all the baptisms. I accept that the services at which the lack is most felt is at the four school services and the seasonal services but, whilst recognising the current work load of the church ministers at such times, I suspect that some of this difficulty might be overcome by providing a larger number of services.

37. I appreciate that the need to erect and dismantle the present screen is tiresome and time consuming and that some slight damage is being caused to the rood screen. However, as I have already said, I regard the former as of very little weight in all the circumstances. As to the slight damage, now that it has been recognised I have no doubt that further damage can be prevented with care and, if necessary, some judicious and discreet padding. Although the present screen, when erected, blocks the view of the chancel, I take the view that this is a small (and, in chronological terms, a very shortlived) price to pay.
38. I also bear in mind that the church feels the need to upgrade the present system so as to play films and DVDs but I have little doubt that can be accomplished whether or not the present proposals go ahead. I also accept that primary school children in particular are more used than adults to the use of DVDs, videos and films but this is likely to be less so in relation to children at secondary school.
39. Weighing all of these factors together, and even assuming that the actual figure when the main visibility problems occur may in practice be somewhat more than 14 times a year, I regret that I do not find that the justification put forward by the petitioners for carrying out their main proposals (which, as I find, would cause serious harm) as exceptionally compelling: see *Duffield*, question 5. Indeed, bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, I find on a balance of probabilities that the reasons put forward for the main proposals fall far short of outweighing the serious harm that I have already outlined.
40. I therefore refuse the grant of a faculty for this petition (as amended) in so far as the provision of TV screens on the four pillars is concerned. On the other hand, a faculty may issue in relation to the choir vestry monitor, the confidence monitor and the Kramer seamless switcher together with any related wiring and cabling.
41. The petitioners will pay the court costs as assessed by the diocesan chancellor. However, I waive those fees that are due to me personally.

The Worshipful and Reverend Rupert Bursell QC
Chancellor of the Diocese of Durham

15th August 2017