



**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: 22nd August 2017

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER McGREGOR
CHANCELLOR**

**In the matter of :
St Nicholas, Great Kimble**

Determined on consideration of written representations

JUDGMENT

The Chancellor:

1. St Nicholas, Great Kimble is a fourteenth century church and is grade I listed. The Petitioners – the Rector and churchwarden – seek a faculty for a reordering of the church (at an estimated cost of £285,000). The faculty has been submitted with the unanimous support of the parochial church council.
2. The proposed reordering includes–
 - the replacement of the floor
 - relocation of the font to the north nave arcade
 - the installation of a new heating system
 - the installation of a lavatory and a servery at the west end of the church under the tower
 - replacing the existing pew benches with new, lighter benches which can be stacked to create space when required, but retaining some of the existing ‘children’s pews’
 - the acquisition of some stacking chairs to accommodate more people on special occasions
 - redecorating and relighting the church.
3. The motivation for the proposed reordering is in part to improve the church for its primary use as a place of worship but also, significantly, so that it can also be used by the parish school for its educational activity, and to make it more attractive for use by the community generally.
4. In the opinion of the Diocesan Advisory Committee (DAC) the work or part of the work proposed is likely to affect the character of the church as a building of special architectural or historic interest. The DAC has recommended the proposals for approval by the court.
5. Historic England (HE), following the making of a number of adjustments in response to earlier concerns raised by them, are content for a faculty to be issued for the proposals.
6. The Church Buildings Council (CBC) has provided detailed advice on the proposals, most of which has been followed by the Petitioners. Following the provision by the Petitioners of various details and explanations, CBC has stated that it supports the proposed shared use of the church building by the school and has advised that the impact of the proposed changes would be acceptable in principle. The Council has, however, questioned the relocation of the font. It has advised the retention of some of the existing children’s pew benches. It agrees with the proposed form of new seating but advises the use of loose cushions rather than upholstered seating.
7. Of the bodies who were given special notice of the petition in accordance with rule 9.3, neither the local planning authority nor the Society for the Protection of Ancient Buildings has sent a substantive response. The Victorian Society has responded and maintains objections in respect of two aspects of the proposals: the replacement of the floor and the removal of the existing pew benches. As a subsidiary point the Victorian Society objects to the any new benches or chairs being upholstered.

8. Two individuals have submitted letters of objection. Neither any longer lives in the parish or has her name entered on the church electoral roll of the parish. Both have relations buried in the churchyard. These individuals do not meet the definition of “interested person” in rule 10.1(a) or (b). I do not consider that being a former parishioner or having relations buried in the churchyard (where the petition relates only to the interior of the church) provides a person with sufficient interest in the subject matter of a petition for the purposes of rule 10.1(h). They are not, therefore, entitled to object to the grant of a faculty and I have not taken their letters into account.
9. The position is, therefore, that three aspects of the proposals are contentious to a greater or less extent, namely the removal of the existing pew benches, the replacement of the floor and the relocation of the font.
10. St Nicholas’ church is a listed building. In considering the proposals, I have therefore had regard to the framework of guidance provided by the Court of Arches in *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 presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less easily, depending on the particular nature of the proposals
 - (3) If the answer to question (1) is “yes”, how serious would the harm be.
 - (4) How clear and convincing is the justification for carrying out the proposals?
 - (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, ... will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed.

I have also had regard to the observations about these questions which were subsequently made by the Court of Arches in *Re St John the Baptist, Penshurst* [2015] PTSR D40 (judgment 9 March 2015).

11. The starting point for consideration of the proposals is that St Nicholas’ church is a grade I listed building. Only 2.5% of listed buildings are listed at grade I and they are of exceptional interest. The church was first listed in 1955 and the list entry has not subsequently been amended. The list entry details are as follows–

Parish Church. C13 and C14, very much restored by J. P. Seddon 1876 when most exterior stonework was renewed and chancel aisles rebuilt. Flint with ashlar dressings, lead roofs to nave and nave aisles, tiled roofs to chancel and chancel aisles. W. Tower, nave, aisles, C19 S.porch, and aisled chancel. C14 W. tower of 3 stages with diagonal buttresses, carved head corbel table, chequered battlemented parapet, and 2-light traceried openings to bellchamber.

W.side has moulded doorway, 2-light traceried window and cusped single light above. Nave has similar parapet, C19 carved head gargoyles, and 3-bay clerestory with cusped windows, single light to N., 2-light to S. Aisles with chequered moulded parapets, the S.aisle with flat-headed.2-light traceried windows, the N.aisle with paired cusped lights. Chamfered N.door; double chamfered S.door in porch with cusped ogee light over similar arch. Chancel aisles have 2 bays of grouped lancets, door to S, and E. lancets with carved hoodmould stops. 3-light traceried E.window with carved head hoodmould stops. Interior: triple chamfered arch to tower. C13 4-bay nave arcade of double chamfered arches with moulded broach stops on octagonal piers with moulded capitals. Original stone roof corbels but nave roof restored 1929. Chancel arch with 2 moulded orders on piers with attached shafts and moulded capitals. Chancel has 2 bay arcades to aisles with C19 double chamfered arches, the central piers with clustered shafts. E. Window hasdlaft to each jamb. Fittings: very fine C12 "Aylesbury" font with fluted bowl, carved foliage frieze and scalloped base; medieval chest; medieval tiles re-set in wall of N. chancel aisle (now vestry and organ chamber); C17 altar table, now in S. aisle; 2 C17 chairs with incised decoration; E. window with stained glass dated 1844, by Sir R. F. Russell, It was at a meeting in this church that John Hampden led the refusal to pay ship money. Highly graded for font.

12. The list description is principally concerned with the architecture and its development over time (including the addition of features of particular interest) from the 14th to the 19th centuries. The reason for the grade I listing is given as being because of the “very fine C12 ‘Aylesbury’ font”. The entry for the church in the Buckinghamshire volume of Pevsner’s *Buildings of England* is broadly to the same effect as the list description. Pevsner remarks that the exterior is all Victorian. He too remarks in particular on the font, which is “big and uncommonly beautiful”. I take the architectural and historic significance of the church essentially to lie in these features; and in the association with Hampden.
13. The substance of the Victorian Society’s objections are set out in their letter to the parish architects dated 1 March 2017. The Society states–

The proposals involve a number of substantial and harmful changes to the church including the removal of the pews and the complete re-flooring of the nave. We are pleased to see that some of the pews will be retained and we welcome the use of stackable benches for the majority of the new seating. However we object to the upholstered benches proposed. Upholstered seating is not appropriate for this highly significant church as it is discordant with the character of the interior. ...

[There is then a reference to the CBC’s guidance on seating.]

The provision of a new timber floor in the nave would have a significant impact on the character of the interior. Humble red and black Victorian tiles are often undervalued in the contribution they make to a church interior. At St Nicholas, the tiles are arranged in various geometric patterns which add interest and an element of playfulness to otherwise sober interior. They also serve to break up the wood block flooring and create a legible route around the building. The tiles at St Nicholas make a significant contribution to the

interior, in that they add colour and variation to the building and also draw the eye towards the chancel, the liturgical and architectural pinnacle of the building. The replacement timber floor proposed lacks the character and interest that these tiles provide and would significantly alter the atmosphere of the church. This change would seriously harm the interior of the church. The statement of need makes it clear that some of the wood floor and grates need to be repaired. However this does not indicate that the floor is failing. The wood floor needs to be repaired due to water ingress from the roof and this does not represent a failure of the entire floor. The gratings can be replaced or repaired so that they do not present a hazard. The evidence presented would suggest that repairs are needed to the floor, not wholesale replacement. We understand that the timber floor is a requirement of the school use, however this ephemeral use of the building should not dictate a change which will have a significant impact on the interior. We object to the flooring proposals.

14. So far as the suggestion that the removal of the pews would amount to a ‘substantial and harmful change to the church’ is concerned, the Victorian Society would seem to be saying that the first of the *Duffield* questions – ‘Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?’ – should be answered yes. If so, that aspect of the objection is misconceived as a matter of law.
15. Section 1 of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides (so far as material) –

1 Listing of buildings of special architectural or historic interest

(1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act and the principal Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England (in this Act referred to as “the Commission”) or by other persons or bodies of persons, and may amend any list so compiled or approved.

.....

(5) In this Act “listed building” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

(a) any object or structure fixed to the building;

(b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall[, subject to subsection (5A)(a),] be treated as part of the building.

.....

16. The existing pew benches are free-standing pieces of furniture which, although described by the petitioners as being heavy, can nevertheless be moved about. They are neither part of the church building, nor are they fixed to the building.
17. Were it not for the ecclesiastical exemption, section 7 of the 1990 Act would apply to the church building. Section 7(1) provides –
- Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised [under section 8].
18. As the pew benches are neither part of the building itself nor fixed to it, their removal would not – were the provisions of section 7 applicable – amount to the execution of works for the demolition or alteration of the listed building. In the secular system, no statutory consent would be required for their removal.
19. The special considerations set out in the *Duffield* questions are intended to supply part of the ‘equivalence of protection’ required by the Department for Culture, Media and Sport’s Guidance on the Operation of the Ecclesiastical Exemption. The first *Duffield* question, in asking whether proposals would result in harm to the significance of the church as a building of special architectural or historic interest is necessarily concerned only with proposals that would, but for the ecclesiastical exemption, require approval under section 7 of the 1990 Act. To hold otherwise would amount to applying to ecclesiastical buildings a stricter test than is applied in the secular system, something for which the Court of Arches expressly said in *Duffield* there was no justification (at paragraph 84).
20. The proposal to remove the existing pew benches is not, as a matter of law, capable of amounting to harm to the significance of the church as a building of special architectural and historic interest. No special ‘listed building’ presumption is therefore applicable in relation to the pew benches and the petitioners have only to rebut the ‘ordinary presumption’ in favour of things as they are. For the reasons set out below I find that the Petitioners have succeeded in rebutting that presumption.
21. The floor *is* clearly part of the listed building. I note, however, that it is not mentioned at all in the list description or in *The Buildings of England*. While this is not conclusive in itself, I also note the view of HE, contained in their letter of 14 March 2014, is that ‘it is not of sufficient merit to warrant retaining’.
22. In their response to the Victorian Society’s objections, the Petitioners state–
- The current floor is made up of some areas of wooden blocks surrounded by Victorian tiles. There are areas in the church where the wood is rotten and broken up, most of these were damaged by water coming in when lead was stolen from the roof. The Victorian tiles are breaking up in certain areas and causing an uneven surface, which people can trip on.
23. This is not a complete tiled floor – it is a wooden floor with tiled surrounds. The tiles themselves are in poor condition.

24. I am prepared to accept that the tiles have some value in terms of the significance of the building, but that value seems to be limited. The view of the Victorian Society overstates their contribution to the significance of the church. While their removal may result in some harm to that significance, it will be (at most) minor.

25. So far as the justification advanced by the Petitioners is concerned, the statement of needs concludes–

The whole project is designed to make the church a welcoming, warm, comfortable and flexible space. This will then provide a wonderful resource for worship, for Great Kimble C of E School and the wider community enabling us to share the hospitality of God.

26. The specific needs are set out earlier in the statement of needs as follows–

Gt Kimble CofE primary school is very close to the church and we have a close relationship. The school come into worship once a month. The school building is small and has no space large enough for the children to do drama, PE etc. without considerable disruption of the classrooms. The space in the nave would be ideal but the church needs to be safe and warm etc. Hence the need for a new floor, heating, toilet etc. The floor needs to be wood to be safer for the young children, and so that it has some give in it, for dance, drama and PE etc.

Other Community Use: The church is an ideal venue for concerts or to show films. Although the village hall offers better parking the acoustics in the church are superior.

To be able to offer this we have to have comfortable heating, toilet and refreshment facilities.

27. The Victorian Society questions the propriety of the church providing facilities for the school. They argue that the school or the local authority should provide the facilities that are needed. They say that there is no guarantee that the school will use the church on a long term basis. They further submit that the existing floor should be repaired. While acknowledging that a timber floor is a requirement of the school for school use, they describe this use as ‘ephemeral’

28. The Petitioners have responded as follows–

We have wrought iron gratings which run almost the length of the centre of the nave, covering a trench that previously held heating pipes. These have started to become brittle and someone fell through one, fortunately without hurting themselves too much. They are redundant now as we do not use the heating pipes and do not intend to.

We have a wonderful opportunity here to make a space suitable for our C of E School to make use of during weekdays. If these young children are going to use the space for dance and drama the floor needs to be something that has some ‘give’ in it in case they fall. The new floor also needs to offer a continuous even surface that can only be achieved by complete replacement of

the existing floor. As you will see from our proposal we would like to replace the floor with timber planks. The planned floor will be easier to look after and it will give a flexible space that can be used for various activities, not only by the school but also by the church for creative worship and by other organisations.

29. The parochial church council have agreed heads of terms with the school which are intended to form the basis of a licence which will – subject to the grant of a faculty for the purpose – provide for the use of the church by the school. The licence is to be for a term of 5 years (with break provisions) with use of the church by the school for 3 days a week between 10 am and 3 pm. The licence fee is a nominal £100 per annum but with contributions being made by the school for heat and lighting used by them.
30. The making available of the church for use by the parish school – which itself has no hall – is clear and convincing justification for making the floor of the church suitable for such use. Providing a hall facility to the parish school is an expression of the church’s own mission and outreach. It also amounts to a clear public benefit in the secular sense as Church of England schools are not ‘faith schools’ but are Christian schools for the whole community. I reject the suggestion that school use of the church is not a suitable use; and it is unrealistic – and irrelevant – to argue that a hall facility should be provided by the school itself or by the local education authority. The provision of a hall facility for the school will be a very substantial public benefit to the local community.
31. Bearing in mind the strong presumption against proposals which will adversely affect the special character of a listed building, I nevertheless find that the public benefit which would result from the proposed shared use outweighs the (at most) minor harm which would result from the replacement of the floor.
32. So far as removal of the pews is concerned, that same benefit is more than enough to rebut the ordinary presumption in favour of things as they stand.
33. As to the font, the only outstanding concern is the one raised by the CBC as to the proposed location. (Other concerns as to the conservation and moving of this important font have now been met to the satisfaction of the CBC and the Victorian Society.)
34. The original position of the font is unknown. It currently stands on the central axis of the nave halfway between the north and south doors. The proposal is to relocate it nearer to the north door. CBC accepted that its present location was not conducive to processional use of the nave or to the intended school use of the building but was not convinced that the proposed new location, in the second bay of the north arcade, was an improvement, taking the view that circulation space either side would be narrow and was likely to impede access to the north door, which the PCC intended to reinstate as an alternative exit. CBC also raises the possibility of the risks of unintended damage if the font is near the server. The Council encouraged the PCC to consider alternative locations.
35. The Petitioners have considered but rejected other locations for practical reasons. I note that the CBC has not proposed a suitable alternative location.

36. No one has suggested that the relocation of the font would harm the significance of the church and I do not consider that it would do so.
37. I have considered Canon F 1.2 which requires that “the font shall stand as near to the principal entrance as conveniently may be, except there be a custom to the contrary or the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible”. As the font currently stands on the central axis – and has done so since at least the nineteenth century when its present plinth was constructed – there is a ‘custom to the contrary’ for the purposes of the Canon: the presumption that the font should stand as near as possible to the principal – i.e. south – door does not apply. And from the plans and photo-montage provided, and the difficulty in locating any alternative place that is suitable, I am satisfied that the proposed position in the second bay of the north arcade does provide “as spacious and well-ordered surroundings as possible”.
38. A final point raised both by the CBC and the Victorian Society is concerned with the proposed upholstery of the new stackable benches and chairs. I do not consider that the petitioners have – in the face of the clear advice from CBC – made out their case for upholstery as opposed to providing separate cushions, nor am I convinced about the proposed vivid blue colour. Upholstered furniture in public buildings very quickly becomes dirty and torn and becomes off-putting to visitors and detracts from the high quality of the surroundings which the Petitioners have taken care to preserve. Upholstered furniture is likely to deteriorate more quickly where there is regular school use of the church building.
39. The faculty will be granted but subject to a condition that the new pew benches and chairs are not upholstered and that the material for any separate cushions the petitioners wish to introduce (including their colour) is approved by the court.