

Neutral Citation Number: [2025] ECC Wor 3

OFS CASE NUMBER: 2024-097242

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

RE: CHRIST CHURCH, LOWER BROADHEATH

RE: Replacement of path, installation of handrails, pollarding of lime trees

JUDGMENT

INTRODUCTION

Background

1. This judgment is unusual in that it follows a full, in person, consistory court hearing for an unopposed petition. I took the step of directing such a hearing due to the petition comprising applications for three confirmatory faculties due to the following unlawful actions taking place:
 - a. The cutting down of three mature lime trees without List B permission;
 - b. The removal of a tarmac path and replacement with a larger block paved path without a faculty;
 - c. The installation of black powder-coated metal handrails at the chancel steps.
2. It was therefore necessary both to determine why such unlawful actions have taken place and to subject the confirmatory faculties applied for to a higher than usual level of scrutiny.
3. Such scrutiny is appropriate where unlawful actions have taken place, as the faculty jurisdiction is an ancient and important part of the law of this country. The requirement to obtain legal permission before any major changes are made to a Church of England church building or its contents are to be carried out is an important way of recognising that a parish church is not the private property of the Parochial Church Council of that church, or of any private individuals connected to the church. It is there for the benefit of the whole people of God in that place, both past and future; and in the present it is there for the benefit of the whole parish – all those for whom the Bishop and Minister of the church have cure of souls.
4. Therefore, changes to that building, and its contents, are matters that should be undertaken carefully and prayerfully balancing the past record of faithful worship and the current and future needs of worship and mission. Part of that includes consideration of the heritage of the church, which is of value both in its own right, and in terms of rooting the current worshipping congregation in the history of the locality and the worshippers of the past. That is why amenity societies such as the Victorian Society and Historic England are stakeholders who properly need to be

consulted in appropriate cases to help parishes understand the importance of their buildings and historic items within it and offer advice as to how changes may be undertaken in sympathy with historic fabric. This shared heritage can be overlooked if the faculty process is not properly pursued.

5. Further, the existence and proper operation of the faculty jurisdiction enable parish churches to be exempt from secular listed building controls. Without the faculty jurisdiction, parish churches would be subject to listed building controls, the statutory tests for which do not consider the importance of a church building as a local centre for mission.
6. What the faculty system also provides, in its current form, is a wealth of access to free expert advice from the Diocesan Advisory Committee (DAC) and the Church Buildings Council (CBC). Private owners of listed buildings who need such advice when planning changes to those buildings, would normally have to pay for the expertise that is available free to petitioners, from specialists and professionals who volunteer their expertise unpaid, for the benefit of parishes. This is a very valuable resource for which all of us concerned with church buildings should be extremely grateful. By taking steps unilaterally and unlawfully the opportunity to benefit from this free advice is lost or comes too late.
7. In all cases then, the proper procedures should be followed, and petitioners can expect to face full consistory court hearings on their applications, where unlawful behaviour is serious or persistent. In such circumstances, unless there is a good reason explaining the behaviour a robust and evidenced reassurance that there will not be any repeat, it is not appropriate for case to be determined on the papers only, particularly where there is a prospect that permission for the works may not be given. Where a petition may not be granted it is particularly important to give the petitioner a full opportunity to be heard.

Details of the church and the parish

8. Christ Church is a Grade II listed building in Lower Broadheath, a village three miles to the west of Worcester in the Malvern Hills District of Worcestershire. It was built in 1903/4 so is a little over 120 years old. The architect was Charles Ford Whitcombe. It comprises a four-bay nave with a two-bay chancel and a very narrow south aisle – described in the National Heritage List for England as a ‘south passage’. It provides a walkway to the south side of the central pews, but does not provide sufficient space for further rows of seating. The church has a tower at the west end with a fine weathervane in the form of a ship. The space under the tower has been sensitively developed to provide an accessible toilet and small kitchen area. There is a south porch, with a staircase to a first floor room in the tower, that I understand is usually used for storage. I am grateful to the parish for clearing space in this room so that it could be used as a retiring / robing room for the Chancellor, Registrar and Registry Clerk.

9. The church had some very fine stained glass and some exceptional woodwork in the Chancel. Particularly it has a carved communion rail depicting vines, showing long branches, leaves, grapes and also twisted roots. This was made with outstanding woodworking skill influenced by early C20th 'Arts & Crafts' style. Community and Sunday School artwork is also proudly displayed.
10. I was told during the visit that the building of the church to replace a much smaller chapel on a different site was funded by Rear Admiral Richard Frederick Britten because he fell out with the then vicar of Hallow, in whose parish Broadheath was previously situated. It was stated that he provided the sandstone from his own quarry, although an online article found [here](#)¹ and based on research done in 1954 suggests that it was Lord Dudley who donated the stone, with the land being provided by members of the family of Mr A E Lord.
11. Outside there is a large churchyard with memorials in a range of styles, including a large prone cross memorial with curbs over the grave of Rear Admiral Britten and his widow Blanche, and other similar memorials for other members of the Britten family. There are four War Graves. There is a lichgate at the west end of the churchyard and a wood and iron archway over the south branch of the path, over which climbing plants have previously been grown. The churchyard is well used by the community and particularly by the children at the primary school over the road from the church. The churchyard is well maintained, with simple but attractive planting with both the PCC and parish council contributing to the cost of it, including by the employment of a professional gardener.
12. The sandstone from which the church is built is an unusual colour, being various shades of pinkish red, brown and yellow-ochre, that appears very differently in different lighting conditions. Unfortunately, at some point in the past gaps in the mortar have been re-pointed with an unsuitable cementitious mortar which is unattractive, but according the 2024 Quinquennial Inspection report prepared by the Church Architect Nick Joyce has not damaged the stonework. The QI report also notes work needing to be done to improve the drainage channels. A greater priority, however, is removing silt etc from the parapet gutter, replacing broken tiles on the roofs, removing vegetation, including a sapling, growing on the tower and tower buttress and resetting the gutter on the south slope of the chancel as well as other matters set out in section 6 of that report.
13. Overall, it is a well-loved, handsome church building in an attractive setting.
14. Lower Broadheath itself is a village and civil parish with a population of 1,728 at the time of the 2011 census. It is proud of its association with Edward Elgar, who was born in what is now a National Trust cottage/museum in the village. It has an active parish council, some members of which were in attendance at the hearing. There is also a group named Friends of Christ Church, Lower Broadheath that raises funds for

¹ <https://worcestervista.com/index.php/amusing-moments/lower-broadheath/>

works to the church building, which supplements the funds held by the PCC for particular projects they wish to support.

THE PETITION

15. The current petition is dated 7 October 2024 and Mr Michael Beard, churchwarden, was the sole petitioner. No explanation is given on the face of it as to why the minister and/or another warden or PCC member was not also a petitioner. I was told Mr Beard is in his 80s and has been a churchwarden for over 18 years. I asked him why that was, in view of the requirement under the Churchwardens Measure 2001 that a churchwarden have a break after 6 years. He said no one else wanted to do it. I have also been told that although there is a second churchwarden, Mr Barnett, he focuses on liturgical support and does not get involved in any of the property matters, which is very much left to Mr Beard to get on with. This was not clear on any of the papers submitted to me at the time of my first set of directions, so I required the papers to be sent to Mr Barnett by the Registry, and for him to file a statement so that I could find out why despite his legal responsibility for the Church building by virtue of his role, he was not petitioning with Mr Beard and appeared to have played no part in the decisions made. Mr Barnett found that experience very difficult and was particularly angry and upset with the Registry for sending him the papers just before 5pm on a Friday. This was briefly explored at the hearing, and Mr Barnett was able to accept that there was no ill motive from the Registry clerk who simply wanted to get the papers to him as quickly as possible, and ahead of the weekend when he would be able to discuss them with other Church members.
16. Mr Beard was unrepresented at the hearing, but had some informal assistance from the Rector who was previously employed as a commercial solicitor. This prior experience appears to have influenced her support for Mr Barnett in erroneously ascribing 'tactical' motives to the Registry clerk in the timing of her emails. She voluntarily revised her view in this matter at the beginning of her evidence.
17. The petition seeks retrospective permission for:
 - a. Removal of the previous tarmac path;
 - i. Placement of hardcore using M.O.T Type 1 roadstone, compacted with vibrating plates;
 - ii. Expansion of new path base to create accessible path in 'pink' brick with 'grey' brick edging;
 - iii. iii. Finish with kiln-dried sand.
 - b. Installation of two black powder-coated metal handrails at the chancel steps;
 - c. Works to Lime trees including;
 - i. Coppice 3. no Lime trees (T3, T6, T8);
 - ii. Re-pollarding of remaining Limes, pruning of basal shoots.

EVIDENCE

18. In addition to the standard documents forming part of the faculty process, including statements of significance and need, standard information, DAC notification of advice, certificate of public notice, I also received the following documents which I have read:
- a. An undated witness statement from Mr Beard, petitioner and an undated letter sent with the petition.
 - b. Statement of David Barnett, churchwarden dated 6 May 2025
 - c. Statements of the Rev Kalantha Brewis, the Rector of the parish, dated, 3 May 2025, 8 May 2025 and 14 July 2025. The latter appended a detailed governmental report on driveway surfaces from 2008.
 - d. Statement of the Ven Mark Badger, Archdeacon of Worcester dated 9 May 2025
 - e. Statement of Mark Carter, DAC secretary dated 9 May 2025.
 - f. PCC accounts and treasurers report 2024
 - g. The QI inspection report from March 2024
 - h. Invoices for the works done
 - i. The report of B J Unwin Forestry Consultancy dated 24 October 2023
 - j. A selection of extracts from PCC minutes dealing with the works
 - k. Various plans and photographs of the church
 - l. An undated letter from Daniel Walton, District Councillor for Broadheath Ward in support of retaining the path
 - m. Copies of some entries on the Friends' Facebook page.
19. I admitted the late evidence (third statement of Ms Brewis and letter from Mr Walton and Facebook posts) having first obtained the views of Mr Beard who was in agreement with them being filed late.
20. I conducted a site visit on the morning of the hearing, in the presence of the petitioner, the Rector, the DAC secretary and a member of the Friends society. After the hearing, the Rector sent the draft churchyard management plan, which is in the process of being developed. The PCC treasurer sent the invoice from the paving contractors, and an accompanying email, explaining how the works were funded. I also asked for a copy of the Churchwardens' logbook. Mr Beard was unable to find it on the day of the hearing – having initially thought it was in the filing cabinet in the first floor tower room, and when he could not find it there, thought it may be at home. He went home to find it but was not able to do so. He offered to provide it after the hearing but has not done so at the time of writing this judgment. I also note it was not provided to Nick Joyce, the church's architect for his Quinquennial Inspection report in March 2024.
21. I heard evidence from each person who provided a witness statement although the bulk of the oral evidence was given by Mr Beard and the Rector. Mr Beard was given full opportunity to ask questions of every witness. I also permitted brief contributions from some of the approximately 20 members of the local community who also attended the hearing.

22. I am grateful for the respectful way in which all contributions were made and for the hospitality of the parish in making the practical arrangements for the site visit and hearing.

CONSULTATION

23. The DAC advised that the proposals were not such that it was necessary to consult the amenity societies or Church Buildings Council, and I took the same view. Consequently, the petition is being determined without such consultation.

THE LEGAL TEST

24. In all cases where an application is made for permission to make changes to a listed building on consecrated ground, the legal test for whether such a faculty should be granted is set out in *Re St Alkmund, Duffield* [2013] 2 WLR 854 which directs the Chancellor to answer the following questions in determining the petition:

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.
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 2*, where serious harm should only exceptionally be allowed.

APPLICATION OF THE LAW TO THE PROPOSALS

Trees

25. This part of the petition has caused the least difficulty. A tree close to the hedgerow at the perimeter of the churchyard tree was blown down in high winds in 2023, fortunately into the churchyard, rather than onto the B4204 on the other side of the hedge. As a result, the PCC commissioned a specialist report which recommended works to three other trees that were dangerous to avoid similar issues arising. No issues of harm to the significance of the church as a building of special architectural or historic interest arises.
26. The felling of trees that are dead, dying or dangerous may be undertaken without a faculty order, if advance permission is obtained from the Archdeacon pursuant to rule 3.3 and Table 2 of Schedule 1 (known as 'List B') of the Faculty Jurisdiction Rules. Had permission to fell these trees been sought from the Archdeacon in advance, it is highly likely that it would have been given, and no full faculty would have been required. However, due to the unlawful actions, the PCC lost that opportunity to obtain the permission quickly and cheaply, such that a retrospective full faculty was now required. However, the Archdeacon is likely to have requested information on the replanting of replacement trees, as trees provide an important element of the Church of England's commitment to becoming Carbon Neutral by 2030. Certainly, where faculties are sought to fell trees that are not dying, dead or dangerous this court generally requires further planting as a condition of the faculty being granted.
27. Having read the report of B J Unwin Forestry Consultancy I find that the felling of the trees was necessary and appropriate and that therefore a retrospective faculty should be granted. It will be subject to a condition that within 12 months of this judgment a plan for planting replacement trees will be agreed with the Archdeacon and the trees themselves shall be planted within 12 months of that agreement. The planting of trees is also a List B matter so will not require a faculty (contrary to the information given by Mr Beard to the PCC meeting on 10 April 2024) unless the parish and Archdeacon do not agree on what should be done. I allow a period of a year as I am aware that a comprehensive churchyard management scheme is underway, and that there is limited space remaining for full size burials in the churchyard, although a good amount of space is still available for the burial of cremated remains.
28. No satisfactory reason was given for not obtaining advance permission from the Archdeacon ahead of the works. It appears to stem in part from a lack of up-to-date knowledge of the faculty system, Mr Beard having last undertaken any form of training in respect of faculties nearly 20 years ago when he first became churchwarden and having no more than the haziest awareness of the existence of List A and List B. It also appears to stem in part from a disinclination to involve the appropriate authorities in his management of the church, which I shall consider more below.

The path

29. The previous path was a relatively narrow tarmac path that seems to have been installed many² years ago at the instigation of the father of a bride. I have seen photographs showing it was deteriorating when the plans were made to replace it. Mr Beard has suggested that the deterioration was an 'urgent health and safety' matter but was not able to point to any accidents or near misses related to it. But in any event, renewing a pathway is in principle a perfectly reasonable piece of work to undertake to improve a church. The issue here is that unless it is a simple like-for-like replacement, it requires a faculty. This is because it is a significant piece of work that significantly impacts upon the setting of a church, and on that basis advice should be taken from the DAC as to the suitability of the proposed materials, method and route. Neither Mr Beard nor the wider PCC took any steps to obtain advice or the necessary faculty prior to the works being done.
30. The timeline taken from the papers shows that works to the path were suggested by Mr Beard at the PCC meeting on 29 June 2023, at which point he reported that the Friends group would be willing to pay for this. The PCC then authorised him to negotiate on this with the Friends group. This authority to negotiate appears to have been repeated at the October 2023 PCC meeting.
31. On 15 November 2023 Mr Beard emailed the DAC Secretary informing him of the intention to fell trees and replace the paths, and that the handrails had been installed. Mr Beard accepted that this was the first time he made any contact with the Church Buildings Team about these works. The following day the DAC secretary replied indicating that:
- a. The provision of handrails provides a faculty, which will need to be applied for retrospectively;
 - b. The removal of dangerous trees requires consent of the Archdeacon under List B and if this work has already been done, a retrospective faculty will also be required;
 - c. A like-for-like resurfacing of paths does not require permission, but if the materials, structure or route is changing then a faculty is required.
32. The Rector also gave evidence that she informed Mr Beard around this time that if the materials of the path were changing, that a faculty is required. Mr Beard did not dispute this evidence, and accepted he knew a faculty was needed.
33. Nevertheless, in January 2024 Mr Beard notified the PCC that he planned to start work replacing the church paths in February. The minutes appear to have noted this, but no formal resolution was passed authorising the works, and no record kept of what materials were to be used. Mr Beard said he did discuss this with other members of the PCC and congregation, and of those present at the hearing four indicated that they had discussed this with Mr Beard, although one of those was his

² There is a reference to this being '30 years ago' and another to the paths being 'over 40 years old'.

wife, Barbara Beard. The works were then undertaken in February/March 2024, around the time that the Church Architect was undertaking the site visit(s) for his QI report of March 2024. By the time of the April 2024 PCC meeting the works were complete.

34. The first the Church Buildings Team knew that the paths had been installed, despite the clear advice that a faculty was required, was upon reading the March 2024 QI report.
35. The petitioner was then informed that the PCC must apply for a retrospective faculty for the three unlawful works, which he reported to the April 2024 meeting. He started that process and the proposals were then considered at the DAC meeting on 12 June 2024. Those three applications were formally authorised by the PCC at their meeting on 13 June 2024. The petition was issued on 7 October 2024, after the Church Buildings Team assisted the parish to reduce the three applications into one petition to save costs, and all necessary documents to enable the Registry to progress the petition were provided by early January 2025.
36. The DAC secretary had concerns about the suitability of the path but advised the DAC to 'not object' to it because it had been installed to a high standard and received positive comments from the church architect. However, the DAC is a body of independent professionals and is not obliged to follow the recommendations of their secretary. In this case the DAC took the view that the materials were inappropriate, so they determined to 'not recommend' it. Their reasons were that it was 'out of keeping with the church building and its surroundings, in its material and overall appearance. The DAC felt that a more neutral buff-coloured brick or ideally resin bonded path would have been significantly more sympathetic and would have so advised had the application been made prospectively.'
37. I asked Mr Beard for his response to these comments. His view was that resin-bond paths have not been around very long and that block paving was much better. In his view the latter was a 'more fitting material, for a church'. He also feared, but without any investigation to confirm this, that it might take longer and be more expensive to repair. He did not agree that the colour scheme of contrasting pink and dark grey brick with yellow sand between them was 'too dominant'. He did not think it had faded much in the c.18m since it has been installed. He also relied on the fact that the path has been well received with lots of people commenting positively on it. That could be seen from the Friends Facebook page where 8 people have taken the time to comment positively about it.
38. Mr Beard also sought to rely on a point made by the Rector in her July statement, that block paved paths are more environmentally friendly than tarmac ones – because the water drained through more efficiently. That was the thrust of the governmental report she attached to her statement. However, that report also makes it clear that for a block paved driveway to drain properly it needs to have a suitable subbase – which it lists as Interpave (2007) 4/10, or Type 3 Sub-base from the Highways Agency Specification or two other specific types of sub-base. In the 18

years since that report was written there will presumably be other materials that have become available to achieve this outcome. What the report describes as 'normal sub-base' which is known as Type 1 or hard core is explained to be not appropriate for permeable surfaces as it has fine material in it that slows the passage of water through it. Unfortunately, the specifications for the path installed was stated to be 'Type 1 hardcore'. Neither Mr Beard, nor Ms Brewis were able to help me with this difficulty. The Rector did give evidence that she spoke briefly to the contractor who reassured her that it was permeable – but she was not able to explain why this advice was apparently different to that in the report that she had put into evidence. It is also the case that the amount of ground now covered by the path is significantly more than was previously covered by the tarmac path (although the extent is unclear due to me having limited information about the earlier path). No person was able to help as to whether there is less run off from a smaller tarmac path or a wider paved one. However, I was told that no puddles appear on the paving and there is no run-off into the road. I am content to accept that evidence.

39. I have attempted to get to the bottom of why the works were done without a faculty, despite Mr Beard having been advised twice that a faculty was needed. His explanation of that was unsatisfactory. He suggested that the 'health and safety' need to improve the path exempted him from faculty jurisdiction and purported to rely on an extract from the Church of England website that confirms that the Church of England is exempt from listed buildings consent because it has the faculty jurisdiction, but is not exempt from other planning and secular legislation including health and safety. This extract, which had been altered by converting the text relating to health and safety legislation into bold, does not say that health and safety legislation exempts parishes from faculty jurisdiction. Rather it simply states that both sets of obligation exist. If this was not a wilful misunderstanding, it betrays a worrying level of ignorance of a system under which Mr Beard should have been operating for over 18 years. When questioned, he was also unaware of the availability of interim faculties, on short notice where an emergency situation requires action prior to the resolution of a full faculty application. This enables emergency action to be taken to make a situation safe, with the full application being made thereafter. Further, where there is a genuine urgent safety issue – for example falling masonry – this court is quick to grant a retrospective faculty where only such works are done as are essential to protect people from injury prior to obtaining advice and permission for longer term solutions. The upgrade of a path does not fall into this category and in any event temporary measures such as placing a warning sign or cone on a pothole or other trip hazard does not require a faculty.

40. I am required to consider whether the pathway results in harm to the significance of the church as a building of special architectural or historic interest. My view is that it does. The style of the path is not appropriate to a country churchyard. It is more suitable to its usual use as a domestic driveway. The colours are also not appropriate. The manufactured paving blocks in a cool-toned pink clash with the range of warm colours in the natural stonework, although in person the effect is less marked than in the photographs submitted with the application. In what is otherwise a relaxed and natural churchyard the dark grey lines at the edge of the path are

somewhat jarring. The yellowish sand swept between the blocks is another colour again, making the overall effect very busy. I agree with the DAC's advice that either a resin bound³ path in a neutral-coloured gravel, or block paving in a single buff-colour would have been far better.

41. However, whilst the colour and style of the path is inappropriate, the need for an improved path is made out. The increased access for less mobile people and wheelchair / buggy users is a distinct improvement. The new path has also been made in a way that provides level access to the south porch, whereas the previous path required a step up. Had this been a prospective application it would have been approved, albeit in a different colour and design if paving blocks were insisted upon.
42. So, I am left to consider whether I should retrospectively permit a pathway that in its current form would not have been given permission, but a similar one in a more appropriate colour scheme would have been. I do not think it right to simply leave it in place without a faculty being granted. It should either be made lawful, or I should make a restoration order for it to be removed. I have the power to make a restoration order under section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 of my own motion pursuant to subsection 72(4). In an earlier directors order I had invited the Archdeacon to consider making an application for a restoration order, but he declined on pastoral grounds, preferring that any such order should come from the court.
43. On balance I do not think it proportionate to order it to be removed. It has cost £13,500 to install this path, money raised and donated in large part from the Friends group. This group donated £10,000 and the parish itself paid £3,500. There has also been a lot of work done to install it and a lot of materials used. It would be very wasteful for the path to be dug up. Replacing it with tarmac to be as near as possible to how it was before the new path was laid, would also not be particularly attractive and would have poorer drainage.
44. I also take notice of the fact that the new path has a lot of local support. I do note, however, that many comments in support are to the effect of how nice the path is, rather than how good the church itself looks with the new path. It is a small but important distinction. When entering a churchyard, the focus should be on the church building or the churchyard monuments and planting, rather than the footpath. The footpath should provide an unobtrusive part of the setting to enhance the church, rather than being the focus of attention in its own right. Sadly, here I think the footpath is a distraction. However, I do not consider it to be so bad a distraction as to justify the large costs in terms of money, resources and local goodwill to remove it and replace it with another. I will therefore grant the faculty sought.
45. In my judgment the path would be improved by a darker coloured sand between the joints that blends in better with the blocks in preference to the light-yellow sand

³ Rather than resin bonded as I understand that resin bound is more permeable.

presently being used. I will therefore impose a condition that enquiries are made with the supplier as to whether a darker sand is available and if so, that a more appropriate darker coloured sand as agreed with the DAC is used for any repairs or maintenance going forward.

46. I will also impose a condition that the PCC approve a maintenance schedule for the pathway to keep it free of weeds and moss that will impede the drainage and to do any necessary repairs of loose blocks. This must be agreed with the DAC and submitted to the registry within 6 months of this judgment.

The handrails

47. There are two steps up to the chancel from the nave. They are covered by a red carpet that also covers the whole of the chancel and most of the central aisle between the rows of pews. In about March 2023 two members of the congregation asked if handrails could be installed on either side of the chancel steps to facilitate access to the communion rail for people with mobility issues and Mr Beard was asked by the PCC to 'look into this'. He does not appear to have been given any greater authorisation to do the works.
48. There does not appear to be any further mention of this in the PCC minutes until April 2024 when Mr Beard relayed to the PCC that they would have to seek a retrospective faculty for the installation of the handrails. It appears they were installed in or about October 2023 at a cost of £350 plus VAT, so a total of £420.
49. They are made of black powder coated steel to specifications apparently given by Mr Beard. He pointed out that the ends did not have any curved parts to ensure that people did not catch their hands in them. They are simple and solid. They have been very firmly fixed to the floor and the side of the chancel furniture.
50. Again, the DAC are dissatisfied by these works. The DAC secretary's recommendation was that the DAC should 'Not recommend' them, because they are out of keeping with the surrounding fabric and appear to restrict access. The DAC accepted that recommendation and added the following reasons: the material (at least in that location) is inappropriate to the interior of a church and unsympathetic to the location in an area of fine woodwork. In addition, the configuration of the handrail nearest the pulpit appears to create an awkward junction. The parish was advised to speak to their architect about an alternative solution / design and suggested that in the meantime a temporary altar table be used or communion be taken to those who cannot manage the steps.
51. In evidence Mr Carter expanded on the DACs views. He stated that the railings are the most basic design, not suitable to a Grade II listed building. He pointed out that they negatively impact on access to the pulpit and the reading desk from the front. He was concerned that one of the fixings did not appear level. He indicated that had prospective advice been sought then the DAC would have advised not just on the design of the handrail but on other ways of improving safety, such as giving better

visual clues as to the location of the steps – the matching carpet making it hard to distinguish them. He also indicated that the DAC would have advised on the need to ensure the rails met Part K of the Buildings Regulations.

52. Mr Beard's response was that the pulpit was not used. At the time of the hearing it had an audio-visual screen in it on a temporary basis, whilst an application for permission to fix it on the wall on a retractable arm is progressed. He stated that you could access the reading desk from the east side when the tables and chair set up for the Consistory Court hearing were removed. He also admitted that the contractor had not confirmed compliance with Part K of the Buildings Regulations.

53. In my judgment these railings do harm the significance of the church as a building of special architectural or historic interest. The very simple, functional design is out of keeping with the very fine carved wood and other attractive elements of the church furnishings. The also do block easy access to the pulpit and to the readers desk from the west side.

54. There is clearly a need for some handrails, or another way of ensuring accessibility of all to the Eucharist. Sympathetically designed rails would enable that access for many, if not all, whilst not detracting from the architectural significance of the church. However, these rails are not designed to fit within the context. Whilst a justification can be given for rails in general, where it would have been possible to install some that better suit the context, and indeed where such alternative rails remain a realistic option, there is no justification for permitting these to remain on a permanent basis. I therefore make a restoration order for the removal of these rails. However, in order to ensure that the congregation are not left without any rails to use whilst a faculty is obtained for new ones more sympathetic to the context, I will allow two years for the petitioner to remove the rails. This will enable the petitioner, or other members of the PCC to obtain design advice from a specialist church architect, consult with the congregation and more widely and obtain a faculty for a new, more appropriate design of rail. The new rails can then be installed at the same time as the current rails are removed. It should normally not take anything like as long as two years, but I am also aware of the funds wasted by the failure to make a proper application for the works undertaken, leading to this hearing and its associated costs. The PCC may therefore need a little longer to ensure they have sufficient funds in place for the proposed new rails.

55. There is likely to be relatively little costs to the removal of the railings, and therefore I am minded to make no order as to who should pay the costs of removal, meaning in practice that the PCC will need to cover this cost when installing the new rails. However, should the PCC wish to make representations as to whether Mr Beard or any other person should pay the costs of removal they may do so in writing within 14 days of the date on which this judgment is emailed to them by the Registry.

COSTS

56. The application for the confirmatory faculties had been approved by the PCC as a whole and I indicated at the beginning of the hearing that I would therefore expect the PCC to pay the costs of the hearing, rather than Mr Beard personally, unless any person wished to propose otherwise. No other proposal was made.

OTHER MATTERS

57. In paragraph 4 of the Archdeacon's statement he expressed concern that the churchwardens were 'somewhat dismissive' and 'did not seem to take seriously the gravity of the situation or the possible implications'. Whilst during the hearing I did perceive some beginnings of a recognition that the proper procedures should be complied with, I also share the concern that Mr Beard does not fully appreciate the responsibilities of his role to act within the law of the land as it relates to works undertaken to church buildings.
58. There also appears to be a degree of misplaced hostility towards 'the Diocese' as something set against the parish, rather than a body of people trying to support Parishes against a background of ever dwindling resources. This is evident from some of Mr Beard's evidence and the comments in his emails to Hannah Taylor as set out in the witness statement of the DAC Secretary. It was not appropriate within the context of a consistory court hearing to get to the bottom of why this misapprehension exists but do note that the Church was without an ordained minister for around 7 years due to pastoral reorganisation. It is a matter that the Archdeacon may want to investigate and address together with the current Rector who has been in role at Lower Broadheath for over five years.
59. However, following my earlier direction that I needed to know what provision was being put in place to ensure similar problems do not reoccur, the PCC agreed that whenever they wished to undertake some work, they would check with the Church Buildings Team whether a faculty was required. This is a welcome step in the right direction. However more can and should be done.
60. The petitioner clearly cares deeply about the church building, the congregation and the wider community, and also has a positive approach to dealing with health and safety issues. However, he nevertheless lacks up-to-date knowledge of and commitment to the full range of his responsibilities. I also observe a disinclination to attend to the paperwork and record keeping aspects of his role. However, I note his age and the lack of support he appears to receive from other members of the PCC. When asked if he himself thought he needed additional support or others to share the burden on him, he did consider that help with paperwork would be welcome. Whilst I have no power to order the following, I nevertheless make recommendations that I would invite the Archdeacon, Rector, PCC and Mr Beard himself to implement. These are:

- a. I would suggest that it is investigated as to whether the annual meeting of parishioners has ever passed a resolution exempting them from the provisions of section 3 of the Churchwardens Measure 2001. If not, the Rector should ensure that such a resolution is considered and voted on in the event Mr Beard wishes to stand for re-election as churchwarden again in 2026.
- b. I invite the DAC secretary to arrange for details of forthcoming diocesan training on faculty process to be sent to both the PCC secretary and Mr Beard personally. I would strongly encourage Mr Beard to attend, but not just him. At least one or two other PCC members should also attend so that they understand the processes involved and can support Mr Beard in his role. The PCC only meets four times per year, which may be inevitable when the minister is responsible for multiple churches and congregations. However, it gives the members limited time to learn their roles and pass on that learning, such that additional training is likely to be of assistance. Events in the Diocesan training programme appear to be free of charge to attendees. I therefore suggest that it is reported at the next Annual Meeting of Parishioners and Annual Parochial Church Meeting what training the churchwardens and other PCC members have attended in the past year.
- c. As set out above, I have not had sight of the Churchwarden's log-book, despite my request on the day of the hearing and despite the offer to provide it after the hearing. The legal duty to maintain this book and record it all alterations, additions, repairs and other events affecting the church, land and contents is contained in section 49 of the Care of Churches and Ecclesiastical Jurisdiction Measure 2018. I therefore recommend the Archdeacon inspect this log-book to see whether and to what extent Mr Beard may need assistance with paperwork logging what is taking place with the building. It is vital there are proper records for the use of future churchwardens and others. I would like them to report back to me within six months as to whether this issue has been satisfactorily resolved. If not, it is open to me, for example, to direct it be provided to the Registry for me to inspect ahead of the consideration of future faculty applications.
- d. I suggest that the churchwardens obtain a copy of Lists A and B (copy attached to this judgment) and familiarise themselves with it. This will help them know whether proposed works will require a faculty, permission from the Archdeacon or may be simply undertaken subject to the conditions therein. I suggest they print a copy to retain with the log-book. Please note however, that this legislation is periodically updated and that the most up to date version can be obtained from the Church of England website. The current version may be found from this link [here](https://www.churchofengland.org/sites/default/files/2024-07/faculty-jurisdiction-rules-2015-amended-up-to-2024.pdf).⁴ If in doubt, contact the Church Buildings Team for advice, as proposed.

⁴ <https://www.churchofengland.org/sites/default/files/2024-07/faculty-jurisdiction-rules-2015-amended-up-to-2024.pdf>

- e. I strongly encourage PCC members to take more shared responsibility for fabric matters, particularly Mr Barnett who has equal legal responsibility with Mr Beard. Neither Mr Beard, nor anyone else, should be making changes to the building or its contents without the express approval of the PCC recorded in the minutes in sufficient detail. Otherwise, if works are done that have not been so approved and problems develop there may be issues as to the extent to which they are covered by the church's insurance. Therefore, the PCC need to hold Mr Beard properly to account for the work he does. Conversely Mr Beard needs to ensure that what he is doing has express PCC approval, together with such further permissions as are legally necessary. I encourage the Rector and/or Archdeacon to explore ways of assisting Mr Beard and the PCC to share responsibility more effectively.

CONCLUSION

61. I direct that faculty permission be issued for the following works subject to the following conditions:
- a. The petition for the felling of trees is granted subject to the following conditions:
 - i. The PCC shall agree with the Archdeacon a plan for the planting of replacement trees by 31st August 2026.
 - ii. The agreed plan shall be implemented by 31st August 2027.
 - b. The petition for the installation of the path is granted, subject to the following conditions:
 - i. The petitioner shall make enquiries with the supplier as to whether a darker sand is available to be used between the blocks. The results of those enquires must be reported to the DAC and where possible a darker coloured sand agreed with the DAC is use for any repairs or maintenance in the future. This must be agreed within 6 months of this judgment.
 - ii. The PCC approve a maintenance schedule for the pathway to keep it free of weeds and moss that will impede the drainage and to do any necessary repairs of loose blocks. This must be agreed with the DAC and submitted to the registry within 6 months of this judgment.
62. In each case in the event there is disagreement between the petitioner/PCC and the DAC the matter may be referred back to this court for further directions.
63. Retrospective faculty permission for the installation of the handrails is refused. I direct that a restoration order be issued requiring the removal of the chancel step handrails by 31st August 2027. I strongly encourage the petitioner / PCC to seek a faculty for more suitable handrails prior to the final date for implementation of the restoration order.

64. I direct the costs of this hearing shall be paid by the PCC.

65. I give permission to the PCC to apply within 14 days if they wish an order to be made in respect of the costs of implementing the restoration order. If no such application is made there will no order in respect of those costs.

THE WORSHIPFUL JACQUELINE HUMPHREYS
11 August 2025