

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

**In the Matter of Kirkby Stephen Church, Parish of Kirkby Stephen with Mallerstang
and Crosby Garrett with Soulby**

THE PETITION OF:

- (1) PROFESSOR RICK GREENOUGH (PCC Member)**
- (2) THE REVEREND BRENDAN GIBLIN (Priest in Charge)**

JUDGMENT

Delivered on 1 July 2025

A. Introduction

1. By their petition dated 19 March 2025 Professor Rich Greenough and the Reverend Brendan Giblin (“**the Petitioners**”) seek a faculty permitting them to install certain Hershel Halo Chandeliers to replace the gas heating system at Kirkby Stephen Church.
2. The petition is opposed by six parishioners, being Mr. A. Coates, Mrs. J. Coates, Mr. N. Prime, Mrs. C. Prime, Mrs. S. Haughey, and Mr. C Simpson (“**the Objectors**”). They have chosen not to become parties opponent, but ask me nonetheless to take their letter of objection into account when reaching my decision. I confirm that I have done so.

B. The Church

3. The church is sometimes referred to as “St. Stephen’s Church” (“**the Church**”), although I understand there is no evidence of formal dedication to that saint.

4. The Church has an interesting and long history, well summarised in the helpful Statement of Significance prepared in support of the petition thus:

“The entire church including chancel, crossing, transepts, nave and aisles was rebuilt in around 1230 using a local sandstone. The nave arcade and north transept of this building remain but the present south aisle dates from the 15th century. The ‘Hartley Chapel’ on the south side of the chancel was added in the 14th century by the Musgrave family of Hartley Castle, and the Wharton family of Wharton Hall built a matching ‘Wharton Chapel’ on the north-east side in the 16th century: both were maintained by those families and intended for their burials. The tall west tower of the church dates from around 1506. Both side chapels and the chancel were rebuilt in 1847, although some features from the 13th century church including a fine piscina and sedilia were incorporated in the new walls. A further rebuilding took place in 1871 when the crossing and parts of the south transept and north aisle were reconstructed and the nave re-roofed with the addition of an enlarged clerestory. The extraordinary tall arch between nave and tower probably also dates from 1871.”

5. The Church is listed Grade II*. It is often the view across its nave arcade from the main entrance that is commented upon by visitors. As the Petitioners identify, Sir John Betjeman called it “*stately and impressive*” with a “*cathedral-like nave*” in his *Collins Guide to English Parish Churches* (1958).
6. Pevsner’s *Buildings of Cumberland and Westmoreland* (1967) similarly remarks on the height of the arch towards the nave, which he identifies as being the highest in the county.

C. The Proposal

7. The proposal under consideration (“**the Proposal**”) is informed by the Parish’s 2030 Vision, part of which is an aspiration to make the Church responsible for as near as possible to net zero greenhouse gas emissions. One aspect of that aim is to instal a new electric heating system powered, as far as feasible, by solar

panels. The parish aspires to achieve this in a number of phases. The first is to address the immediate need for a heating system. Subsequently the parish hopes to secure an electricity supply from solar photovoltaic panels on the south aisle roof: although that is intended to be the subject of a future faculty application.

8. The Petitioners identify that the present heating system at the Church was installed some 35 to 40 years ago and has outlasted its designed life. Spares are now hard to find. It is a warm air system, pumped into the Church through a grille in the wall of the north side. Although this serves rapidly to warm the building, the Petitioners identify that the system also, unfortunately, blows combustion fumes and water vapour into the Church, to the detriment of the people, fixtures and fittings. It is assessed by them as being expensive, inefficient and failing. Furthermore, they report that the position is now pressing, because the existing system failed in December 2024, so that it was necessary to hire temporary heaters during the winter months that followed.
9. It is in these circumstances that the Petitioners' Proposal is for the installation of 9 Halo design chandelier style infrared heaters supplied by Herschel. Those heaters have inbuilt up and down lights.
10. The Petition has the support of a majority of the Parochial Church Council ("**PCC**"). At its meeting held on 18 November 2024 the PCC voted 14 in favour, one against, with two abstentions. I infer that the person voting against may have been Mr. Alan Coates, who is one of the Objectors.

D. Statutory consultees

11. The Victorian Society, Historic England, the Twentieth Century Society, SPAB, the Church Building Council ("**CBC**"), the Georgian Society and Historic Buildings & Places have all considered this application. None object to the proposals as they are now formulated.

12. In its initial response the CBC identified that *“There will arguably be a negative impact to setting, [so that] any design and installation should aim to protect the building and its setting, with no loss of historic fabric, and follow the principles of mitigation, minimisation, and reversibility”*.
13. The CBC further noted that *“The effective positioning of infra-red emitters can be complicated by the sensitivities of the building fabric both in terms of fixings and in areas where sensitive fabric may be exposed to the infrared heating, the Council asks that the risks to heritage and visual impact are given equal consideration and that the positioning of the infra-red units have borne this in mind.”*
14. Even so, after further engagement with the Petitioners and the DAC, the CBC wrote to confirm that it was supportive of the Proposal.
15. I mention the CBC’s initial response because it engages with some of the concerns raised by the Objectors (as to which, see below).

E. DAC notification of advice

16. The Diocesan Advisory Committee (“**DAC**”) considered the Proposals at its meeting held on 6 March 2025. In its Notification of Advice, it recommends the Proposal for approval, subject to certain conditions.
17. The DAC’s opinion is that the Proposals are unlikely to affect the character of the Church as a building of special architectural or historic interest.

F. Objections

18. The Objectors’ letter of objection is the document emailed to the Diocesan Registrar by Mr. Coates’ email of 21 April 2025. Mr. Coates writes of the letter of objection *“It is more a list of the points that we strongly feel should be addressed before the faculty is granted”*.

19. The Objectors raise five specific concerns about the Proposals, being:
- (a) The cost of the proposed new system;
 - (b) Its effectiveness;
 - (c) Its potentially harmful effect on the structure of the church;
 - (d) Health concerns; and
 - (e) Visual impact.
20. The letter of objection is clearly and constructively written and concludes
“Considering the concerns discussed above we would ask that the granting of the faculty be delayed until those concerns have been satisfactorily addressed.”
21. I shall consider each of these five points in turn.

G. Cost

22. The Objectors’ first argument is that the estimated cost of implementing the Proposals, at £140,000, *“is a massive amount of money to provide a heating system”*. They reason that gas fuelled warm air heaters could be installed for a fraction of that price. To this they add that if it were necessary to upgrade the Church’s connection to the grid this could occasion a further cost, which they point out has been estimated at £108,000 by one contractor. They are concerned that without such an upgrade the proposed new Herschel heaters will not run at their maximum output.
23. The Petitioners recognise that these heaters would be expensive to install. The anticipated cost is £139,827 plus VAT (i.e. a total of £167,792.40). On the other hand, they argue that the running costs and emissions will be low: so that from a lifecycle cost perspective they reason this is the best decision. They have taken specialist advice that supports the Proposal and their reasoning.

24. Furthermore, the Petitioners emphasise that they and the PCC take their financial responsibilities very seriously. In answer to the objections, the Petitioners explain that the PCC is able to meet the cost of installing the proposed system from a substantial legacy. Separately they propose to seek grant funding. Since this is a significant Grade II* listed building, and a net zero project, they hope to be successful with such fundraising.
25. Having noted the arguments either way about value for money I turn to the relevant law.
26. In the first place, and in the words of one of the leading textbooks, “*As to how funds should be raised, managed and spent in a parish, that must be a matter for the PCC, in collaboration with the vicar*” (Mynors “Changing Churches” (1st edn.) paragraph 12.5.2).
27. The authority for this proposition lies in the Parochial Church Councils (Powers) Measure 1956, s.7(i)(iv), which reads:
- “The council of every parish shall have the following powers in addition to any powers conferred by the Constitution or otherwise by this Measure:—*
- (i) Power to frame an annual budget of moneys required for the maintenance of the work of the Church in the parish and otherwise and to take such steps as they think necessary for the raising collecting and allocating of such moneys;*
- [...]*
- (iv) Power jointly with the minister to determine the objects to which all moneys to be given or collected in church shall be allocated”.*
28. It is also necessary to consider reported decisions such as *Salcombe, Holy Trinity* (1995) 4 Ecc LJ 606; *Drayton, St. Catherine* (2002) 7 Ecc LJ 100; and *Aldwick, St. Richard* (2014) 17 Ecc LJ 263. In the last of these the Chancellor (being Chancellor Hill, KC) decided that it would be a usurpation of the foundation of the PCC, as the elected decision-making body charged with the

stewardship of the church building and its contents, for the Consistory Court to act as a supervisory or appellate authority reviewing the PCC's decisions. He ruled that the court would not interfere with decisions as to the prudent use of its funds where the PCC acted in good faith and within its statutory competence.

29. It is for these reasons that Dr. Mynors states (op. cit.) that "*A chancellor should therefore generally not give great weight to financial considerations, unless it was clear that the PCC had not given proper thought to raising money, and wanted to embark on a scheme that could not reasonably be carried through for lack of funds*". Here he refers to the decision of the Court of Arches in the case of *Ashford, St. Mary the Virgin* (2010) 13 Ecc LJ 244 where the Dean, in refusing permission to appeal, considered a ground of appeal concerned with whether the proposals would achieve funding. He held that the question of funding was "*largely irrelevant, save that it is best practice not to grant faculties for schemes with no chance of implementation within a reasonably defined timescale*".
30. Applying that law to the facts of the present case I reach the following conclusions.
31. Firstly, as to the question of whether the power supply to the church will need to be upgraded, I am satisfied that the Proposal, if implemented, will not necessarily require such an upgrade, and that the Herschel heaters will operate satisfactorily without an improved supply.
32. I reach this conclusion because, in response to concerns raised by the DAC, and having consulted Herschel, the Petitioners explain that it is possible to set the heaters at 66% power so that the capacity of the present supply is not exceeded.
33. Another alternative will be to zone the heaters, so that if some are set at a higher than 66% output, others are correspondingly reduced, with the result that the overall power draw remains within the existing system's capacity.
34. On either basis, I am satisfied that a competent and safe heating system will be in place. It may simply be necessary to leave the heaters on for a little longer on the coldest days to compensate for using them at a lower output than their

design maximum. The PCC have confirmed that they do not intend to upgrade the electricity supply.

35. Secondly, it is not for me to reach a conclusion about whether or not the Proposals are good value for money, or an appropriate use of the PCC's funds. That is a question for the PCC, not me.
36. Thirdly, in my view it is sufficient that I should be satisfied that the PCC is acting within its powers, in good faith, and having available to it sufficient funds to implement the Proposals. I am satisfied that the PCC is acting in that way. That being the case, I do not need to say anything more about the first objection.

H. Effectiveness

37. The short point raised by the Objectors here is that only people within the beam of the heaters will experience their heating effect. They are concerned that there will be no margin for appreciation between those who are in that beam (and warm) and those who are not (who will be cold).
38. In this connection I note that Herschel's "*Infrared Heating proposal*" for the church (at p.13) states "*Please note that heating benefit away from the centre of the heaters (and where there is no overlap of heating zones) drops rapidly*". That might tend to support the Objectors' position. Herschel continue, however "*This is why we include overlap of the heating zones in our design recommendations or we reflect less coverage from heaters mounted on their own.*" The visual representations of the areas that will be covered by the new heaters is shown at pages 6, 9 and 11 of the same document.
39. In my view, the Objectors' argument here does accurately reflect the way in which these heaters operate, but any consequent concerns are assuaged, in my opinion, by the system design, which aims to avoid cold areas by overlapping the zones heated by each separate device.

I. Risk of Structural Harm

40. The Objectors reason that since the proposed new heating is being designed so that (as they put it) *“no heating is going into the fabric of the building ... This could have serious consequences for the very structure of the building.”*
41. I note that on one possible reading of Herschel’s own proposal document the proposed new system might be capable of causing damage to the building. The passage I have in mind reads (p.12) *“For the main seating area in the Nave (the area to be heated) we have suggested ceiling-suspending Herschel Halos directed into the central area. This will suit the aesthetic requirements of the building, prevent damage to the fabric of the building and provide heating where required”* (emphasis added).
42. In my view, however, the statement is ambiguous. This could equally well be read as explaining how the proposed system has been designed so as to carry a benefit to the building, rather than to avoid harm resulting from its operation.
43. In any case, the Petitioners have shared these concerns with Herschel, particularly as to the possible effect of the system on the wooden pews, dating from 1871-1872. Herschel report (by reference to a trial carried out at St. Matthew’s Church, Bristol) that the infrared radiation is unlikely to penetrate deeply enough into the wood to cause any damage.
44. I would add to this that the Petitioners emphasise that the heating will be on for just 2 hours a week and only then during the coldest months of the year. In this way it will be operated with a similar regularity to the previous, now defunct, system.
45. That said, I note that the materials submitted in support of the Petition include reference to the Historic England website, which advises *“Heating your building only in occasional short bursts is not advisable. This will cause temperature fluctuations, which will not control damp, might exacerbate condensation and might subject the fabric - especially roof timbers - to stress resulting from*

movement. We recognise, however, that some places of worship are in only occasional use and the heating regime will need to reflect this”.

46. Equally, the Petitioners’ discussion paper, appraising the merits of different heating options (which, I should add, is a conspicuously careful, comprehensive and well-written document) reasons that *“Perhaps moisture and thermal shock damage the church fabric more than the cold and if that is the case we need to arrange for the church to be well-ventilated, heat the people only and forget about background heating.”*
47. In these circumstances, the Petitioners’ willingness to monitor the fabric of the church seems a very appropriate response to the element of uncertainty over the effect that the Herschel system may have on it. This reflects the DAC’s recommendation that the Proposals should be approved subject to a condition that *“A survey of the condition of the building is undertaken prior to the installation of the heaters and the church continue to monitor the fabric on a yearly basis for the next 5 years, reporting if there [are] any significant changes to the building condition during that period.”*

J. Health Concerns

48. The Objectors report that *“Some parishioners, one who has a pacemaker fitted, have expressed concerns over possible long term effects of exposure to this level of electro magnetic radiation.”*
49. The Petitioners respond that *“no evidence of harm to health is provided in the letter from the objectors. We are not aware of any evidence that this is a problem. Concerns expressed do not count as evidence. Infrared heaters produce non-ionising radiation, which is similar to that felt from the sun at the earth’s surface.”*
50. I agree with the Objectors on this point, for the reasons they give.

K. Visual Impact

51. The final point raised by the Objectors concerns the visual impact that the proposed new heaters would have. They go so far as to state “*There can be no doubt that the proposed heating system will destroy what must be one of the finest interior views of any church in the diocese.*”
52. I have considered this point carefully, both because of the strong language used by the Objectors and also because of the renowned nave at the church, which has been remarked upon by no lesser figures than Sir John Betjeman and Sir Nikolaus Pevsner.
53. It is common ground that the installation of the proposed new heaters would alter the appearance of the nave. The issue is whether that alteration would be a harmful one.
54. In connection with this Petition generally, and this specific point of objection in particular, I have considered the series of questions identified by the Court of Arches in the case of *Re St. Alkmund, Duffield* [2013] Fam. 158 at paragraph 87 (and see *Re St. Peter, Shipton Bellinger* [2016] Fam. 193 at paragraph 35). The questions are:
- (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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?
 - (3) If the answer to question (1) is 'yes', how serious would the harm be?
 - (4) How clear and convincing is the justification for carrying out the proposals?
 - (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building, will any

resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

55. The Objectors' case is that the implementation of the Proposals would result in serious harm to this listed church, such that the Petition should be dismissed.
56. The Petitioners, in their response to the objections, recognise the concern raised by some that *"the Halo chandeliers will impair the view across the 13th century nave arcade"*. They *"accept that the position of the chandeliers might not be ideal from a visual amenity perspective"*. Even so, they reason that the heaters will hang high in the nave. They add that the majority of the congregation prioritise their warmth and comfort during winter months over any aesthetic concern. While recognising that *"the chandelier heaters will have a visual impact"* they argue *"that, in addition to helping people feel comfortable so that they will be able to enjoy the beauty of the church, the chandeliers will enhance the long view of the nave through to the chancel, drawing the eye to notice the craftsmanship of the ceiling."*
57. I find the helpful and balanced views of the Church Building Council (letter dated 21 January 2025) of assistance in considering this question. The CBC recognises that *"there will arguably be a negative impact to setting"* and *"asks that the risks to heritage and visual impact are given equal consideration"*.
58. Having engaged further with the DAC and the Petitioners, the CBC later wrote in support of the Proposal, which it identified to be in alignment with its published guidance. I take from this that the CBC considered that its suggested approach had been taken, and satisfactorily so.

59. I take into account that none of the amenity societies consulted with respect to the petition have objected to the Proposals, and none argue that the installation of the proposed new heating system would result in harm to the significance of the church as a building of special architectural or historic interest. As I have already noted, that reflects the advice of the DAC.
60. In my judgment, and taking into account the reversibility of the Proposals, I find that the installation of the proposed new heating system would not result in harm to the significance of the church as a building of special architectural or historic interest. Specifically, my decision is that the new heating system would not change the appearance of the nave so as to cause such harm. Accordingly, I answer the first of the *Duffield* questions in the negative.

L. Decision

61. In all these circumstances, the remaining question I need to answer is whether the Petitioners have shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted.
62. I bear in mind that the burden of proof rests on the Petitioners to show that the proposal they make is desirable. This is because it has long been settled that “*All presumption is to be made in favour of things as they stand*” (*Peek v. Trower* (1881) 7 P.D. 21 (Court of Arches) per Lord Penzance).
63. In my judgment the Petitioners have shown a sufficiently good reason for change. The existing heating system is defunct, and having taken full and proper advice, and thoughtfully weighed the merits of alternative options, they have arrived at the Proposal as the most desirable way of heating the church during the colder months. In reaching that conclusion the Petitioners have taken into account the Church of England’s net zero goal: which is why they have chosen the Herschel infrared system.

M. Conditions

64. Given the concerns over the potential effect of the new heating system on the fabric of the Church I am satisfied that the condition proposed by the DAC (see paragraph 47, above) is appropriate.
65. I am also satisfied that the other two conditions proposed by the DAC are reasonable and appropriate.

N. Direction

66. For these reasons I grant this petition as asked, subject to the following conditions that:
- (a) A survey of the condition of the building shall be undertaken by the Petitioners prior to the installation of the heaters and the Petitioners shall continue to monitor the fabric on a yearly basis for the next 5 years after completion of the installation, reporting to the DAC if there are any significant changes to the building condition during that period.
 - (b) The Petitioners shall ensure that the operation of the newly installed system is safe and that all reasonable steps are taken to avoid overloading the electricity supply. For that purpose, the Petitioners shall consult with Herschel prior to installation regarding zoning and use of a control mechanism.
 - (c) Details of the proposed cabling layout and fixings shall be approved by the Archdeacon (who shall consult with DAC experts on the point) prior to installation.
67. I should like to thank both the Petitioners and the Objectors for the careful and clear way in which they have made their respective arguments.
68. I charge no fee for this written judgment, but the Petitioners must pay the costs of the petition, including any fees incurred by the Registry in dealing with this faculty application.

JAMES FRYER-SPEDDING

Chancellor

1 July 2025