

**IN THE COMMISSARY COURT OF THE DIOCESE OF  
CANTERBURY**

***His Honour Richard Walker – Commissary General***

**Re ASHFORD, St. Mary the Virgin**

**Faculty Petition of 6<sup>th</sup> December 2009 and**

**Further Supplemental Petition dated 30<sup>th</sup> March 2010\***

**Major internal reordering; including**

- **Provision of performance and exhibition space**
- **Removal of nave pews & platforms**
- **New Floor**
- **New enlarged nave dais**
- **Moving the pulpit to the opposite side of the nave**
- **Small toilet extension to the vestry**
- **\*Ground source heat pump & Rainwater harvesting tank**

**PETITIONERS: The Revd. Colin George Preece, Robert Austin  
Blount & Anthony Hurd AND Ashford Borough Council AND  
Ashford's Future Limited**

**PARTIES OPPONENT: (1) The Victorian Society &**

**(2) Christopher Cooper**

**JUDGMENT**

1. The Parish Church of St Mary the Virgin is a major Grade 1 building and a landmark structure in heart of the historic part of the town centre in Ashford. Ashford lost much of its historic townscape during the Second World War and was subsequently drastically altered by a new road system, which has left the

Church and its surroundings as a significant enclave surviving from the historic old town. The fine Church is surrounded and framed by a square of generally small old properties with a footpath running all round it and a delightful absence of motor traffic.

2. Because I was anxious to assist the Parties in providing them with a clear ruling on these Petitions, as early as was possible, I handed down a brief “Summary-Form Judgment” on 1<sup>st</sup> June 2010, indicating that I was granting these Petitions and would give full reasons for my decision later. It is necessary to read this present full Judgment in the light of the short Judgment of 1<sup>st</sup> June 2010, and I incorporate it by reference into this Judgment without needing to set it out verbatim here. It is however set out at Annexe 1 to this Judgment
3. The Petitioners are the Incumbent and Churchwardens of St Mary’s (“the Church Petitioners”) together with (now) Ashford Borough Council (“the Council”) and Ashford’s Future Limited. The PCC of St Mary’s unanimously approved the scheme and the decision to apply for a Faculty on 2<sup>nd</sup> September 2009. Planning Consent had been granted by the Council on 18<sup>th</sup> August 2009 for those aspects within the secular planning jurisdiction.
4. The works proposed are directed to both refurbishing the interior of the building and altering its furnishings and layout to enable it to be used by the local community as an arts centre alongside its continuing primary function as a place of worship.

For this reason substantial funding has been offered through the Council to make this ambitious project financially possible.

5. In summary these proposed works are

- To replace the present dais in the Nave with a larger and higher one which can accommodate the choir, servers and clergy, where communion can take place, and be distributed and which will be flexible in its use for worship and also community use.
- To relocate the pulpit and the font.
- To repair and decorate the fabric.
- To improve the very poor lighting in the church.
- To improve the heating in the church.
- To improve and replace the audio visual equipment.
- To completely redesign the nave seating in order to encourage a sense of the gathered community in the nave and increase flexibility.
- To alter the 3 distinct areas of seating in the chancel, so when used together it would improve the sense of gathering and the sense of unity of the congregation worshipping within the chancel area.
- To provide a proper kitchen in the building so drinks and simple meals can be more easily and safely prepared in the church.
- To provide better toilet facilities and facilities for baby changing, more appropriate to modern expectations.
- To improve the access and space for welcome and fellowship into the church to encourage ease of entry.
- To improve the storage facilities in the church and vestries.
- To provide meeting spaces to supplement the very well used church halls for small meetings and counselling.

6. Among the more contentious proposed alterations are the replacement of the nave pews with moveable modern chairs, the installation of a larger and more permanent dais for the nave altar, moving the pulpit from one side of the nave to the other, and also the replacement of the present flooring of the nave.

7. The Petitioners at an early stage in the project commissioned a Statement of Significance from the Architectural History Practice, which has been described by the Victorian Society as *“extremely thorough and explains clearly the complex*

*development of this building*” (letter of 13<sup>th</sup> November 2009). I do not propose to summarise its contents which I accept in its entirety and which informs my decision in this Judgment. The entire church is clearly of considerable historic and architectural significance, but as is pointed out in 3.7 of the Statement of Significance “*much of its list description and grade status rests on the eastern end of the building and its fine monuments*”. This is the oldest part of the church, predominantly fifteenth-century, although there is also some thirteenth and fourteenth century material here. At this end of the building, the Petitioners are proposing relatively minor alterations to pews and their platforms, improvements to the lighting and restoration work.

8. The majority of the changes proposed are in the nave, to the west of the crossing where very little of the fifteenth century work remains. The Statement of Significance (3.4.2) describes this part of the church as “*A combination of a seventeenth century roof, eighteenth century galleries and nineteenth century expansions*”. It contains a late 20<sup>th</sup> century set of rooms under the galleries as well. The Statement of Significance identifies a string of successive developments after the medieval period which have created this space including:-

- The building of galleries in the Nave (1717-18)
- The Installation of box pews and possibly pulpit on south-west column of tower (1744)
- The installing of a west gallery (1772)
- The chequered stone floor (before 1820)
- Widening of the aisles and moving out of galleries; the font moved to south east corner of church (1827-28)
- Extension to the west end (1860-62)

- Installation of pews (*it is these which are the particular focus of disagreement now*) and introduction of heating (1879 - Thomas Williams)
- The heads to the nave windows altered, the ceilings to the aisles replaced, new pulpit installed (1897)
- West lobby added 1910-20, enclosure of the West end, removal of some pews and relocation of the font (1986)
- The construction of the present small nave dais and the removal of front pews to accommodate it (2000?)

9. In accepting as I do the correctness of the Statement of Significance (above), I would make a few brief observations of certain matters which I observed on my visits to the Church:

- The immediate impression on entering is that the Church is dark: somewhere on a spectrum between austere and gloomy. The present lighting system is entirely ineffective to dispel this.
- The darkness is no doubt largely due to the presence of the large and deep Georgian galleries which loom over the nave on three sides and which lie across the windows on the North and South walls.
- The Hearing took place on a bright sunny day in late May. Yet the light inside the Church (with the lights on) was so poor that we were all in some difficulty in reading our papers.
- Even without the chancel screen which was erected as a memorial to the fallen of the First World War, there must always have been a sense of almost total disjunction between the chancel/choir and the nave. This seems to stem from the combined effect of the deep crossing between the nave and chancel and the remarkably narrow (for the size of the church) arches between the nave and the chancel.

- Remarkably large (in girth) pipes run up both sides of the central aisle, against the bases of the pew platforms, as part of the Victorian central heating system. These are aesthetically unattractive as well as a considerable tripping hazard for those stepping into and out of the pews.
- The nave pews are of great solidity and width.
- Questions of comfort are largely individual and subjective, but I found the pews uncomfortable to sit in, due to the combined factors of the narrow depth of the seat and the almost vertical back.
- The present (temporary) dais is fulfilling an important role in producing a focal point for worship in the nave, but is of such “Heath Robinson” construction that it must be replaced or removed soon.

10. On 8<sup>th</sup> October 2009, the Diocesan Advisory Committee (“the DAC”) issued its certificate recommending the works proposed in the Faculty Petition, subject to several conditions. The Committee did, unsurprisingly, state that in its opinion the works or part of them were likely to affect the character of the church as a building of special architectural interest, but were not likely to affect either its archaeological importance or any archaeological remains existing within the church or its curtilage. On 5<sup>th</sup> May 2010 the DAC issued a further certificate recommending the works proposed in the Supplemental Petition for the installation of the ground source heat pump and rainwater harvesting tank, also subject to conditions.

11. A number of Objections were received by the Diocesan Registry, and most of these fall to be taken into account by me

under Rule 16(3)(a) of the Faculty Jurisdiction Rules 2000, but two Objectors have pursued their objections to the point of becoming Parties Opponent: the Victorian Society and Mr Christopher Cooper, a local resident and church member.

12. At a relatively late stage, the Petitioners added a supplemental Petition relating to the installation of a ground source heat pump and a rainwater harvesting tank both to be buried under the churchyard, with radial boreholes deep in the ground beneath the archaeological level in the churchyard. These will serve the new underfloor heating system as well as the plumbing needs of the toilets. It is perceived that such systems are 'greener' than more orthodox methods, and an increasing number of churches have been investigating such systems. Further Planning Consent for this has been granted, and the DAC granted a Certificate as recently as 5<sup>th</sup> May 2010 recommending these works subject to a series of conditions. Such works can give rise to potential concerns in relation to disturbance of trees in the churchyard, as well as of the colonies of bats that live there. There are also concerns as to possible disturbance of archaeological artefacts as well as of human remains from burials many centuries ago. The DAC's Archaeological Consultant has endorsed the specification and would maintain an archaeological watching brief during the works of excavation. The Petitioners recognise that, as in other aspects of this whole scheme, any grant of a Faculty would have substantial and stringent conditions attached, in order to address these and similar concerns.

13. *Public Notice issues relating to the Heat Pump and Rainwater Tank.* In anticipation of the fact that this additional work really needed to be covered at the impending Faculty Hearing, the Petitioners exhibited a Public Notice on 5<sup>th</sup> March 2010, stating that plans and documents could be inspected at the Parish Office and inviting any objections to be lodged at the Diocesan Registry by 23<sup>rd</sup> April. The only person to register objection was Mr Cooper. I am satisfied that in real terms sufficient public notice has been given to enable any potentially interested party to express objection.

14. The Parochial Church Council has voted unanimously in favour of both sets of works.

15. I held a Directions Hearing on 14<sup>th</sup> April 2010, attended by all the Parties. This present Judgment should be read in the light of the short Ruling I gave after that Hearing, most particularly because of the rulings I made there about certain of the matters which Mr Cooper had clearly sought to incorporate into his representations in this case, which in my judgment fell outside the bounds of relevance and which would therefore have unreasonably and unnecessarily enlarged the scope of this case and led us into matters outside my competent jurisdiction. As is set out in that earlier Ruling, I had given Mr Cooper plenty of time to anticipate this matter and to prepare and make submissions on the point prior to my excluding them from this case.

16. I then conducted the substantive public hearing in the Church on Friday 21<sup>st</sup> May 2010. The Petitioners were represented by



Mr. John Gallagher of Counsel and the Victorian Society by Mr. Mark Blackett-Ord of Counsel. Mr Cooper conducted his own case with vigour and clarity. Limited cross examination took place of those witnesses who had been called by other Parties for this purpose. I reserved Judgment.

17. Because of the considerable public interest in the outcome of this case and the need for as early a determination of the issue as was consistent with a proper and measured consideration of the evidence and the merits, and because I was due to go away for a considerable period in June and had brought forward the date of the substantive Hearing to avoid further delay, I reviewed all the evidence and submissions in the 10 days following that hearing and then handed down a “Summary Form Judgment” on 2<sup>nd</sup> June 2010, granting the Faculty, subject to extensive conditions. I stated that full reasons for my decision would be delivered later. A copy of this Summary Form Judgment is at Annexe 1 to this present Judgment. I directed that the Faculty should pass the Seal, but Condition 1 of the Faculty states that “No works may be commenced until at least 28 days after the Full Judgment (with reasons) has been handed down by the Court”.

18. **The Legal Principles** applying to this case are a matter of common ground between the Parties. As in any case involving the potential radical alteration of the interior of a Grade 1 Listed Church, the burden of proof is firmly on the Petitioners to overturn the presumption against change and to justify the need for such changes, on the balance of probabilities. This is a case whose outcome is largely to be decided upon applying the

tests set out in what are colloquially described as the “Bishopsgate Questions”, arising from the Judgment in the case of In Re St Helen’s Church Bishopsgate (26<sup>th</sup> November 1993), and subsequently approved by the Court of Arches in In Re St Luke the Evangelist, Maidstone (1995) Fam. 1. These were the subject of a useful updated summary by the learned Chancellor of the Chichester Diocese in the case of In the Matter of St Mary, Newick (4<sup>th</sup> July 2008), which summary was commended by the Court of Arches in the recent case of The Church of St Peter the Apostle, Draycott (2009). I set out the pertinent paragraphs of the Newick judgment here:

“ Where, as here, we are concerned with a listed building, the Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in Re St Luke the Evangelist, Maidstone, [1995] Fam 1, which adopted what are now generally styled the ‘Bishopsgate Questions’, first posed in the unreported decision of Re St Helen, Bishopsgate, 26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256. Those questions are:

- (1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?
- (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
- (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court’s discretion a faculty should be granted for some or all of the works?

The consistory courts of both provinces have been ‘loyally applying’ this approach, to quote Chancellor McClean QC in Re Wadsley Parish Church (2001) 6 Ecc LJ 172, Sheffield Consistory Court, such that it is now regarded as having universal application, but as I stated as Deputy Chancellor of the Diocese of Winchester in Re St Mary, Longstock, [2006] 1 WLR 259, at para 11, ‘there is a danger of descending into too sophisticated an analysis of the Bishopsgate questions. They derive from a first instance decision of the highly experienced Cameron Ch (as she then was); were readily adopted by the Court of Arches in Re St Luke the Evangelist, Maidstone; and have been consistently applied subsequently by the appellate court and consistory courts of both provinces. They have brought about a welcome consistency of approach. But ... they are not a catechism nor a mantra. I do not think it would be helpful for me to reformulate the questions. Nothing is gained by different chancellors articulating subtly nuanced variations of principles of general application ...’

The order in which the questions are approached is significant. In Re St Mary the Virgin, Sherborne [1996] Fam 63, the Court of Arches stated the following at pp 77-78: ‘... by the questions and their order we wish to stress

the fact that with listed buildings the presumption is so strongly in favour of no alteration that the first question which must be asked is: are the alterations necessary? The present order of questions emphasises that for listed buildings the presumption is heavily against change. To change the order of the questions would, we believe, cause confusion and might seem to some to indicate a relaxation of the requirements before change will be authorised. No such relaxation is intended or desired by this court’.

Contrary to this unambiguous prescriptive guidance, in a number of cases determined on their own particular facts, the order in which the first two questions were asked has been reversed, most particularly in Re St Gregory, Offchurch [2000] 1 WLR 2471, Coventry Consistory Court, a case concerning a memorial window. This approach was followed in Re St Peter, Walworth (2002) 7 Ecc LJ 103, Southwark Consistory Court; Re Parish of Stourbridge, St Thomas (2001) 20 CCC No 39, Worcester Consistory Court, Re All Saints Church, Crondall (2002) 6 Ecc LJ 420, Guildford Consistory Court, and Re Dorchester Abbey (2002) 7 Ecc LJ 105, Oxford Consistory Court. For an insightful discussion, see W Adam, ‘Changing Approaches to the Bishopsgate Questions’ in (2003) 7 Ecc LJ 215. In each of these cases, even though the order of the first two questions was reversed, the strong presumption against change was not in any way displaced. As I stated in Re St Mary Longstock (above) and as I adopt in relation to the present matter:

‘... for the purpose of disposing of this petition, I take as my starting point the fundamental premise upon which the ecclesiastical exemption is based, namely that in the case of listed buildings, there is a powerful presumption against change. The burden of proof lies on the proponent of change, and the burden is not easily discharged. However, where the interests of justice so demand, a consistory court ought not to be compromised in its analysis by too rigid an adherence to the strict order in which the guideline questions are set out.’

The word ‘necessity’, although a very convenient shorthand which carries a clear meaning that is well understood by those who practise in the ecclesiastical courts, needs to be read in context. As the judgment of Chancellor Cameron QC in Re St Helen, Bishopsgate makes clear, what petitioners are required to demonstrate is that any proposed works ‘are necessary for the pastoral well-being of [the parish] or for some other compelling reason’. In Re St John the Evangelist, Blackheath, (1998) 5 Ecc LJ 217, Southwark Consistory Court, Chancellor George QC ventured that ‘necessity’ and ‘necessary’ in the context of the Bishopsgate questions meant ‘something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary’. While this is undoubtedly correct, the word ‘necessity’ should not be taken in isolation as an abstract concept. Rather it should be read in its clear context which imports the wider concept of pastoral well-being or some other compelling reason. Seen in this way, the meaning and effect of the Bishopsgate approach is readily comprehensible, continuing to impose a high standard of proof on those who seek to discharge the presumption against change applicable in the case of all listed buildings, yet admitting of factors concerning the role of the church as a local centre of worship and mission. This is central to the operation of the faculty jurisdiction in consequence of the overriding consideration set out in section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.”

19. I would not wish to attempt either to better express or summarise the relevant law in any other manner and will seek loyally to apply this magisterial analysis of it to the issues confronting me in the present case.
20. Mr Cooper draws to my attention to the Judgment of the Chancellor of Salisbury in the case of Re All Saints Burbage (14<sup>th</sup> February 2007), a case in which the application of the Bishopsgate questions led to the dismissal of Petition to remove pews from a church. In it, reference was made to pastoral well-being and the degree of opposition to the proposed changes to the Church. “To allow that change” said the Chancellor “would not make for pastoral well-being in its wider sense.” I take due note of this case, although it seems to me to be a classic example of the general principle that every case turns on its own particular facts.
21. **The Petitioners** put their case on the basis that their evidence demonstrates that it is requisite or necessary for these works to be carried out for the pastoral well being of the Parish and for other compelling reasons. They submit that a re-ordered St Mary’s would serve to better reflect and accommodate contemporary forms of worship and would more effectively support the PCC’s mission to the town centre and the community, in the provision of a first class venue for cultural and community activities. They say that the works will not affect the character of the Church as a building of special architectural interest, but that even if they did affect it to some degree, the proven necessity of the works is such that a Faculty

should nevertheless be granted. I set out their evidence in the succeeding paragraphs.

22. The Incumbent - Canon Colin Preece has been Priest-in-Charge since September 2003. Previously he had been Vicar of the adjacent parish of Kennington for fourteen years and was Rural Dean of Ashford from 1993 to 1999. He has therefore long pastoral experience of the Ashford area.

He makes the following points:

1. The PCC has long seen the broader use of the Church as being at the heart of the distinctive mission and ministry of St. Mary's towards the town. The reordering would facilitate the Church's broader engagement with the town centre and the wider community.
2. In addition to the usual round of regular Sunday and weekday and special services, the Church has been used for a wide range of cultural activities, including exhibitions (e.g. Ashford Federation of Arts); occasional concerts and productions (e.g. the local art college) and, for a decade, the professional concert programme of the Ashford Arts Festival. For very many years, the Ashford Choral Society held concerts at St Mary's, until difficulties with the inflexibility of, and limitations on, the nave caused the Society to seek an alternative venue.
3. He believes that a re-ordered St Mary's would fundamentally serve to better reflect and accommodate contemporary forms of worship and more effectively support the PCC's town-centre outreach. There would be a much greater degree of appropriate flexibility in the use of the church for liturgy, for other church activities, for events for the local community, and for groups to whom the church could properly be made available for use.
4. There is also a clear pastoral need to refurbish and improve, at the very least, the temporary re-ordering of the nave altar and dais which is too small and in need of repair and upgrading, in any event. There is a Sunday Family Eucharist, at which at present it is necessary for the celebrant and congregation to move from the nave altar to the chancel altar at the east end of the Church for the distribution of the elements. A redesigned and larger dais in the nave with altar rails around it would eliminate this requirement. There would be a platform lift built into the dais to assist moving equipment on to the dais and to facilitate wheelchair access.
5. Canon Preece believes that the worshipping congregation would find it difficult to revert to the previous arrangement whereby much of the 'theatre' of the Eucharistic liturgy took place out of sight (and, for some at least, out of hearing) at the high altar. Where the emphasis

may once have been on (perhaps passive) *attendance* at church, it is appropriate now to provide for the proper inclusion and *active participation* in the liturgy of the congregation. (*I interpose the comment that whilst Mr Cooper would wholly disagree with all of this, there can be no doubt that this reflects current (and indeed relatively long-standing) practice in very many Churches and Cathedrals nowadays. It is certainly not in my judgement unreasonable for the Incumbent with the majority support of the PCC to foster such liturgical philosophy and practice.*)

6. Canon Preece also confirmed the obvious fact (obvious it seems to all but Mr Cooper) that the flexibility of the reordered Church would enable the holding of very “traditional” services as required, alongside more contemporary or family-friendly ones.
7. The fastest growing service at St Mary’s is the monthly non-eucharistic Family Service. This is often the first service that many young families attend, particularly those requesting baptism. Modern and informal liturgies are often based upon greater interaction between the worship leaders and the congregation, again emphasising the greater significance today of affording worshippers opportunity for *participation* in the liturgy rather than mere *attendance* at it. This needs greater flexibility of layout to enable all to see and participate in the liturgy. Young people play a greater part in readings, prayers and sometimes drama.
8. The removal of pews would allow more flexibility for processional routes (which are used every Sunday) and any other part of worship which requires movement (Music Sundays, family services, services that require a number of readers or worship leaders greater than two). Although the choir has declined in numbers from its glorious past, there has been a steady growth in recent years making it barely possible for the choir to process in a dignified manner on an ordinary Sunday.
9. There is a midweek communion service, held at the nave altar, using the Common Worship order and averaging 10-15 in attendance. This has grown from 3-4 attending over the last 2-3 years and is expected to continue to expand. The format of this Eucharist is informal and the use of meditation is becoming hindered by the lack of flexible space as the congregation grows. This has arisen out of the development of the practice of the congregation at this Eucharist gathering and being seated around the altar. The lack of space and flexibility now means that the space around the nave altar is overcrowded.
10. It is his view that a greater flexibility in the nave has become a pastoral necessity. The re-ordered space in the nave would help to meet this need. Accommodating larger numbers is not just about the ability to ‘get people in’ but about the quality of their “experience” of worship: everyone should ideally be able to feel they are involved, and that they are able to see as well as hear.
11. The Chancel is used for Evensong every Sunday at 6.30pm (approx 20 people in attendance); for Holy Communion every Sunday morning at 8am (10-15 worshippers); and also for small funerals (approximately 6

- per annum). There is a need for greater flexibility to enable the use of the chancel for smaller congregations, which is currently hampered by the present pew configuration, which prevents those at the sides from seeing what is taking place. The proposal is to raise the pew platforms at each side of the misericords and choir stalls, and to make the short pews in the side chapel mobile so that they can be used in either orientation (facing East towards the Chapel altar or facing North/South in 'choir formation'). There is also a need to improve the lighting in this area. All this would enable a larger - but still relatively small - congregation to participate fully in the liturgy in the chancel.
12. He points out that the five regular worshippers at St Mary's who have sent written objections relating to the nave pews are in fact those who attend services held in the chancel or side chapels, who will continue to be able to use the pews there.
  13. The Font has been in various locations over the years and has only occupied its present position on the south side of the Church since 1987 in an arrangement which has been described by the Church Buildings Council as "cluttered". The proposal is to relocate it with its dais to a mid-point on the South Aisle, assuming that the pews in that location had been removed, where it would continue to be a focal point for baptisms within Family Worship.
  14. The Pulpit has been used for sermons at most Sunday morning services and would continue to be so, albeit from the south side of the arch, with its stairs now running down into the South Aisle. This relocation would enlarge the available space on the new dais, both for liturgical use and for arts/community use.
  15. The flooring: at present he considers that the floor of the aisles is uneven and presents something of a safety hazard in places. A new floor would enhance processional routes as well as assisting wheelchair and pushchair etc. access.
  16. The lighting is currently poor, causing significant problems where it is essential that worshippers should be able to read orders of service. The current audio and lighting system is very basic. The PCC has established that the heating system is inadequate.
  17. The Church currently uses temporary screens/projectors for some special services, and would like to extend this use. The proposed new screen would bring additional opportunities for a range of presentations and other uses, for both the liturgical and arts/community. The new screen will be fully retractable into a specially created housing hidden from view (from the nave) behind the nave arch.
  18. A reordering of the West End of the Church was carried out in 1985/6 to provide a meeting room, toilet and kitchen area. However to reflect the greater expectation of visitors and the congregation for appropriate facilities, were the main part of the scheme to be permitted, further works would be necessary (e.g. current toilet facilities do not meet the requirements of the Disability Discrimination Act nor meet the needs of a capacity audience of 300, which is why there is a need for the toilet pods upstairs and the toilet extensions to

- the vestries). The kitchen would need enlargement and upgrading (which would in turn assist in the provision of Soup Lunches and Saturday Coffee Mornings, to bring in passers-by and shoppers).
19. Unfortunately, the financial position of St Mary's is not strong and any reserves have been gradually used up in years when a deficit in the accounts has had to be made up. Increasing costs, particularly in utility bills and in 'parish share' contributions to the Diocese and the National Church (currently some £57,000 p.a.) have left little money spare for the upkeep of the interior of the church. The possibility of new money from the Growth Area Fund and Ashford Borough Council has thus come as a wonderful opportunity to secure badly needed funds for much needed improvement. Schemes for internal redecoration, re-ordering, improved lighting, sound systems, rewiring, etc have been put forward and discussed over the years, but have never been affordable. Essential repairs to the exterior of the building (e.g. re-leading the roof) are now three-quarters complete, but have only been achievable by the generosity of the Ashford Parochial Charities. However there is always a large list of significant items of maintenance of the fabric needing attention.
  20. The finance required for this project would be entirely beyond the Parish. Ashford Borough Council with Ashford's Future have made this scheme possible through the Government funding. In return the PCC and Churchwardens, whilst retaining ultimate control of the building, subject to the Commissary Court, would be able to offer to the community an excellent arts and community facility. Canon Preece puts before the Court a Draft Agreement proposed jointly by all the Petitioners.
  21. Despite its relative lack of funds, St Mary's intends to raise a total of at least £75,000 and up to £100,000 towards the total project, most particularly directed towards those aspects of the works which most directly concern its use as a place of worship.
  22. The PCC envisages a programme of 12-15 "arts" events a year, arranged in two or three "seasons".
  23. Whatever the future holds regarding a dedicated theatre for Ashford, the PCC would envisage the Church continuing to be used for many years as a venue for arts and community events.
  24. "This is a wonderful opportunity for the people of St. Mary's to join in partnership with the local authority to reorder this beautiful mediaeval church for its ministry and mission in the 21<sup>st</sup> century."

**23.** For Canon Preece and the PCC the focus of the entire scheme is to enhance St Mary's as both a sacred and a "shared" space. "Our aim" he says "is to create a space which will engender a sense of awe and wonder in all who step over the threshold of



our church.” “Buildings like cathedrals and other historic churches are not just timeless artefacts, but demand constant reinterpretation by people who approach them from within their own historical circumstances. To treat such buildings as ‘works of art’, that is as ‘static’ listed buildings to be preserved at all costs, raises all kinds of problems for liturgists and theologians, who suggest ‘meaning’ is arrived at through interpretation by use.” “The Parish has a vision for a church which is relational, where there is genuine engagement and opportunity for communication and interaction, with sensitivity towards others. I believe that this would be facilitated by a clearer understanding of the use of part of the church as ‘shared space’.” *It is neither the wish nor the role of this Court to dissent from this theology of shared space. It is, however, necessary for me to evaluate the extent to which a laudable desire to share this particular space with the wider community may adversely impact upon the architectural and historical character of this Grade 1 building, and to balance that against the proven pastoral well-being of the Parish.*

24. I should add that the enduring impression made on me by Canon Preece as a witness was his dogged sense of commitment to seeing the vision of this project through as a central plank of this Church’s mission to the town and community.

25. Mr Mark Carty, is Head of Cultural and Project Services at Ashford Borough Council, the Senior Manager of the Council involved in this scheme, reporting directly to the Council’s Chief Executive. He has held this function for some 18 years. He says that “partnership working” is fundamental to the

Council's approach to service delivery in the Borough. It involves, in particular, giving support to local parishes, the voluntary sector, churches and faith groups, tourism, business, and partnering other public sector organisations to deliver shared service objectives in health, education, social and community life. At the meeting of the Council's Executive Committee on 25<sup>th</sup> June 2009, Councillors gave their full support to the reordering proposals to "create a quality worship, arts and community space at St Mary's Church".

26. In paragraph 8 of his Witness Statement, Mr Carty was keen to stress that the Council recognises that first and foremost the Parish Church is a place of worship and will remain so. The Council is entirely committed to the clear need to ensure that the use of the Church, from time to time, as a community and arts venue is handled with particular care and sensitivity. The Council understands that any such use must be strictly appropriate to the context and setting of a consecrated place of worship. The Council is wholly committed to the principle of the proposed agreement with the Incumbent and PCC to safeguard and maintain Church control over the nature of all the proposed community uses and arts programme. The Council recognise within the proposed agreement that there will be limitations on the type of event and performance which may take place at the Church. I found Mr Carty's evidence on this, as on other matters, impressive and compelling.

27. The proposed Agreement (at Annexe 2, below) would create a new Managing Trust controlled by the PCC to oversee the use of the shared aspects of the building. The Borough Council has

endorsed the proposed partnership with the PCC and Ashford's Future, subject to the grant of a Faculty, to provide at St Mary's Church "an appropriate arts programme that will benefit local artists, voluntary arts sector and the wider community and has agreed to nominate a Council member to sit on the sub-committee of the PCC to support the management of the arts and community programme".

28. Mr Carty produced a document listing the extensive consultation process which has been undertaken both by the Council and the Church between 2005 and the present. I have to say that I found Mr Carty's evidence on this point compelling and am satisfied that there has indeed been an impressive amount of consultation with public, Church members and Arts bodies in preparation for the presentation of this project in its final form.

29. Among the further points he makes are:

1. Ashford is the only town of its size or larger within the South East region without any dedicated community arts venue or flexible/multi-purpose community space, in or close to its town centre, readily available to all.
2. He considers it essential that the proposed adaptations are seen and understood to be coherent and integrated. When taken together, they create the essential degree of flexibility, comfort and amenity within the nave to provide the PCC, the proposed arts trust and prospective users with the possibility of creating their ideal layout within the space with relative ease. He was firm in stressing that there is no pre-condition attached to the grant that the pews *must* be removed, but he clearly believes that the retention of any pews in the nave would ultimately frustrate this degree of flexible and increased level of use. Pews would prove difficult to move and store, and would limit the scope for creative use of the nave, which in turn would limit its proper 'community use' but, importantly, also the financial sustainability of the building.
3. The short stay car parking capacity of the town centre already exceeds 2,000 spaces and there are currently ample council car parks readily available close to St Mary's. There are five car parks nearby. Of those,

three have free parking after 6 pm every evening with a collective capacity of 683 spaces and are open 24 hours every day. These include the closest car park to St Mary's: the Vicarage Lane car park, which is a short 226 metre walk from the churchyard, and has a capacity of 184 spaces.

4. He rejects the suggestion from Mr Cooper and others that the Council regards this as a temporary project of some five years duration.
5. The funding is simply not available for a new, dedicated arts venue at this time. It is highly unlikely that sufficient funding could be secured for some considerable time, particularly given the budgetary constraints under which it is anticipated local government will have to work for some time. St Mary's has made a helpful contribution to the arts programme for many years and the proposed reordering, if agreed, would build on that longstanding contribution to, and involvement in, the wider life of the local community. Nevertheless the Council recognises that the limitations that must rightly be placed on appropriate arts and community uses of St Mary's, and a number of other factors, including the historic setting of the church and churchyard, mean that the Council will continue to seek opportunities in the future to achieve a much larger, multi-purpose, events venue with a greater audience capacity of up to 2,000.
6. He also insists that the project is not "over budget" as some have suggested.

### 30. Judith Armitt Managing Director of Ashford's Future

Company Limited explained that Ashford's Future is a company limited by guarantee. The members of Ashford's Future are four public sector partners: Ashford Borough Council, Kent County Council, the South East of England Development Agency, and the Homes and Communities Agency. The role of Ashford's Future is to drive forward the sustainable growth and regeneration of Ashford, and it is the delivery arm of the Ashford's Future Partnership Board, a group comprising the four partners mentioned above and other relevant public and private sector partners involved in the growth and regeneration of Ashford. She confirmed that Ashford's Future has provisionally offered, subject to conditions, £1.2 million to Ashford Borough Council to enable development of the 'Art at St Mary's' project. One of the conditions is that the project is completed within the timescales

that enable the funding to be used by 31 March 2011 at the very latest.

31. Mrs Armitt also

1. Confirmed that Ashford's Future and the Ashford's Future Partnership fully support the proposed dual use of the church for worship and as an arts venue, with the principal purpose of the building clearly remaining as a place of worship. Ashford's Future is sensitive to the importance of ensuring that nothing detracts from the use of the building for worship.
2. Produced figures and projections to support the prediction that Ashford's population will at least double by 2031, as a result of planned increases in housing development and the creation of new jobs.
3. Asserts that even if there were at some future date (as yet wholly un-envisaged) to be a new custom-built Arts Centre in Ashford, this would not mean that St Mary's became redundant for such purposes. It would merely present an alternative, probably smaller, and more central venue.

32. Nicholas Lee Evans – Project Architect, has had extensive experience of working on Church projects and is Inspecting Architect of 13 churches across the Dioceses of Canterbury, Chichester and Portsmouth. He and his staff are responsible for all the designs, drawings and specifications which have been considered by the DAC and are now before this Court.

1. He acknowledges that the whole project must recognise the importance of the building within its context in the National heritage as a Grade 1 listed structure and, as such, requires particular care in any treatment which affects its fabric and its setting; secondly, that any changes that are to be made must meet high standards of aesthetic and technical merit, because of the setting in which they will be located.
2. He also recognises that the replacement of the nave pews with chairs will alter the aesthetic character of this part of the Church, though not, he thinks, in a damaging manner. "The replacement of the pews is driven by need" he said in evidence. "Without that need I would not have suggested the replacement of the pews .... I have wrestled with retaining the pews, but the (cumulative) needs and practicalities in the end make that impossible." "I took the keeping of the pews very seriously."
3. He spoke of a number of cases involving buildings of serious historical significance that have been altered and the pews removed where the Parish has shown a compelling need. He was the architect for an extension at St Margaret's Angmering, a Grade 2\* church, where the

removal of the pews was contested by the Victorian Society. He says that their removal has led to a significant increase in the use of the church by the community, whilst the flexibility of chairs has enriched the liturgy by allowing the parish to rearrange the furniture on special occasions for baptisms, funerals, prayer meetings, youth work, art exhibitions and concerts.

4. He contends that he is proposing alterations in part of the fabric which has no strong identity to one particular era and has been adapted many times to the changing needs of the Parish. It should not, therefore, be suggested that this Western end of the building is an entire piece and should remain so.
5. Commenting on the Victorian Society's compromise suggestion of the retention of a central block of seven rows of fixed pews in the nave and one mobile set at the front of this block, with the pews' default position in a traditional arrangement, but on the new stone floor with fixings that locate them, so they could occasionally be moved, he says that he takes these proposals seriously, re-visiting his previous conclusions, since they clearly go a long way in allowing the Church to meet its needs and preserve some of the pews. However, he makes the point that just because something is historic, it does not necessarily lead to a good solution or an aesthetically harmonious solution. From a visual point of view, he believes that the pews are working against "enlivening" the space when the building is used as currently anticipated. They are dark, and by modern standards are rather cumbersome, and might be said to tend to lend a sense of weight rather than life to their environment. The retention of a large block of pews, as the Victorian Society suggests, albeit potentially mobile, will be likely also to limit the development of arts at St Mary's. The mounting of art exhibitions over several weeks would be severely limited. There would also be formidable issues around manhandling these substantial pews. Nor, most importantly, would the end result of such a compromise be visually satisfactory.
6. The proposed chairs (Howe 40/40) are of the type used in the Nave of Canterbury Cathedral. They will normally be linked in rows to give stability. At least one in 20 will have arms, for the comfort of older occupants. These chairs are lightweight but sturdy and conveniently tidily stackable.
7. By arranging the chairs in different formation, the number of seats with good views will be maximised, placing seats in the present aisle locations and putting the new aisles where sightlines are poor. He proposes a large cupboard at the end of the south aisle, large enough to accommodate all the stacking chairs when they need to be cleared away from the nave, to ensure that the nave is kept tidy.
8. It is proposed to retain the existing chequered stone floor of the central aisle within the otherwise new floor.
9. There is no proposal to re-site any of the memorials in the floor of the church. In the two side aisles there are a few very old ledger stones which may mark the site of burials under the floor or which may have been moved to their present positions in the Victorian re-orderings. These are clearly marked on his drawing No 06792-A-A-(23)-0-259D and would remain in situ in the newly laid floor.

10. He does not favour the compromise suggestion from the Victorian Society that if the pews were to be removed from the nave, the stones of the two side aisles should also be retained, like those of the central aisle. They are of no particular merit, and the effect would be visually unattractive. I don't think he used the word "messy" but that is what I took him to mean.
11. Whilst some of the 19<sup>th</sup> Century floor grilles in the nave will be removed, the proposals include the retention of the majority of grilles in the building together with the more historic radiators in the chancel crossings and transepts.
12. When the pew platforms are removed, archaeological advisers will be available to inspect the floor, as it is likely that there are burial vaults underneath the nave. The new flooring is designed to cover over any such without disturbing them. If any further ledger stones or other memorials of interest are found it will be necessary to consult with the DAC, and seek further directions.
13. Moving the pulpit will require the inner face of the steps to be altered to suit the configuration of the column. It is his professional view that all the significant design, including carvings and the brass hand rail, will be preserved. Quotations have been obtained from three reputable and experienced stonemasons, all of whom have visited the site, and confirmed that they are confident that the dismantling and re-erection can be undertaken without damage to the fabric of the pulpit.
14. The West End was re-ordered in 1985/6 and it is of no architectural significance. The church has need of a kitchen which could serve into a meeting room, as well as into the main nave space for larger functions. The present tiny kitchenette clearly does not meet the needs of the current congregation nor the community groups who use the meeting room. There is also not enough space for the usual congregation of up to 100 people to be able to stand or sit and socialise in an easy and relaxed manner. The proposed design allows for a larger welcome area, and the removal of pews at the back of the church will allow for a larger free area for welcome and fellowship.
15. There is a continuing and potentially increasing need for a medium-sized meeting room and the present Crothall Room at the back of the Church, which is used by community groups, luncheon clubs, and various parish meetings, will be expanded and improved. An additional smaller room will be built in a 'pod' at the back of the gallery. The church hall is very well used, with little spare capacity to accommodate these groups at the times they want to meet.
16. The Church only has one toilet and the need has been clearly identified for increased provision. When the church is used for worship on Sunday, the needs of the current congregation of up to 100 could probably be met with one or two toilets. However, for the larger services and when the church is used for performances with a capacity of over 450, a large proportion of people might well expect to use the sanitary facilities. The best solution has been to split the toilet provision and provide the bulk of the accommodation on the ground floor, but to create a 'pod' housing four toilets at the first floor level, which would minimise the need for those sitting in the gallery coming down the stairs to the ground floor. There was an area of pews, at the first floor level in the corners of the church, where there were no sight

lines to the dais for anyone sitting in them, and they are now never used. They were clearly put in when the church was extended at the end of the 19th century. Like the Petitioners, the Church Buildings Council considered that “*the two pods in the gallery would have very little impact from the ground floor given the depth of the gallery.*”

17. In order to attract artists to use the enhanced facilities, it was felt by the Council’s Arts Team that having an area to change in and act as a ‘green room’ would be important. The church has two vestries which, though cluttered, could provide the necessary changing accommodation, whilst continuing to meet their primary function as choir and clergy vestries. The Petitioners felt that the toilets at the West end of the church would be too far away (as well as being at the other side of an audience!) to be usable by artists; and whilst the choir and clergy would not necessarily need toilets, their provision would be of benefit to them as well. Therefore, the proposals allow for a simple modification to the existing ‘blower room’ and a very modest extension to accommodate two toilets. The function of the organ will be maintained. The Petitioners and members of the congregation also felt that when the nave was not in use, and small services or Evensong were taking place in the chancel, access to toilets close by, at the East end of the Church, would be very helpful.
18. It is not anticipated that the small extension to the ‘blower room’ will encroach on burials. The graveyard has been surveyed and headstones plotted to ensure that care is taken in placing anything in or through the churchyard, so that they avoid positions where graves are recorded or known. (*There will nevertheless be a need, if a Faculty were granted, for my standard condition as to the procedure to be followed if any interments are disturbed, since as in any old burial ground, there are likely to be ancient remains in unforeseen locations.*)
19. Disabled access within the Church will be improved as part of the works.
20. The scheme provides for the installation of an underfloor heating system below the new floor in the nave. The Petitioners also propose a rainwater harvesting tank which, like the ground source heat pump, would need to be buried in the graveyard. This collects rainwater from the south aisle roofs and reuses it, after filtration and treatment, to flush the toilets, thereby saving water and reducing the church’s carbon footprint both in its supply and delivery.
21. The ground source heat pump and the rainwater harvesting tank will be buried in the churchyard. Very little digging will be needed to install these and such digging as takes place will be undertaken by the archaeological team rather than by ordinary workmen, because of the possibility of disturbing archaeological or human remains. The boreholes for the ground source heat pump will run below the archaeological level.
22. The underfloor heating will be much gentler than radiators and will be better for the fabric of the Church.
23. He cannot recall any project he has worked on which has involved greater consultation with the wider public.



33. **The Victorian Society** initially objected to much of the scheme for reordering, stating that “the proposal to convert the building for use as a flexible performance arts space is incompatible with the sensitive conservation of the Church’s fabric”. They objected to the removal of the nave pews as “handsome and finely crafted examples of church seating from the Victorian era which make a significant contribution to the character of the nave”. They contended that “the nave flooring contained flagstones, memorials, tiles and heating grilles from a range of periods representing the development of the church which is fundamental to the building’s historic interest” and that the alterations involved in moving the pulpit “will be damaging to its architectural design”.
34. As this matter has developed the Society has adopted a commendably constructive and sympathetic approach to the situation at St Mary’s and has sought to see how far its concerns could at least be assuaged by ceasing to object to the entire scheme, provided that the essence of the present features of the nave as left by our Victorian forbears could be preserved in the midst of change. Its final position as outlined by Counsel is that it limits its objections to the wholesale removal of the nave pews and the proposed alterations to the flooring down the aisles running between the pews, since all of these items are of good quality workmanship and have been characteristic of the Church for well over a hundred years. The Society would be content with the removal of some of the peripheral pews and would also consider allowing other pews to be movable, but they submit that a solid block of pews in the central part of the

Nave is an essential feature of the Church and should be preserved.

35. The Society called as its expert witness Mr John Scott, an architect experienced in work on historic buildings and Chairman of the Southern Buildings Committee of the Society. He is Inspecting Architect to some 35 churches in the Dioceses of London, Guildford, Bath and Wells and Exeter. Time constraints had not allowed him to visit St Mary's before he prepared his Witness Statement but he had seen all the drawings, photographs and relevant documentation.

36. In his Statement Mr Scott makes the following points:

1. The nave pews were installed in 1879 to designs by architect Thomas E. Williams and the contract given to J. Thompson of Peterborough. The pews fill the nave and side aisles. They are constructed of oak, with closed backs and moulded top-rails. The ends have a range of decorative tracery designs framed by buttresses. The frontals at the east end of the nave are made up from rows of the same designs as the pew ends. They are fixed on raised platforms with heating pipes around the edges that were installed at the same time as the pews.
2. He would concur that the pews in themselves are not exceptional but would suggest that they are significantly better than the most sets of pews from this era. This is essentially due to three points: their construction from oak; the quality and variation in their decoration; and that they are largely in the same arrangement and condition as when they were installed in 1879. The variation in the decoration of on the pew ends also makes them more important than most sets of Victorian nave pews.
3. The nave pews are part of an arrangement west of the crossing that has changed very little since the end of the nineteenth century. There is a coherence to this nineteenth-century arrangement: the pews integrate with the geometry of the building and the colour and tonality of the wood corresponds with that of the balconies and west gallery and nave roof. The decorative Gothic tracery on the pew ends relates the pews to the work of the various architects and craftsmen who have worked on the nave and aisles to alter sympathetically the medieval church in the Gothic style (AHP report 3.7).
4. The significance of the nave pews therefore extends beyond their historic and architectural value as individual items of furniture to their contribution to the interior of the church as a whole. The regularity and visual order of the nave pews makes a significant contribution to the character of the interior. The

nave is a large, open interior which is given definition by the rows of pews, as well as directionality and focus that relates to the spatial design.

5. The floor and pews are an integrated design, and many of the comments above regarding axiality, materials etc relate no less to the floor than to the pews. The floor of the nave encapsulates the incremental development and change to the church over its long history. The fabric is sensitive due to the number of layers of fabric from different periods that survive. In its present form it contributes with the pews to the character and quality of the interior.
6. He would not object to the removal of some of the nave pews, or to alterations to the remainder for comfort and movability. It is important however that a sufficiently substantial number are retained in meaningful blocks so that the characteristics of the pews which make them of value can still be appreciated. If the nave contains a substantial number of pews in their current arrangement, much of the visual impression of axiality, order and consistency of materials and colour that is so important to the interior will remain.
7. Many of the activities that are proposed to take place in the church do not require the entire space of the nave. It might be that removal of the pews from the aisles, along with two from the east end of the nave and perhaps from the west end of the church would provide enough flexible spaces to be used for exhibitions, worship, meetings and a variety of other uses, as well as the placing of additional seating when it is needed, in whatever arrangement is appropriate to that need. On the few occasions when the clearance of the whole of the nave is required, then with suitable adaptation the remaining pews could be unfixed and moved to the back or sides of the church. He is aware of other churches where such arrangements have been successful.
8. The replacement of all but the chequered flooring represents a selective approach to the historic fabric of the building which he does not feel is appropriate. The flooring contains evidence of the complex development of the church and is valuable as evidence of how the building has changed. It also contributes to the overall character. All fabric in a Grade I-listed church should be retained unless there is strong justification for its removal and a coherent design which incorporates more of the historic floor with carefully judged materials for areas of new flooring can be achieved in this case. The insertion of the memorials in the new floor also needs to be carefully considered and not to appear arbitrary.
9. The petitioners wish fundamentally and irreversibly to alter the character of their church in a way that would be detrimental to its special architectural and historic interest. He believes this to be unacceptable since other solutions could achieve many of the needs of the petitioners.

37. In summing up the Society's case in opposition to the removal of the nave pews, Mr Blackett-Ord acknowledged that the Petitioners' scheme was a bold attempt at mission on the part of the Church, but submitted that if that missional object can only be achieved by "damaging the church" then the discretionary balance of the Court's decision in applying

Bishopsgate principles should be against allowing change. St Mary's is an example of the best sort of English church, which has grown up over the centuries. Its strength as a building lies in the accretions resulting from the money and the love put into it over the centuries, so that it has achieved a unity which should only be changed with the greatest caution. What the Petitioners propose in the nave would be bright and modern and would "irremediably spoil" the building as one of historic and architectural significance. As a fall-back position, the Society urged the compromise which would retain at least the bulk of the nave pews, and would, in any event, submit that the flagstone passageways of the side aisles should be retained within the new flooring proposed by the Petitioners.

38. **Mr Christopher Cooper** had expressed unwavering objection to the entire scheme since its inception and has undoubtedly been a major coordinator of a campaign to rally opposition to it, over (on his own account) some seven years. One of the problems which has faced me throughout my dealings with this case has been to separate out from Mr Cooper's submissions those matters which were entirely legitimate and relevant to the significant issues in the case from his personal "subtext" of (i) his openly expressed antipathy towards the Priest-inCharge, Churchwardens, PCC and Senior Diocesan Staff, and (ii) of his personal vision of St Mary's as a potential centre for a particular form of Anglo-Catholic worship. These were threatening to overshadow the relevant material of his Objections. As can be seen from the Ruling I made at the Directions Hearing, I sought to deal with this before the substantive Hearing. It is greatly to the credit of Mr Cooper

that he was scrupulous to honour that Ruling, with the result that his Witness Statements were far more focussed and I have been better able to assess the cogency of his evidence and submissions.

39. Mr Cooper summarises his position in the opening paragraph of his Skeleton Argument:

“I oppose all aspects of this project as being ill-devised in order to advance fundamental changes in the inherited expression of liturgy and ceremonial here”

The essence of Mr Cooper’s opposition to the scheme is that there is no pastoral or other necessity for these proposed works, which would irreparably damage the special architectural and historic character of the building as a centre of worship in the historic heart of Ashford.

“I believe that much of the work would have a negative impact on this church, both pastorally and as a building of especial historic interest.”  
and

“the pewed interior in fact perfectly complements the conservation area in which the church is sited, being the kind of interior most people would expect to find in a Parish Church in the historic conservation area of an important town.”

He describes himself as having been a regular worshipper at St Mary’s since 2002; having first started ringing the bells there in 2000. He rejects any suggestion that the incorporation of arts centre facilities into the Church would have any benefit either to the mission of the church as a centre of worship and witness, or to the wider arts community of Ashford. Although he doesn’t express it quite as crudely as this, he clearly believes that the Church leadership has been induced (or even seduced) by the offer of a very large sum of public money to agree to the

Arts Centre scheme as a convenient way of meeting the long-standing problems of maintaining and carrying out repairs to this fine historic building. Mr Cooper agrees that the church building is in poor condition both externally and internally. His own solution to the financial stringencies faced by what he feels is a dwindling congregation would be found in the revival of the particular forms and styles of liturgical practice which he sees as the true Anglican heritage (“traditional worship” which he contrasts with “narrow eclectic contemporary worship”). He also suspects that the final cost of the proposed works will in fact be much greater than is currently estimated.

40. At the heart of his objections is the proposal to replace the nave pews with chairs, but he also objects in principle to the presence of a nave altar (with dais) as it inhibits the use of the chancel as the focus of worship. He favours what he terms a “hierarchical” context for worship in which priests, servers and choir in the chancel are deliberately separate from the congregation in the nave, and which he believes gives the church “a much more reverent and serious atmosphere”. He does not believe “that it is pastorally necessary to seat the choir in the nave, in full view of the congregation”. “Both the dais proposed and that currently sited, especially when topped with an Altar, draw attention away from the lavish High Altar and reredos.” “The reordering now proposed would to every practical extent completely halt any possibility of being able to use the full building as it was intended and I do contend that it would incline worship toward lower standards.”

41. Mr Cooper also suggests that “If a nave altar must be used, it could be placed on a lightweight moveable platform under the tower space [*i.e. east of the present and proposed dais*] easily moved for traditional celebrations.” He says that if occasional concert use was required, it had proved possible in the more distant past to erect temporary staging over the top of the front nave pews.

42. In a spirit of compromise Mr. Cooper would be prepared to countenance the removal of the side pews, but in exchange he would require those central pews which were removed in order to accommodate the present temporary dais to be reinstated, so that the rows of pews continue eastward to the base of the pulpit, and the nave altar be done away with. He attaches great importance to what he describes as the Queen’s Pew which was one of those removed to accommodate the present dais, in which the Queen sat, during her visit to Ashford in 1970. He opposes the moving of the pulpit (which he describes as “arguably the most valuable furnishing in this church”) to the other side of the nave arch, both because of the risk of damage to the historic fabric in the process and also because it would then be entirely out of the sightlines between the preacher and those in the chancel – there would, of course be no need for such a move in any event if the main scheme were rejected. He argues that “the new materials which it is proposed to introduce into the church will not be in harmony with the remaining older fabric of the church, and ... the Chancel and Nave would then work against each other ‘like chalk and cheese’”. He also objects to the more modest proposals in respect of the chancel pews.

43. Mr. Cooper expresses anxiety as to the potential for subsequent disagreement between the Church and the Borough Council/Arts Community. He questions whether the proposed partnership of Church and Arts Community in shared use will endure for long. He fears that there will be inappropriate conduct (“raucous behaviour, debauchery etc.”), disorder and drunkenness by those who would attend arts events at the re-ordered Church, and that this conduct would spill out into the Church Yard, causing “noise pollution” and disturbing him and other nearby residents.

“Concerts which some Bishops might determine as falling within the acceptable boundaries of Canon F16(1) might well attract a fair number of un-churched persons into the building who have no understanding of what is fitting behaviour within God’s House.”

He also suggests that there are insufficient car parking facilities nearby in the town centre: an assertion which is totally refuted on behalf of the Council by Mr Carty, who produced detailed figures to support his point.

**44. Mr Cooper’s Witnesses:**

- i. **Miss Joan Willmore** – member of the congregation for upward of 70 years. She expresses concern as to problems of access and parking for large numbers attending concerts in the Church, and fears for the sort of material which the arts community might wish to mount there, if public funds have been used to make the alterations. She would welcome improvement of lighting, kitchen and toilet facilities, but opposes the removal of pews in favour of chairs. Pews give greater stability to older people as they stand, and “those pews



in St. Mary's are solid oak, beautifully carved and add to the beauty of the building".

- ii. **Mr Jeremy Adby** – resident of the Church Yard – considers that “the works proposed for the church will irreversibly damage the area as a conservation area” and “will seriously detract from its interest as a building of heritage interest”. He also fears that “any work carried out will mean inconvenience for residents (this is particularly so in the case of the works which seem to be required to install the Ground Source Heat Pump)”.
- iii. **Mr Andrew Buchanan** - resident of the Church Yard since November 2009 – he cannot understand how it could be thought that the proposed alterations to the Church will provide a satisfactory basis for either worship, or artistic performances. “Many people still value the traditional layout of a church.” Nor does he favour the proposed upgrading of the lighting and heating systems.
- iv. **Councillor Bob Packham** – District Councillor for the Ward covering the Town Centre and the Church Yard. “I am totally against converting St Mary's Church in the Church Yard to an Arts Centre ... to dig up some of the Church Yard graves and to extend the side of the church on a Grade 1 listed building for a new organ blower room. Also to dig up the church floor for under floor heating and to take out the Victorian pews which seat 300 people to make room for a large stage ... all these alterations plus loss of fabric will destroy the character of this Grade 1 listed

building.” Mr Packham also appears to think that the replacement seating will be “250 fold up chairs” – a misunderstanding which, added to the other inaccuracies, leads me to wonder what was his source of information about the details of the works. He also appears to believe that “the Project is already £100,000 over budget”: an assertion firmly refuted by Mr Carty (see para. 29.6 above).

- v. **Mr Paul Smith** - resident in Malaysia – a Civil and Mechanical Engineer, commenting on the heat pump – see para. 69 below
- vi. **Mr Jack Cowan** – a campaigner for an “Ashford Theatre Project” – regards the proposal for using the modified Church building for arts purposes as “half-hearted” and “makeshift”. He presented a long petition of signatories urging the Ashford Council to put money into a dedicated Arts Centre. Such a document is really of minimal assistance to the present case, anyway, but I have also received a number of communications from persons who signed that document stating the obvious fact that in doing so they were in no way seeking to oppose the idea of the use of St Mary’s for such purposes. Nevertheless, I take note of Mr Cowan’s efforts, for what worth.

#### **45. Other objectors whose views I am taking into account**

A. Objections received from persons resident in the Parish or on the Electoral Roll who elected not to become Parties Opponent, but whose views will be taken into consideration

- Councillor R.F. Packham – (and see preceding paragraph) - objects to change of character of Grade 1 building

- Mr J.F. Noon – worshipper for 53 years at St Mary’s – objects to removal of pews
- Mr P.A. Renyard – bell ringer – objects to the removal of pews
- Mr I.A. Renyard – bell ringer – objects to moving of pulpit and disturbance of Victorian interior
- Mr J.P. Adby – resident of Church Yard – objects to removal of pews and modernisation of interior – also to expenditure of Council money on the scheme
- Mr P. Found – objects to changes to a ‘traditional’ church; fears loss of reverence
- Mrs C.M. Straw – lives near the Church – objects to combining arts centre with a Christian Church – this would not in her estimation attract other faiths and cultures
- Mrs M. Brown – objects to changing a ‘fine old building’ and to the expenditure of money better spent on the poor
- Mr S. Harrison – objects to changing a fine building
- Mr J.F. Hopkin – a pagan – objects to spoiling an excellent interior which has been good enough for 500 years
- Mr R.E. Pilcher – a regular worshipper – object to the removal of beautiful carved oak pews, as an act of vandalism
- Miss J. Wilmore – is content with replastering the walls and refurbishment at west end to toilet, kitchen, wardens’ vestry and meeting room; also better lighting – but objects to removal of pews – chairs are uncomfortable in her opinion.

#### B. Objections out of time from persons who appear to have locus and whose observations I take into account

- Ms C. Raven – objects to changes to fine church and its Victorian pews
- Councillor P. Davison- objects to the changes to the interior, the removal of the pews and the moving of the pulpit – also to the use of Council monies
- Mr R.C. Ainey – a longstanding “friend” of St. Mary’s – objects to the removal of the pews and the new flooring as unsuitable to a historic ancient place of worship. He is also concerned about the possibility of the removal of some of the railings around the churchyard during the carrying out of the proposed works.

#### C. Objections from people with local connections:

- Mr H.W. Friend – early 80’s; attended as child – objects to ‘desecration’ of the building
- Mr D.P. Smith – resident in Malaysia – rang bells in St Mary’s, as a visitor – objects to ‘desecration’. Mr Smith also provided Mr. Cooper with a Witness Statement on the subject of the Heat Pump (see below)
- Mrs J Beale – her ancestors are commemorated in the church – ‘what they want to use the Church for is disgusting’

D. Other objections received:

- “Save Britain’s Heritage” – a London based society – supports Victorian Society’s objections
- Seven persons who did not have legal locus or any discernible connection with the Church
- Messages placed on “Facebook Groups” – produced by Mr Cooper

46. “Petitions” etc. I also received the following Petitions:

- i. A petition signed by some 89 members of the Church Electoral Roll expressing support for the scheme;
- ii. An ‘online’ Petition, initiated, I think, by Mr Cooper in which people expressed support for his opposition to the scheme;
- iii. Mr Jack Cowan’s petition relating to a permanent theatre in Ashford (see above).

47. Whilst I would not wish to ignore these latter, there are always problems attached to the amount of weight to be given to such documents because one is never sure of exactly what was said to those whose signatures were canvassed, quite apart from any difficulties there may be about the genuineness of any particular signatories. I take note of them.

48. **The Advice of Independent Bodies:** I am very grateful to all of these for their assistance.

A. The DAC as already mentioned has recommended all these proposals subject to certain entirely standard provisos which would be converted into conditions to be attached to the Faculty, if granted.

B. The Church Buildings Council (formerly ‘The Council for the Care of Churches), in a letter to the Diocesan Registrar

dated 26<sup>th</sup> February, “was pleased to endorse and commend the overall aims of the scheme to share use of the space and allow wider community use, as these fit entirely within the Cathedral and Church Buildings Division’s strategy for church buildings”. “While the changes are extensive, the Council considered that the overall result could actually be a positive rather than a negative one. The church is currently rather tired looking and somewhat cluttered in feel.” Its only points of hesitation were whether the supporting documentation shown to it at that stage really demonstrated how much the parish would benefit from the changes to the interior in terms of their worship and use of the building, and how far the legal agreement between the Parish and the Ashford Council was sufficiently robust to enable the Parish to retain control of the building. *These are matters which I was able to investigate much further in the Witness Statements and other evidence before me at the hearing.*

As to the pews, the Council considered that the nave pews were of good quality, but not of particular significance in terms of design, nor so closely linked to a quality restoration of the building that it would be appropriate to argue for their retention. They do add some character to the building but the Council considered that their loss could be mitigated by the quality of the new floor and replacement seating. On balance the negative impact from the loss of the pews was felt to be outweighed by the positive benefits to the building as a whole. The Council was happy to support the principle of the new floor and had no objection to the proposed relocation of the pulpit. Over all the Council considered that the scheme

had been carefully considered and was deserving of support. The impact on the church interior was relatively modest considering the substantial gain for the parish in terms of facilities and potential for community use.

- C. The Society for the Protection of Ancient Buildings The Society had already been consulted by the Petitioners during 2009 in the course of preparing their scheme, and had visited the Church. It had expressed general approval of the scheme. In accordance with my Directions of 30<sup>th</sup> January 2010, special notification was given by the Diocesan Registrar to the Society, in accordance with Rule 13(3) of the Faculty Jurisdiction Rules 2000. It did not wish to respond or further comment.
- D. English Heritage had already been consulted by the Petitioners and its comments were given in a letter dated 14<sup>th</sup> September 2009 to Mr Lee Evans. On 26<sup>th</sup> February it wrote to the Diocesan Registrar endorsing the terms of that earlier letter and stating that English Heritage did not object to the scheme, though would, as indicated in the earlier letter, expect to be involved in agreeing some of the details, relating for example to the proposed new chairs, the fabric of the limestone flooring and the materials for the new pods in the gallery. In the letter of 14<sup>th</sup> September 2009, Mr. Tom Foxall, the Historic Buildings Inspector for English Heritage, said:

“In principle this is an important and interesting proposal which corresponds very well with English Heritage’s *Inspired!* Campaign. Among other things this Campaign seeks to work with congregations to accommodate changing patterns of use

and to secure the future of their historic places of worship as living buildings that are well used and visited and enjoyed by all. .... The pews date from the nineteenth century and are of good, although not exceptional, quality. Although their removal would be regrettable, we appreciate that their retention would preclude the flexibility of use and increased capacity that are central to your ambitious proposals for securing the building's long-term future. In addition we note that the majority of the nave gallery pews and all of the highly significant chancel pews with medieval misericords would remain. ... We therefore raise no objection to the removal of the nave pews..."

E. The Georgian Group The Group had already been consulted by the Petitioners during 2009, in the course of preparing their scheme. In accordance with my Directions of 30<sup>th</sup> January 2010, special notification was given by the Diocesan Registrar to the Group, in accordance with Rule 13(3). It did not wish to respond or comment.

49. As a matter of precaution, I also directed that Notice be given to the Twentieth Century Society, but (unsurprisingly) it did not make any comment.

## ANALYSIS

50. The Pews – my analysis: Thomas E Williams was the designer of the pews which are proposed to be removed. The Statement of Significance says of him "*Little is known of the architect other than he was a pupil of Thomas Henry Wyatt (1807-80) and spent his early career in London. He was active from around 1867 till the end of the century; he resigned from the RIBA in 1899.*" The Architectural History Practice researched the history of the pews and identified their manufacture as

being by J. Thompson of Peterborough and described “*the pews of the nave are typical of their period and solidly constructed in oak.*” (2.3.5). They also say they are “*good examples of the Gothic revival style and of robust Victorian workmanship. Their design is not exceptional, nor their architect significant. However they have local significance as an ambitious project by the church’s community to install order into what must have felt a chaotic setting by the late nineteenth century.*” (3.4.3).

51. English Heritage in its letter of the 14<sup>th</sup> September 2009 accepted the view that the pews are “*good, although not exceptional quality*”. Its final stance is to raise no objection to their removal. The Church Buildings Council, having seen the pews, was also of this view, stating in its letter of the 26<sup>th</sup> February 2010 “*The Council considered that the pews were of good quality but not of particular significance in terms of their design nor so closely linked to the quality restoration of the building that it would be appropriate to argue for their retention*”. The CBC expressed the view that on balance, “*the negative impact from the loss of pews was felt to be outweighed by the positive benefits to the building as a whole.*”

52. These experts’ views are somewhat at variance with the Victorian Society’s description of the pews in its letter of 13<sup>th</sup> November 2009 as “*handsome and finely crafted examples of seating from this era. The use of oak in this context and the varied design of the bench ends signify their unusually good quality.*” In his evidence to me, its expert Mr John Scott says that while the pews in themselves are not exceptional, they are significantly better than the most sets of pews from this era. This is essentially due to three points: their construction from



oak; the quality and variation in their decoration; and that they are largely in the same arrangement and condition as when they were installed in 1879. The variation in the decoration of on the pew ends also makes them more important than most sets of Victorian nave pews. He regards their significance as demonstrating a nineteenth century arrangement, which is coherent and integrates *“with the geometry of the building and the colour and tonality of the wood corresponds with that of the balconies and west gallery and nave roof. The significance of the nave pews therefore extends beyond their historic and architectural value as individual items of furniture to their contribution to the interior of the church as a whole.”*

53. I am satisfied on the balance of probabilities by the evidence taken as a whole that whilst these pews are of some historic interest as typical examples of Victorian pews and their general disposition in the Church, they are not of themselves so artistically meritorious or historically important that their preservation is essential if there are sufficiently strong grounds to justify their removal. Insofar as there is a conflict between the experts' evidence on this point – and in reality there is not a great deal of conflict – I accept the combined views of the Architectural History Practice, English Heritage, the Church Buildings Council and the DAC in preference to that of Mr Scott for the Victorian Society.

54. I have given considerable thought to the compromise suggestion raised by Mr Scott and advocated with persuasive enthusiasm by Counsel on behalf of the Victorian Society that a possible variant of the Petitioners' scheme for the almost total

removal of pews from the nave would be to remove those in the side aisles and retain most, but not all, of those in the centre section of the nave. I am grateful to the Society for the considerate and constructive way in which it has (with courteous regret) conducted its case. I hope that what I am now about to say will not discourage it from adopting a similar approach in subsequent cases but, as Mr Gallagher on behalf of the Petitioners was not slow to point out in his closing submissions, once one begins to contemplate the partial removal of the nave pews, the prospect of a half-and-half (or two thirds/one third) disposition of old pews and modern seats is likely to look patchy if not downright messy! There may well be situations in which such an approach might be satisfactory, but as I witnessed the proposed scheme being indicated and marked out during the course of the Hearing, I was left in no doubt that the issue in this case had to be a stark choice. Either the nave pews remain in (virtually) their entirety, or I must accept the evidence of Mr Lee Evans that, having wrestled with retaining the pews, one is in the end driven to the conclusion that the cumulative needs and practicalities of the scheme make that impossible. I am faced with what is really an all-or-nothing decision.

55. The Dais – my analysis: The current dais is the result of a temporary permission granted by the then Archdeacon of Maidstone, some 10 years ago. Not surprisingly (!) it is showing signs of wear and tear. Its quality is of poor standard and it is cramped. I am satisfied by the evidence that many, probably most, of the congregation appreciate the benefits of having a nave altar and dais, especially - but not solely - for the

Family Services, rather than being distant and dislocated from the high altar for considerable and important parts of the liturgy. The shape, form and size of the proposed new dais has been based on the need to accommodate the choir, clergy and servers, as well as a lectern or ambo and a nave altar and removable communion rail. It incorporates a disabled access lift tucked around the north east corner where it would be least conspicuous. This would make the dais fully accessible for people with disabilities. The dais also hides a furniture lift which allows larger pieces of furniture such as the piano, which is often used, to be raised up onto the dais or even onto the temporary staging, which is placed over it in the event of a performance. The dais will incorporate a removable communion rail and nave altar so the current movement to the High Altar of members of the congregation and clergy would no longer be needed.

56. Mr Cooper is implacably opposed to the presence of any dais at all at this point in the nave (save for temporary provision of staging for moderate concert use). His perception of what he defines a “collegiate” style worship, recognising a formal “hierarchy” of clergy and the separation of the lay congregation, is entirely at variance with the declared philosophy and theology of the Priest-in-Charge who is clearly supported by the PCC in this. It is also at variance with the common practice in many larger churches Sunday by Sunday – cathedrals included. His is a sincerely held point-of-view with which some may agree. But where, as at St Mary’s, the Priest-in-Charge has, with, I am satisfied, the general support of his Wardens, PCC and Congregation, been leading the church in a

particular and entirely orthodox liturgical style for a long time, the fact that a few members of the Congregation may have different preferences is not of itself a ground to prevent change – or the logical further development of existing changes. In any event the conduct of worship is not really the province of this Court unless the changes in fabric sought in a Faculty Petition are highly and widely controversial, in which case I might need to seek guidance from the Bishop, as Ordinary, as to the pastoral wisdom of particular liturgical practices. We are far from that position here – indeed, as Mr Cooper himself first drew to my attention, the Petitioners have the full support of both their Archdeacon (of Maidstone) and Bishop (of Dover) for the changes they wish to make.

57.If, for whatever reason, it were to transpire that the main bulk of these proposed changes became economically impossible, the works to the dais would, it seems to me, be entirely viable and justifiable on “Bishopsgate” principles, on their own. It is possible that this eventuality might call for a degree of variation of what is currently envisaged, but I would be willing to give sympathetic consideration to an application for appropriate variation of the proposals for the dais, without the need for a fresh Faculty.

58.The Pulpit: - my analysis: The Statement of Significance recognised that the pulpit is a significant piece of furniture designed by John Loughton Pearson in about 1897. It is still used in many services by the Preacher. The stairs wrap themselves around the inside of the north pillar, further narrowing the relatively narrow arch at the crossing and

impeding the view to the chancel. This restricts the usable central area of the dais. Arts users of the church also feel the stairs restricted the available area at the centre of the dais. Therefore, it is proposed to move the pulpit to the south pillar, with stairs descending into the south aisle thus increasing the useable area of dais, allowing for more flexibility in liturgy, including for drama and music as well as seating for choir, servers and clergy. The move will also greatly assist the arts users of the church. English Heritage, the Church Buildings Council and the Canterbury DAC have all accepted that it is possible to move the pulpit without damaging it. Indeed to quote the CBC "*the Council recognised the benefit of freeing up the central space within the crossing and had no objection to its proposed location.*" The CBC has suggested that a conservator be involved; a suggestion which would certainly have to be incorporated as a condition, were the move to be approved. The Victorian Society, having originally objected to this part of the scheme also, subsequently withdrew that objection, leaving the field largely to Mr Cooper and his supporters. Beyond the simple (and by no means insignificant) principle of "no change", and the possible risk of damage to the fabric in the course of a move, the only specific ground advanced by Mr Cooper in opposition to a move was that it would then put the preacher out of the lines of sight of persons sitting in the chancel. This ground of objection only really has any validity at all if the practice of using the nave and the chancel as two separate liturgical units were to be ended. As it is, most of the occupants of the chancel must have no view of the preacher in the pulpit.

59. The Nave Floor – my analysis: The Statement of Significance identified the chequered stone paving in the central aisle as “*the oldest surviving and most significant part of the nave floor. Probably dating from the 18th century, it formed an important visual axis from the western entrance and to the crossing*”. The Petitioners do not seek to alter this part of the flooring, but rather to clean and restore it. However, there are flagstones and ledger stones in the north and south aisles which must date from the time of the Victorian extensions to the church. The Statement of Significance goes on to say that these “*flag stones of the nave are of less interest and have been altered to incorporate heating and vent pipes*”.

60. In the course of the Hearing various misunderstandings about the proposals for the flooring were resolved. In particular Mr Lee Evans was able to satisfy both me and the Victorian Society that his new floor would incorporate *in situ* the various ledger stones which are to be seen in the side aisles.

61. The Victorian Society now accepts the principle of lowering the pew platforms and installing a new stone floor and underfloor heating system (in its letter of the 15<sup>th</sup> April). However, the Victorian Society is suggesting that the existing flagstones, which now form the side aisles and the walkway between the south and north aisles, should be retained within the building, or at the very least, be re-organised in an area at the west end of the nave adjacent to the new welcome area. The Petitioners consider that this would produce an unsatisfactory compromise to the unity of the new design and they are apparently supported in this view by the DAC. In my

judgement, assuming that the main scheme for the removal of the pews and a new floor is justified, then the flagstones in the side aisles are not of sufficient merit to require their remaining and that such retention would actually be aesthetically untidy and unduly “fussy”, for no good or sufficient reason. Here again therefore, I am faced with an all-or-nothing decision.

62. The Font – my analysis: The Statement of Significance

identifies the font as a significant survivor from Sir John Fogge’s building of the church and dating from the late 15th century. It also identifies that it had been restored and had been moved at least twice in its history. In 1744, it stood near the central aisle to the east of the passage from the north entrance and by 1827 had moved to the west end of the church in the south aisle, where it remained until moved relatively recently to a position which is generally recognised (even, I think, by Mr Cooper) as cramped and unsatisfactory. Since most baptisms at the church take place at family services, the Petitioners would like the font be in a position where the rest of the congregation could easily turn and see the font, and the priest and baptismal party could easily process to it. Therefore, it is proposed that the logical place to meet these needs is halfway up the south aisle, closer to the earlier position of the font.

63. Mr Cooper opposes such a move on the basis that whilst the earlier move of the font in the 1980’s was wrong, the font should now remain where it was both because “I do not believe that there is any other place suitable for it in the church as fully pewed”, and also as a warning to future generations of how unwise it was to have moved it in the 1980’s: “as a perpetual

reminder ... of the futility of relocating ancient objects in a church to satisfy a whim or fashion, rather than to give sober consideration to such works”. Sober consideration on my part leads me to conclude that the move proposed by the Petitioners, in the context of the scheme as a whole, would be both aesthetically and pastorally, as well as practically, beneficial – always assuming that the scheme as a whole is proven to be pastorally necessary.

64. The Chancel Pews – my analysis: The plans to adapt these to enable them to be turned through 90 degrees, and to site them on raised platforms to permit greater numbers to participate meaningfully in worship centred in the Chancel, seem to me to be unobjectionable. I’m afraid I could not understand any rational basis for Mr Cooper’s objection to this minor part of the proposed scheme, beyond the simple fact that he was opposed to almost all changes, on principle.

65. The West End Reordering – my analysis: The sole objection raised to this aspect of the scheme to upgrade the toilet and kitchen, enlarge the present Committee room - the “Crothall Room” - by moving the internal wall at the rear - comes from Mr Cooper, who regards it as “too radical”. He accepts that some minor improvements might be desirable, but he suspects (wrongly, as the evidence clearly showed) that the memorial to Mr Harry Alan Crothall would be destroyed in the process.

66. The use of this Church as a “shared space” for secular concerts and other “arts” and community events: it is perhaps surprising that the question of the legal and other principles to be applied



by the Ecclesiastical Courts in cases of Petitions to permit shared (sacred/secular) use of churches has never been addressed by the Appellate Courts or even by a major first-instance decision. The nearest one gets are the cases concerning mobile phone masts on church towers. Neither Counsel wished to address me on the point or draw any authority to my attention. Nor did Mr Cooper. Yet I am aware of a number of substantial schemes of the shared use of churches in various parts of England, which must have arisen out of the grant of Faculties. In the end, I have concluded that the reason for this is probably that the concept is not of itself particularly controversial, or indeed new. In pre-reformation times the parish church played many roles in the life of the community alongside its primary function as the sacred space in which the entire community gathered to worship. We are continuing that pattern today. It seems to me therefore that what I need to address here is not so much the basic fact of using the church building for some purpose other than actual Christian worship and teaching, as the need for wise controls on the proposed secular use of that building, in order to avoid unnecessary and damaging controversy later about the appropriate limits of such use.

67. The Petitioners have produced a Draft Agreement designed to address issues of control and suitability. A copy of this is annexed to this Judgment. I have to say that, having been particularly concerned to ensure that proper consideration had been given to the obvious and at times subtly difficult issues which may arise in the future as to the scope of arts events to be staged in the Church, I am deeply impressed with this

document and with the clear attempts of all parties to the “shared space” discussions to meet problems in advance as best they could. It is clear that all parties are affirming that the Incumbent and PCC will have a majority say in what performances should take place. The document includes a schedule of the sort of events which may be included in the early years, and which should go some way to demonstrate what is envisaged should happen and equally should not happen. I asked Canon Preece specifically if he saw a time when rock concert or heavy metal type music might be played in the Church, and his firm answer was ‘no’. I do not in fact regard that question as a litmus test of acceptability, but it indicated a likely stance in the area of popular music for the foreseeable future. The Draft Agreement does envisage jazz and blues performances. In my judgement, the risks of disturbance to those residing in the immediate environs of the church, from proposed events in St. Mary’s are relatively minor. Events will not end at an unduly late hour.

68. As a legal document the Draft Agreement leaves something to be desired. As a close comparison of the version annexed to the Faculty will show, perhaps unwisely, I have in fact tinkered with it a little. I would invite the legal teams for the Church and the Council to tidy it up, and to see whether more radical amendment is desired. The final version will have to be approved by me – see Condition xiii – but as a statement of intent and as an indication of roughly what is envisaged by way of performances, I find it satisfactory and reassuring, and a good basis for me to make my decisions on the Petition relating to pastoral and other necessity.

69. The Heat Pump and Rainwater Harvesting Tank – my analysis:

The Petitioners' reasons for seeking to install these as part of the overall scheme are that they are the most effective and environmentally beneficial way of meeting the needs of the new and extended usage of the building. In any event the present heating system is well past its effective usefulness. The only opposition to this aspect of the scheme comes from Mr Cooper who does not wish to see the floor disturbed, the pew platforms unfixed and the present heating pipes interfered with, since their remaining undisturbed is "extremely desirable in disallowing the flexibility for activities which I contend are not really acceptable in a church". He also suggests that the installation works in the churchyard would be likely to damage tree roots. In support of his opposition to this aspect of the proposals Mr. Cooper relies on the witness statement of Mr Paul Smith, writing from Malaysia on 5<sup>th</sup> My 2010, and, no doubt doing his best without the benefit of seeing all the relevant documentation, or re-visiting the church. Mr Smith raises a number of general questions, but with great respect, does not actually advance any persuasive arguments to rebut the strong case made by Mr Lee-Evans for the system and the methodology of its installation.

70. For myself I was most impressed with the evidence from Mr Lee Evans as to the carefully thought-through reasons for opting for this form of ground source heat pump and rainwater tank, and for the thorough way in which the scheme aims at minimal disturbance within and beneath the churchyard. The fact that the works of excavation in the churchyard will be kept

to a minimum, with the initial digging being undertaken not by workmen but by an archaeological team, in order to ensure that any inadvertent disturbance of human or archaeological remains will be handled professionally, is also most reassuring.

71. The Churchyard Railings – my analysis: Having pursued the concerns expressed by Mr R.C. Ainey (para. 45-B above), I am satisfied that the only disturbance to these railings will occur during the months in which the works are carried out. Were the railings to remain in place during access to the site by the workmen there would be a risk of their being damaged. A temporary removal is entirely sensible. I see no significant reason to fear that the railings will be damaged in the process, though care will be needed to move, store and reinstate them.

72. Applying the Bishopsgate Questions Against this evidential background, I now turn at last to consider the Bishopsgate Questions, in order to determine whether or not the Petitioners have discharged their substantial burden to overturn the presumption against making any change to this Grade 1 building.

(1) Have the Petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of the Parish, or for some other compelling reason?

I am fully persuaded by the entire thrust of the evidence adduced by the Petitioners, and in particular by that of Canon Preece, that this visionary scheme for the renewed use of the Church as a shared space is indeed necessary, in the sense of being requisite for the pastoral well being of the Parish; and also for the further compelling reason of the proven needs of the local community which this Church has a mission to serve.

Both the regular worship of this church community and the need for a suitable venue in the historic centre of Ashford for arts and community activities should be immeasurably enhanced by the proposed changes to this fine old building. Moreover, funding needed to repair and maintain it in good order, which otherwise is absent, will be available in the course of the works.

73. The scheme proposed is in my judgement an integrated whole; well thought-out by the Church and community leaders and admirably realised in the plans of Mr Lee-Evans. I am fully satisfied by his evidence that the hard decision to remove the nave pews is essential in order to achieve the objects of the scheme and that it really would not be feasible to attempt half-measures of the type gallantly canvassed by the Victorian Society. I reject the evidence and deeply held opinions of Mr Cooper, in his opposition to change, on the ground that his point of view fails to acknowledge the facts that, (i) although some others have joined in his objections, he is in a small minority within the Church community, (ii) that change is sometimes necessary and actually beneficial and (iii) that the proposed scheme promises to be of major benefit to both the Church and wider Community in Ashford.

74. Since the answer to the first Question is 'yes' I must now consider the second Bishopsgate Question:

2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?

To quote Chancellor Hill in the Newick judgment:

“The second of the Bishopsgate questions concerns adverse effect. Self-evidently the introduction of any significant feature into a church building will have an effect on the character of the church as a building of special architectural and historical interest. Whether or not such effect might be characterised as ‘adverse’ is a matter for subjective judgment.”

There can be no doubt, in my judgment, that the proposed changes, if permitted, would radically and permanently alter the interior of this church. Without the presence of the pews, the impact on entering the nave would be quite different. A good deal of the heavy and sombre feel of the interior would be dissipated. The “traditional” rather “minor-key” reaction of “this is how we generally expect the Church of England to be” will not be the average response of the future visitor. That is an outcome which more than a few would regret but others would value and appreciate as real progress. But would such an effect be “adverse” to the building as one of special architectural and historical interest? The Petitioners say that it would not be so. The burden of proving that is on them. Whilst the Victorian Society and Mr Cooper and others would say that the effect of the works would be adverse, the Church Buildings Council and English Heritage see great merits and benefits in the scheme and are not of the view that the nave and its pews, in particular, are of such special architectural and historic interest as the chancel and its monuments. I remind myself of the view expressed by the CBC that *“the negative impact of the loss of the pews was felt to be outweighed by the positive benefits of the building as a whole”*.

75. Although in weighing this I was at times inclined to conclude that, since the burden of proof lay on the Petitioners, with the presumption against change, the answer to this second

Bishopsgate Question might well have to be “yes” also; the final decision then turning on resolving the third Question. But in the end, and on the balance of probabilities, I conclude that I am satisfied by the preponderance of the evidence of the independent experts that whilst these works will bring great change to this excellent building, those changes will not in the end be adverse to its character. It has seen so many changes and developments in the past. What is now proposed will in the fullness of time be seen as no more than the latest change (so far!) in the ever-evolving development of this old Church. So, in the end, my answer to the second Bishopsgate Question is “no”.

76. Having decided that the answer to the second Question is in the negative, it follows that the third Question is otiose. However, because I am conscious that others might reach a different conclusion on this highly subjective issue of “adverse effect”, I feel it incumbent on me to consider whether, had I answered the second Question in the affirmative, I would nevertheless have concluded that the third test was met and that I should in any event have answered that third Question in the affirmative thus, in my discretion, permitting the works to proceed in any event.

(3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court’s discretion a faculty should be granted for some or all of the works?

In my judgement the necessity for these works proved by the evidence of the Petitioners is such that an overwhelming case has been shown to satisfy me that it would be entirely proper and wholly right for me to exercise my discretion to grant this

Faculty. Here is a coherent vision for the renewal of this Church both physically and spiritually. Here is a vision to fulfil the mission of this town-centre church for the benefit of the twenty-first Century needs of the Community. Thus, by either route, I grant the Faculty as prayed.

77. The Conditions below are attached to this Faculty, to provide continuing control by the Court of matters of detail that are still open-ended. I regret that by an oversight, I failed, in my Summary-Form Judgment to include a condition relating to the moving of the pulpit, as recommended by the Church Buildings Council. This is now set out as Condition xvi (below), which will have to be added by way of an amendment to the Faculty:

- i. No works may be commenced until at least 28 days after the Full Judgment (with reasons) has been handed down by the Court.
- ii. No works may be commenced until the DAC's Archaeological Adviser has been consulted, so that he may specify in detail the archaeological conditions which must be observed during the works.
- iii. The Archaeological Adviser to the DAC must be informed immediately if any item of archaeological or historical interest is found.
- iv. No item of archaeological or historic interest may be removed from the Church site without the prior leave of the Court.
- v. Any human remains disturbed during the works shall be immediately covered from public view and must be treated decently and with reverence at all times. Their discovery shall be notified immediately to the Incumbent. They shall be labelled and preserved as an entity in locked premises until they are reburied in the churchyard at the direction of the Incumbent, in a place



as close as is practicable to the location in which they were uncovered.

- vi. The location and fixing of all internal power cables and power units must be agreed on site with the Inspecting Architect, in order to ensure that they are as inconspicuous as possible, with minimum damage to fabric.
- vii. All excavations for service runs (e.g. gas, electricity, water etc) must be restricted to the minimum depth required by current safety regulations.
- viii. The electrical installation must comply with the current British Standard requirements and the best practice set out in the Council for the Care of Churches booklet “Wiring of Churches” (1997).
- ix. The lighting installation must comply with the current British Standard requirements and the best practice set out in the Council for the Care of Churches booklets “Wiring of Churches” (1997), and “Church Lighting” (2001).
- x. All contractors must be informed that during the course of the works they might find bats. If any bats are found, all work must stop immediately, until advice from English Nature has been obtained and complied with.
- xi. The final design and colour of the chairs shall be approved in writing in advance by the DAC and a copy of that written approval shall be lodged by the Petitioners at the Diocesan Registry before the chairs are ordered.
- xii. Separate application must be made in respect of any new furnishings for the new dais (e.g. new altar or seating for Priests or Choir etc.)
- xiii. The PCC and Ashford Borough Council, through their representatives, must enter into the Agreement, a draft of which is attached to the Faculty (and is at Annexe 1 of the Judgment), or such other variant of the same as

the Court may subsequently approve, for the creation and operation of an Arts Development Committee and Trust (“the Agreement”) before there is any use of the Church as contemplated by the Agreement.

- xiv. Any temporary removal of any of the railings around the churchyard to allow access to the site must only be undertaken under the direct supervision of the Project Architect; any railings thus removed must be stored in a place and by a method approved by the Project Architect, and must be returned to their original position with due care as soon as is practicable.
- xv. The Petitioners may apply to the Court to vary any of the above conditions.
- xvi. The work of removing and reinstating the pulpit must be undertaken in conjunction with suitably qualified conservators, with the specification approved in advance, in writing by the DAC.

78. The Faculty provides for the works to be completed within 24 months of the issue of the Faculty, or such extended time as may be allowed.

79. **Costs.** The subject of Costs was not discussed at the Hearing. As was apparent from my Order of 14<sup>th</sup> April 2010, following the Directions Hearing, it was (and remains) my view that it would not have been appropriate for this matter to have been disposed of on written representations. Indeed, even if no objections had been received I would still have required the Petitioners to prove their case at a Hearing in Open Court. This is a major Grade 1 Church and the proposals will have a huge impact on it as a building of architectural and historic interest. Furthermore the proposed shared use involves complex and

delicate issues of how this is to be effected without strains between the various interested parties emerging later on. For these reasons I am provisionally of the view that the appropriate order with regard to costs is that each party should bear its own costs and that the Costs of the Diocesan Registry should be borne as normal by the Petitioners. I am ready to consider any representations as to any different provision as to costs which might be made, though all parties should bear in mind the danger of yet further cost being incurred by a hearing to consider such matters - the costs of which would be entirely at large.

**RICHARD WALKER**

**30<sup>th</sup> JUNE 2010**

## ANNEXE 1.

### SUMMARY-FORM JUDGMENT [FULL REASONS TO BE DELIVERED LATER]

1. At the conclusion of the full Hearing of these Petitions on 21<sup>st</sup> May 2010, I reserved my decision. As was made clear to all the Parties at the Directions hearing on 14<sup>th</sup> April 2010, if I was to meet the urgent desire of the Petitioners for an early hearing of this matter, it would result in some delay after the substantive Hearing before a full Judgment, with detailed reasons for the decision, could be given because of my own personal circumstances.
2. I am however aware that all Parties wish to know as soon as is practicable what the outcome of this case is. Having now had some ten days to weigh and consider all the evidence, I am in a position to announce my decision. But because I am about to go away for two weeks it is not possible to deliver a fully reasoned Judgment until some time after I return. I therefore am now going to state succinctly what I have determined about these two linked Petitions. I will then aim to give the full reasons for the decision in a written Judgment, hopefully by the end of June 2010.
3. In short I am satisfied by the Petitioners that they have proved a necessity for the entirety of the works proposed in the two Petitions as being necessary for the pastoral well being of the Parish. I am further (just) satisfied that these works will probably not adversely affect the character of this Church as a building of special architectural and historical interest; but even if I had taken a different view on this second and largely subjective question, I would have found that the Petitioners had certainly proved a necessity for the works, which would have led me to exercise my discretion to grant a Faculty for them in their entirety, in any event.
4. I do however attach the following conditions to the grant of the Faculty, as being necessary to that grant:
  - i. No works may be commenced until at least 28 days after the Full Judgment (with reasons) has been handed down by the Court.
  - ii. No works may be commenced until the DAC's Archaeological Adviser has been consulted, so that he may specify in detail the archaeological conditions which must be observed during the works.

- iii. The Archaeological Adviser to the DAC must be informed immediately if any item of archaeological or historical interest is found.
- iv. No item of archaeological or historic interest may be removed from the Church site without the prior leave of the Court.
- v. Any human remains disturbed during the works shall be immediately covered from public view and must be treated decently and with reverence at all times. Their discovery shall be notified immediately to the Incumbent. They shall be labelled and preserved as an entity in locked premises until they are reburied in the churchyard at the direction of the Incumbent, in a place as close as is practicable to the location in which they were uncovered.
- vi. The location and fixing of all internal power cables and power units must be agreed on site with the Inspecting Architect, in order to ensure that they are as inconspicuous as possible, with minimum damage to fabric.
- vii. All excavations for service runs (e.g. gas, electricity, water etc) must be restricted to the minimum depth required by current safety regulations.
- viii. The electrical installation must comply with the current British Standard requirements and the best practice set out in the Council for the Care of Churches booklet “Wiring of Churches” (1997).
- ix. The lighting installation must comply with the current British Standard requirements and the best practice set out in the Council for the Care of Churches booklets “Wiring of Churches” (1997), and “Church Lighting” (2001).
- x. All contractors must be informed that during the course of the works they might find bats. If any bats are found, all work must stop immediately, until advice from English Nature has been obtained and complied with.
- xi. The final design and colour of the chairs shall be approved in writing in advance by the DAC and a copy of that written approval shall be lodged by the Petitioners at the Diocesan Registry before the chairs are ordered.

- xii. Separate application must be made in respect of any new furnishings for the new dais (e.g. new altar or seating for Priests or Choir etc.)
  - xiii. The PCC and the Council, through their representatives, must enter into the Agreement, a draft of which is attached to the Faculty (*and is at Annexe 2 of this full Judgment*), or such other variant of the same as the Court may subsequently approve, for the creation and operation of an Arts Development Committee and Trust (“the Agreement”) before there is any use of the Church as contemplated by the Agreement.
  - xiv. Any temporary removal of any of the railings around the churchyard to allow access to the site must only be undertaken under the direct supervision of the Project Architect; any railings thus removed must be stored in a place and by a method approved by the Project Architect, and must be returned to their original position with due care as soon as is practicable.
  - xv. The Petitioners may apply to the Court to vary any of the above conditions.
5. The Faculty will provide for the works to be completed within 24 months of the issue of the Faculty, or such extended time as may be allowed.
6. I therefore direct that the Faculty covering both sets of works, and the entering into of the Agreement shall pass the Seal. I will refer to issues of costs (provisionally) in the full Judgment.

**RICHARD WALKER**

**2<sup>nd</sup> JUNE 2010**

## **ANNEXE 2.**

### **DRAFT AGREEMENT**

#### **DRAFT Partnership Agreement for the re-ordering works of St Mary the Virgin, Ashford and set up of the Trust to operate the arts and community facility**

##### **Agreement between St Mary's the Virgin Church, Ashford and Ashford Borough Council**

##### **1, Definitions**

1.1 "PCC" means the Parochial Church Council of St Mary the Virgin Church, Ashford, Kent

1.2 "the Council" means Ashford Borough Council, Civic Centre, Tannery Lane, Ashford, Kent

1.3 "The Arts Development Committee/Trust" means the arts programme advisory group which will form as a Charitable Trust as the re-ordering works progress. And whose functions, indicative season of programming, and draft promoter agreements are appended.

1.4 "the Arts Programme" means a sensitive and suitable arts development programme at St Mary's Church that includes a high quality, music programme, arts activities and hiring to arts and community organisations.

1.5 "GAF grant" means a Growth Area Fund capital grant issued by Ashford's Future Company Limited of £1.2 (one million and two hundred thousand pounds) for the purpose of reordering St Mary's Church, Ashford, as per the attached Funding Agreement, which this Partnership Agreement must always be read in conjunction with.

1.6 "Capital Grant" means a capital grant issued by the Council of E100,000 (one hundred thousand pounds) for the purpose of purchasing equipment including audio visual and lighting in connection with the reordering St Mary's Church Ashford. The timing of the payment of the Capital Grant to be agreed.

1.7 "reordering" means the capital works to St Mary's Church and professional fees to provide a flexible auditorium space in the nave of the church, with improved sightlines, increased seating capacity and with the capability of being reconfigured to host small and large-scale events; improving the dais and staging facilities, including provision of suitable, high quality sound and projection systems; a suitable space for arrival and circulation of audiences and the church congregation through reconfiguring the present foyer; toilet, kitchen and bar facilities proportionate with the new capacity and functions of the venue, and with the expectations of paying audiences; backstage' facilities suitable for professional performers and clergy alike; new flexible office and meeting room spaces; upgraded heating and lighting systems creating a comfortable and quality showing space; and, all and any further works (within the permission of

the faculty granted for the project) associated with the reordering works as approved by the reordering project steering group (St Mary's Church, Lee Evans Partnership, Ashford's Future and Ashford Borough Council's Cultural Services & Project Office).  
1.8 "Arts and Community Activity Coordinator" means a person(s) engaged by the PCC to provide administrative support to the Arts Programme and coordinate the Arts and Arts Development Committee meetings.

## **Contributions**

### **2. Ashford Borough Council (the Council)**

2.1 The council will, subject to the payment of the GAF grant, through the Capital Grant support the re-ordering of St Mary's Church, Ashford to develop an Arts and Community shared space of sufficiently high specification for the programming of the arts and community activities to professional standards.

2.2 The Council will offer expertise in arts and community development:

- In the form of a representative on the Arts Development Committee/trust (i.e. Ashford Borough Council's Arts Development Officer or Cultural Services Manager) to support the full delivery of the Programme at St Mary's Church which supports the needs of local artists and builds successful audiences
- As a resource of local, regional and national knowledge and expertise, such as information coming down from the DCMS and Development Agencies such as the Arts Council, National Youth Agency, Crafts Council, Community Service Volunteers and trusts such as Art + Christianity Enquiry, and Arts in Sacred Spaces.

2.3 The Council will offer the expertise of its legal department for the first **six** months of operation:

- in the form of a representative on the Arts and Arts Development Committee/trust
- To comment and advise on legal agreements for the Programme at St Mary's
- After this time, legal advice (where appropriate and subject to the Councils Legal Department resources) will be supported by a legal representative on an ad hoc basis throughout the period of this agreement

2.4 The Council will offer the expertise of an Elected Member to offer expertise on contextual local district issues and to champion the scheme

### **3. Ashford's Future Company Limited**

3.1 Ashford's Future propose, through the GAF grant to support the re-ordering of St Mary's Church, Ashford to develop an Arts and Community shared space of sufficiently high specification for the programming of the **arts** and community activities to professional standards.

### **4. The Parochial Parish Council (PCC)**

4.1 The PCC at St Mary's Church will make available its capital asset of St Mary's Church for re-ordering to develop an Arts and Community shared space of sufficiently high specification for the programming of the arts and community activities to professional standards.

4.2 The PCC will provide a mechanism for overseeing the programming, delivery and



future development of the arts at St Mary's by forming The Arts Development Committee, becoming a Charitable Trust as the re-ordering works progress.

**4.3** The PCC agree that the Council's representatives stated above will be members of the Arts and Arts Development Committee/trust.

**4.4** The PCC (supported by The Arts Development Committee/trust) will make available and operate the flexible shared space, alongside its principle use as a place of worship, and decide, deliver and develop the Programme by hiring St Mary's Church to:

- Music Promoters who have a strong reputation in programming work in religiously sensitive spaces and that have experience of working with a PCC to deliver Music Programmes, as approved by the committee
- Key Stakeholders to deliver the Arts Development Programme, as approved by the committee
- Local Arts groups and Community Organisations, as approved by the Committee
- Other users as approved by the Committee, such as for training opportunities, youth and scouting meetings/conferences, business networks

**4.5** The PCC will ensure that the balance of hirings in relation to the Programme (e.g. to the music promoter, the Council's Cultural Service, local artists and arts groups) and broader public and community use is in the proportion of at or around 40% to 60% respectively of the available use/open hours in the first two years of operation, so that it is undoubted that the principle use of St Mary the Virgin remains as a place of worship. To illustrate:

- 40% Arts and Community Activity Programme
- 60% Religious services and other PCC uses.

**4.6** The PCC, with support from the Council, the Committee and its users will review this proportioning at the end of the first two years of operation to gauge its appropriateness.

**4.7** With the support of the Arts Development Committee/trust, the PCC will seek to pro-actively develop programming and audience development at St Mary's Church in the medium and long term and to review and develop as necessary the governance which attends the levels and complexity of that programme.

**4.8** The PCC will ensure that everyone will have the opportunity to experience and enjoy the environment of St Mary's to encourage more visitors to the building.

**4.9** The PCC will guarantee the Council use of the Arts and Community shared space for the purposes of delivering further arts development activity which will contribute to and complement the Arts Programme (to be agreed by the Arts Development Committee/trust) for between ten and fifteen sessions per year between the hours of 9 am and 11 pm on dates and at times when the space would not be required for ecclesiastical purposes. This arrangement will be reviewed by the PCC and the Council at the end of the first two years of operation of the space.

## **5. Trust Activities**

5.1 The Trust will be set up during the contracted reordering process by the PCC and ABC to run and operate the arts and community facility. It will be a registered charity and will use any profit that may arise from performances for the improvement of the programme and facility.

5.2 Subsequently the trust will actively source further funding and investment to improve the facilities and programme.

5.3 The PCC will grant the Trust use of the Church for no consideration.

5.4 When the trust receives income from hirings and other sales as part of the arts and community space, it will be deemed as business income even if there is no profit made.

5.5 In the first instance, the hirings at St Mary's Church, will be managed by Arts and Community Activity Coordinator, reporting to the Arts Development Committee/trust.

5.6 The cost of utilities and other day to day running costs are contracted and paid for by the Trust.

5.7 Any profits created are used by the Trust for day to day running costs and for any enhancement and improvement of the arts programme and facility.

5.8 All performances and activities will accord with F15 and F16 of Canon Law.

5.9 The Trust will provide comprehensive written materials and briefing of the constraints to programming within St Mary's in relation to: its overall mission and ministry; physical restrictions of the built infrastructure and contents; noise pollution levels; and facilities available within the church to reduce this.

5.10 In the event of any differences (except those set out in Clause 8) arising in connection with the construction or effect of the provisions of this Agreement such differences shall be referred to the Commissary General of the Diocese of Canterbury whose decision shall be final.

## **6. Term of Agreement**

Management Agreement for Arts and Community Shared Space 20 years and then on a yearly basis until terminated.

6.1 It is agreed and declared that there is no intention that this agreement is to develop a legal partnership.

## **7. Termination**

7.1 The PCC has the right to terminate this agreement after 20 years, Ashford Borough Council ("ABC") has the right to terminate after 6 years if, in the opinion of ABC, the PCC has allowed the shared space to be used for a purpose which compromises the Councils objective, which is:

- Allowing the shared space to become a thriving, high-quality mixed-use space in the town centre capable of serving the current and future needs of the church, community and the arts sector.

## **8. Dispute Resolution**

8.1 In the event of default by either party in complying with its obligations under the proposed Agreement; Notice of Default shall be given by the aggrieved party and it is agreed that if the issue can not be resolved between the Church's representative and the Council's representative within seven days the matter shall be considered by the Incumbent of St Mary's Ashford and the Cultural Services Manager of the Council.

8.2 In the event of the issue remaining unresolved within a further fourteen days either party may refer the matter to arbitration. In the event of the parties failing to agree the identity of the Arbitrator within fourteen days then the appointment shall be nominated by the Commissary General of the Canterbury Diocese / or President of the Chartered Institution of Arbitrators.

### **Agreed by resolution of PCC:**

Minutes Dated:

### **Committed by the Incumbent of Ashford, a churchwarden and secretary of the**

**PCC:**

Name:

Position:

Signature:

Date:

In the presence of:

Name:

Position:

Signature:

Date:

In the presence of:

Name:

Position:

Signature:

Date:

In the presence of:

## **Committed by the Head of Cultural & Project Services**

Name:

Position:

Signature:

Date:

In the presence of:

## **Approved by the Archdeacon of Maidstone**

Signature:

Date:

## **Draft Appendix A**

### **I. Purpose and Functions of the Arts Development Committee/Trust**

1.1 To advise, support and assist the Incumbent and the Parochial Church Council (PCC) on the delivery and ongoing development of a suitable and high quality arts and community programme at St Mary's Church within the context of the Church's Mission and Ministry to the communities of Ashford.

1.2 The Arts Development Committee/Trust will support the **PCC** to:

- Provide advice to the Incumbent and the PCC on the programming of the arts within the shared space
- Agree a music programme of performances by experienced music promoters who programme work in places of worship
- Agree activities for the arts development programme
- Oversee the synergy of the Programme in the shared space with the use of that space by other community organisations and as an area for worship
- Ensure and oversee the appropriateness of arts and community activities with the Church's Mission and Ministry
- Oversee the finances of the Programme
- Seek additional funding investment to maintain the programme and the facility
- Oversee the impact of the Programme on the care of the built fabric of St Mary's Church
- Report and advise the Incumbent and PCC on issues pertinent to the future development of arts and arts development activities at St Mary's Church
- Represent the views of, and safeguard the stake-holdership of Ashford Borough Council and Ashford's Future
- Hear reports and representation on the programming, delivery and further development of the arts and arts development at St Mary's from the Incumbent
- Hear representation, via members of the Arts Development Committee/Trust and where appropriate other representatives of the stakeholders, from the PCC, Ashford Borough Council, Ashford's Future, the local arts

- community, local audiences, the music promoter and other hirers
- Delegate the day to day management of hires to the Incumbent and the Arts and Community Activity Coordinator

## **2. Member Contributions**

2.1 Members of the Arts Development Committee/Trust are expected to:

- report in person, and make representation to, their respective line managers and groupings of Elected Members and Managers where appropriate
- support fund raising for the Programme
- build strong relationships with the local artists and voluntary and community sector to support the Programme
- develop and seek support for further investment and partnership from like-minded organisations, bodies and individuals who would have a fondness towards the programme and the mission of the church
- be able to promote wider the best practice of the re-ordering and community cohesion activities taking place at St Mary's to other churches, synods and local authority areas.

## **3. Composition**

3.1 The composition of the Arts Development Committee/Trust will always be as such that the PCC representatives will always have the majority (taking into consideration the casting vote of the Chair)

3.2 The Arts Development Committee Trust to be made up of:

- Three PCC members or nominees
- Two officers of Ashford BC or nominees
- One arts development specialist
- One legal/operations specialist (for the first six months of operation)
- One other Ashford BC Officer or Elected Member (after the first six months of operation)
- One co-opted non- PCC member who is an arts specialist from the local community
- The Chair of the Arts Development Committee/Trust shall be one of the PCC members and shall have a casting vote.

## **4. Selection**

- PCC representatives on the Committee/Trust will be selected by the PCC.
- Representatives of Ashford Borough Council will be selected by the organisation and will have commensurate job descriptions and skills within their designated areas of representation
- The Arts specialist shall be selected by the Arts Development Committee/Trust

## **5. Decision Making**

5.1 All meetings will run to written Agendas composed by the Chair following consultation with all sub committee members.

5.2 Decision making will result from discussion of tabled items against agreed Agendas.

5.3 Where agreement cannot be reached by consensus, it will be reached through voting, where each member has one vote. Where a stale-mate results through voting, the Chair has the casting vote

## **6. Management and Reporting**

6.1 The Arts and Community Activity Coordinator will administer the meetings of the Committee/Trust and liaise regularly on the agenda with elected Chair.

6.2 All meetings of the Arts Development Committee/Trust will run to agreed Agendas and be minuted.

6.3 Minutes will be circulated to:

- Members of the Committee/Trust
- The PCC
- Via Committee/Trust members who are representatives of Ashford Borough Council and Ashford's Future, to their respective line managers and appropriate groupings of Elected Members and Managers

## **7. Frequency of Meetings**

7.1 The sub committee will meet on a quarterly basis with extra meetings where necessary to discuss and agree programming and audience development issues.

## **Draft Appendix B**

### **1. First Two Years of Programming**

1.1 In the first two years of operation, St Mary's will operate three hiring strands which will be discreet but will seek to be complementary: These will make up the Arts Programme at St Mary's focused into three Seasons of arts activity. The Arts at St Mary's Spring, Summer and Autumn Season will comprise of:

- A. A high quality music programme developed and delivered by independent professional music promoters
- B. An arts development programme to support the local arts community
- C. Events organised by local arts groups and community organisations

### **2. (A). High Quality Music Programme**

2.1 There is a long tradition of both religious and secular music being presented at St Mary's, with a wide range of (mainly voluntary) local music organisations having performed at the Church. Most recently Ashford Borough Council's (ABC's) Arts Development Unit has venue-tested high quality professional musicians at St Mary's and Shiva Nova has presented part of its Equator Music programme of World Music supported by the Arts Council England.

2.2 The post re-ordering promoter-led programme will be operated by independent music promoters. Promoters will build on the reputation already established at St Mary's. Programming in traditional genres such as classical concerts, choral evensong, chamber music, and jazz, folk and blues acts will be prioritized in the first two years in order to best match the present and developing demographics of Ashford. Subsequent programming will develop niche audiences, especially among young people for more

contemporary music, especially the growing demand for young Singer-Songwriters to performing in atmospheric spaces, increasingly known as 'Nu-Folk'.

2.3 Performances of these genres of music are also likely to suit the nature of the re-ordering. Due to its nature, the church is unlikely to have either the staging or audience capacity to present large scale events. Performances of small to medium sized ensemble works, quartets and singer—song writers would seem appropriate for the scale and nature of the venue which is likely, for example, to be capable of hosting informal or intimate folk or world music events on ground floor either in stage or café-format.

2.4 The introduction of contemporary avant-garde programming for younger audiences will be developed with experienced promoters who regularly programme successful work in churches such as at the Union Chapel in Islington and St Georges Church, Brighton.

2.5 Working with an independent promoter offers the opportunity for developing a reputation for a new showing space in Kent, attracting new audiences from beyond the town of Ashford and inspiring local performing arts practitioners. Bookings through the Community strand will offer increased showing opportunities for local artists and promote arts development.

2.6 Acts are likely to be booked by the promoter around six months in advance of performance. This would leave ample time to create synergy with the arts development programme at St Mary's and ample time to publicise events within seasoned programmes locally and regionally as well as incorporating performances by community music organisations such as Ashford Brass Band, Ashford Community Choir and Kent Male Voice Choir.

2.7 Overall, the promoter-led music programme will support arts development in Ashford by establishing St Mary's as a venue with a reputation for programming high quality music events which will:

- Provide a bench mark for the standard of artistic performance within the town
- Encourage aspiring musicians to develop their practice
- Develop the critical experience of local musicians and audiences by offering talks and workshops by musicians booked through the promoter's programme
- Offer the potential for developing the technical skills of young people involved with organisations such as Ashford Youth Theatre (as a potential delivery partner)

2.8 The music programme will deliver well marketed individual events within the seasons that reach beyond the current audience and inspire and extend the range of musicians in the town.

2.9 Any experienced promoter will need to test the market for a new venue and particularly in a town where the programming of nationally and internationally known acts is in its infancy.

2.10 Synergy should be encouraged between the High Quality Music Programme and the Arts Development Programme to allow:

- Professional musicians to hold workshops and talks with local musicians at St Mary's
- The possibility of themed events across a number of Ashford venues headlined by acts at St Mary's Church

### **3. (B). Arts Development Programme**

3.1 The use of St Mary's as a resource for knowledge sharing, meetings and training supports the longer-term arts development agenda in Ashford, will encourage artists to the centre of town and support retention in the Borough.

3.2 An Arts Development Programme at St Mary's offers a real opportunity to raise the profile of the venue as a creative hub for conceiving and developing new ways to engage in and celebrate the arts. The Programme will aim to establish St Mary's as a centre for learning and creative participation, so creating a space where local people and artists can explore and develop the arts together

- providing knowledge and understanding of a diverse range of artistic activity, past and present, western and non-western
- providing knowledge and understanding of theoretical, critical and cultural approaches to the arts
- addressing change and the challenge of new artistic directions and ideas

3.3 Activities would seek to meet the needs of local artists and arts groups and include:

- Presenting new and adapted works of theatre, in collaboration with key theatre touring companies, which fit the scale of the building and its stage,
- Opportunities for local writers to present spoken word or live literature events and encourage the development of more writing,
- Visual arts commissions which would be temporary in nature to celebrate and enhance the local environment, bringing the work of high profile contemporary visual artists to the venue and attracting public funding,
- Building strong relationships with the voluntary and community sector, raising standards and aspiration within events such as the Stour Music Festival, Tenterden Folk Festival, and the Ashford Summer Sounds programme
- Networking participants and audiences into advisory and support groups within the Borough.
- Exploring links with National Development Agencies such as Orchestra Live who enable the widest range of people to have inspirational experiences of high quality live orchestral music.

### **4. (C). Community Programme**

4.1 Ashford celebrates a thriving voluntary cultural sector within the Borough which runs many local events and festivals as well as facilities, clubs and societies. Whilst there exists an increasing array of cultural opportunities and events, facilities for performing and visual arts, music, dance, theatre and comedy are particularly lacking, notably within Ashford's urban area.

4.2 The Community Programme will offer the opportunity for local arts and community groups to book St Mary's Church alongside the music and arts development programmes.

4.3 A venue for local writers to present spoken word or live literature events and encourage the development of more writing are activities which were highlighted in ACE's *Taking Part* initiative as activities suitable for market towns with a reasonably high demographic of older people, for example.



4.4 A visual arts showing space offered as a hiring opportunity as part of the community function would attract hirings from local professional and non-professional artists alike. Use of the venue as a rehearsal space for organisations such as Ashford Youth Theatre, Scout Gang Shows and local colleges such as South Kent College would attract footfall into the venue.

4.5 The re-ordering of St Mary's offers the real opportunity for the local voluntary cultural sector to programme performances and activities at a town centre venue which will have a growing reputation for quality.

4.6 The creation of a new venue within the centre of Ashford is likely to encourage community bookings from new organisations and ventures. Increased footfall by people attending the church for various reasons can quickly spread the word about both community and professional arts activities.

## **5. Marketing and Promotion**

5.1 The promoter-led music programme at St Mary's will generate its own marketing via the promoter's website and leafleting around the town. This might need initial assistance from ABC communications department. A leaflet and web presence of the overall programme at the venue to run in parallel with the promoter's marketing activities, and including details of the music programmes will add value to the community activities by association and encourage participation in arts development activities by offering an inspirational context. The appearance of a seamless relationship between the three strands of programming will both work to benchmark quality of programming and delivery at the venue and assist in supporting a broad audience base.

## Indicative Season (Summer) Programme, Year I

Element	Number	Event	Requirements
<b>Community Daytime Hirings</b>	4	Comprise (e.g.): <ul style="list-style-type: none"> <li>• School bookings e.g. by St. Mary's Primary, Norton Knatchbull Boys Grammar, Highworth Girls Grammar, The Ashford Independent School, Godinton Primary</li> <li>• Visual Arts Events e.g. Spring woodcraft sale, Summer art fair, Ashford Art Society, Ashford Visual Artists show</li> <li>• Other e.g. Flower Club exhibitions, Scout Gang Show rehearsals and Annual Youth Forum Conference</li> </ul>	Flexibility to seat large numbers of people. Ability to 'break out' and host discussions/meetings in syndicate style. Opportunity to exhibit freely around the sides as well as in the centre of the space (plinth style). Need for full clearance of space to accommodate rehearsals of all kinds.
<b>Community Evening Hirings</b>	4	Comprise: <ul style="list-style-type: none"> <li>• Ashford Choral Society Christmas Choral event</li> <li>• Ashford Photographic Society presentation</li> <li>• Tenterden Folk Day Trust Events</li> <li>• Ashford Youth Theatre Production</li> <li>• Local Events e.g. Ashford Brass Band, Invicta Singers, The Bach Society, Ashford Visual Artists</li> </ul>	Flexibility for theatre, performance and discussion in the round or in cabaret style to ensure widest possible use.
<b>Music Promoter Events</b>	4	Comprise: <ul style="list-style-type: none"> <li>• 1 Critically Acclaimed <i>Jazz Act</i></li> <li>• 1 Emerging National Nu-Folk Act</li> <li>• World Music Touring Act</li> <li>• Legendary Blues Artist</li> </ul>	Maximum sightlines and comfort for audience to make programme sustainable. Seating mainly in theatre style - curved so audience is facing the act.
<b>Arts Development Events</b>	4	Comprise: <ul style="list-style-type: none"> <li>• 1 Orchestra school development workshop and performance</li> <li>• East Kent Live Literature Event</li> <li>• Ashford Summer Sounds Launch Event, Visual Arts Showcase and Talk</li> </ul>	Space for group workshops and more intimate sessions, maximizing focal points such as the historically significant pulpit and font

# St Mary's Church Ashford

## The Arts Development Committee/Trust Agreement for External Promoters

### Agreement

**1. This agreement is made between:**

The Arts Development Committee/Trust, St Mary the Virgin Church, Ashford, Kent  
TN23 1 QG (*The Trust*)

and

(Name and address of Promoter) (*The Promoter*)

for the purpose of delivery of public performances at St Mary the Virgin Church  
(St Mary's) on agreed times and dates.

**2. The named representative of the Trust for the purpose of this Agreement is: (Name)**

\_\_\_\_\_

**3. The named representative of The Promoter for the purpose of this Agreement is:**

(Name) \_\_\_\_\_

**4. The Trust will engage The Promoter to agree, plan and deliver (number) public performances by professional musicians in St Mary's from**

(Date 1) to (Date 2) (*The Period*)

**5. A Programme of (number) of Performances which will take place in St Mary's during the period will be agreed between the Trust and The Promoter by (Date 3) as described in para 17**

**6. A hire fee payable by the Promoter to the Trust for each Performance will be agreed between the Trust and the Promoter who shall pay the same to the Trust within 7 days of the Programme being agreed together with any Value Added Tax properly payable thereon or on any part thereof**

**7. Responsibilities of the Church**

**8. The Trust will agree the Programme of events in sufficient time for the Promoter to book Performers and support staff**

- 9. The Trust will provide a comprehensive briefing including written materials of the constraints in relation to programming within St Mary's in relation to:**
- a. its overall mission and ministry
  - b. physical restrictions of the built infrastructure and contents
  - c. noise pollution levels and facilities available within St Mary's to reduce this

10. The Trust will ensure that it cooperates with the Promoter in providing representatives to provide access to St Mary's at agreed times and to make available equipment and seating that has been agreed for performances
11. Before Performances at St Mary's the Trust will:
  - a. Ensure that that staging and lighting and sound console are arranged in agreed formats
  - b. Provide access to the lighting rig, lighting controls and electrical power
  - c. Ensure that St Mary's is sufficiently heated
  - d. Make arrangements to buy adequate stock for and provide management for refreshment sales
12. At each performance the Trust will ensure that it **has** at least one representative on site (in the form of a caretaker or Arts and Community Activity Coordinator) to trouble shoot housekeeping and technical issues out of the control of the Promoter or Performer and to provide access to St Mary's
13. At each performance the Trust will make available a servery for refreshment sales commensurate with the scale and nature of the Performance
14. After each Performance the Trust will arrange for a representative to inspect St Mary's with the Promoter to agree standards of cleanliness and any damages to the built infrastructure and contents

#### **15. Responsibilities of the Promoter**

16. The Promoter will research the potential of particular acts and musical groups (Performers) to perform to audience groups identified by the Trust and its advisors, suitable to St Mary's
17. The Promoter will compile a list of Performers which will assist the Trust in agreeing the Programme for each season.
18. The Promoter will present this list for discussion and agreement by the Trust and agree ticket prices at a reasonable level
19. The Promoter will organise and deliver the agreed Programme of Performers and Performances
20. The Promoter will liaise with the Performers and their representatives to agree engagements, times and dates of Performances, fees and venue details
21. The Promoter will identify payment of items liable to be charged by the Performing Rights Society and payable by the Trust
22. Agreements will be drawn up between the Promoter and each Performer within the Programme which will be endorsed by the Trust
23. Prior to each performance, the Promoter will carry out a risk assessment for the Performance which will comply with the Trust guidelines including the consideration of noise levels within the environs of St Mary's and the Churchyard

24. Prior to each Performance the Promoter will ensure that the Promoter and Performer are sufficiently covered for public performances by suitable insurances including by Public Liability Insurance to a minimum of £5 Million
25. Prior to each Performance, the Promoter will at its own expense:
  - a. Ensure that sufficient and appropriate PA systems and lighting and other necessary technical equipment are made available for the Performance and agree with the Trust which (if any) of The Trust's technical resources will be required
  - b. Organise with representatives of Ashford Borough Council and Kent Constabulary procedures for the safe parking of vehicles for the unloading and loading of equipment and the safe and agreed parking of said vehicles before, during and after the performance
  - c. Organise and provide, where necessary, daytime and overnight offsite accommodation for the Performers
  - d. Recruit adequate security and marshalling support
  - e. Recruit adequate cleaning staff
  - f. Liaise with the Trust and its representatives (principally the Caretaker or the Arts and Community Activity Coordinator) on issues of access to St Mary's prior to and for the Performance, on the availability of chairs and refreshments and agree get-in and get-out times
  - g. Fully brief Performers on the etiquette of rehearsing and performing within St Mary's.
  - h. Make available sufficient opportunities through its website and other accessible places for audiences to book tickets for the Performance
  - i. Sufficiently market each Performance within and beyond the town of Ashford
26. At each Performance the Promoter will ensure that all reasonable steps are taken for the safety of audiences, the Performer and its representatives, the Promoter and its representatives and representatives of the Trust and that Health and Safety Procedures are adhered to
27. At each performance, the Promoter and its representatives will manage the get-in, get-out and the Performance
28. At each performance the Promoter and its representatives will take all reasonable steps to ensure the safety of St Mary's built infrastructure and contents
29. At each performance the Promoter and its representatives will be responsible for the safe and orderly receiving and directing of audiences and the handling of tickets
30. If public order is breached the Promoter will contact the Kent Constabulary
31. After each Performance the Promoter will ensure that:
  - a. All Performers, their representatives and equipment and the Promoters representatives leave St Mary's as soon as possible
  - b. The premises of St Mary's including its toilets are cleaned and left in the same condition as before the Performance.
  - c. Any damage to the built infrastructure of St Mary's or its contents are communicated to the named representative of the Trust as soon as is possible. All costs associated with such damage shall be the responsibility

of the Promoter and shall be a debt due from the promoter to the Trust and may be recovered.

**32. Finance**

- 33. The Promoter will pay the Trust in accordance with condition 6 the agreed fee for each performance, negotiated on the nature and scale of the Performance and confirmed at the time of agreement of the Programme
- 34. The Promoter will take 100% of the box office
- 35. The Trust will take 100% of bar sales
- 36. The Trust will not be responsible for reimbursement of any hire fee for reasons that are beyond its control
- 37. The Promoter shall be responsible for all costs associated with its obligations hereunder and hereby indemnifies the Trust against all costs claims and expenses arising directly or indirectly from the use of St Mary's permitted by this Agreement

**38. Disagreements/ Disputes**

- 39. Should disagreement or dispute occur between the Promoter and the Trust during the period of this agreement that cannot be resolved between the Arts and Community Activity Coordinator and the Promoters representative, then each party must identify an arbitrator within 14 days. In the event of parties failing to agree the identity of the Arbitrator within fourteen days then the appointment shall be nominated by the Commissary General of the Canterbury Diocese or the President of the Chartered Institution of Arbitrators
- 40. Any disputes and disagreements between the Promoter, any Performer or representative or sub-contractor of the Promoter lie without this agreement and will be settled separately between the Promoter and the party involved in that dispute or disagreement

**41. Changes to Agreement**

- 42. Any change or amendment to this Agreement shall only be valid if made in writing and signed on behalf of each party

43. Signed \_\_\_\_\_

By \_\_\_\_\_ on behalf of the trust

Date

Print Name

44. Signed On behalf of the Promoter (Name) \_\_\_\_\_

## ANNEXE 3

### DIRECTIONS HEARING - 14<sup>th</sup> April 2010 RULING OF LAW ON THE ISSUE OF RELEVANCE

1. The Order issued at the conclusion of the Directions Hearing in this matter on 14<sup>th</sup> April 2010 includes the following paragraph:

“4. Upon hearing argument on behalf of all parties, and most particularly the submissions of Mr Christopher Cooper, the Court determines that the grounds of objection set out in his Particulars of Objection to Petition for Faculty (Form 4) at points 5 and 8 (upon which Mr Cooper has already submitted extensive documentation to the Court) and point 9 are strictly irrelevant as a matter of law to the issues in this case, and that no evidence upon the same may be given at the Hearing.”
2. I had sought to ensure that Mr Cooper (the Second Party Opponent) was put on notice well in advance of the hearing by taking the following steps:
  - a. On 25<sup>th</sup> March 2010 I issued some Guidelines to all the Parties concerning the forthcoming Directions Hearing, to enable them to understand what issues the Hearing was likely to cover and to be in a position to deal with those and not to be taken by surprise.
  - b. Those Guidelines included the following:

“Mr Cooper needs to focus on the actual issues at stake before the Court. Unless he can persuade me otherwise, and he is invited to do so at the Directions Hearing, quite a lot of the material he has been submitting to the Registry, and thus to me, appears to me to be outwith the legal scope of this Court’s jurisdiction and/or irrelevant as a matter of law to the issues in this case. This is not to say that a significant proportion of his submissions on the proposed changes to this Grade 1 Church are not in point; but such matters as the past history of his personal grievances in respect of the Archives, the Bell Ringing, his membership of the PCC and his apparent antipathy towards the Incumbent and the Borough Council all currently appear to me to be irrelevant as a matter of law and thus inadmissible. Worse, they risk detracting from his case on the serious and relevant issues which he rightly raises. I shall therefore expect Mr Cooper to be ready to address this issue at the Directions hearing, by the end of which I may otherwise rule out any existing or further evidence on these and similarly irrelevant matters. I say this now so that Mr Cooper is not taken by surprise in any way when I raise the point at the Directions Hearing.”
3. When the point came during the Directions Hearing to deal with this matter, Mr. Cooper was good enough to indicate to me that he was well aware that this issue would form part of the Court’s deliberations on this occasion and that he was fully prepared to deal as best he could with it. I am thus satisfied that there was no question of him being taken by surprise by being put to the test on this point, and indeed it was clear that he had given it some thought in advance. I indicated to him and indeed to all the Parties that I would provide a brief written ruling to explain the reasons for my ruling on the point (and see paragraph 5 of the Order).

4. Points 5 & 8 of Mr Cooper's Particulars of Objection on Form 4 read as follows:
- “5. A pastoral breakdown/malaise in the church (over past 20+ years) (at behest of a small and ever dwindling group of people, the church has been diverted away from its Anglo-Catholic tradition. The claim is that this makes it relevant to the modern world, but low congregation numbers show that it is failing). In a nutshell, a dramatic fall in standard of worship.”
- “ 8. Behaviour of a minority of the congregation toward me including:
- unpleasantly removing me as church archivist. Banning me from bell ringing Oct 05 – May 09
  - threat of physical violence by churchwarden's wife
  - abused verbally by churchwarden shortly prior to evensong (strong smell of alcohol on his breath)
  - same churchwarden calling me “the devil” at a meeting of me, the PiC, Warden, Former Warden, Archdeacon of Maidstone, former Bishop of Maidstone and the Revd. Martin Dale (Former PiC at New Romney now PiC of Frisby on the Wreake, Leics).”
5. I do not propose to set out here, in extenso, the nature of this Petition, but in summary the matter is as follows:
- a. St Mary's Church is a major Grade 1 building and a landmark structure in heart of the town centre in Ashford.
  - b. The Petitioners are the Incumbent and Churchwardens of St Mary's (“the Church Petitioners”) together with (now) the Ashford Borough Council (“the Council”) and Ashford's Future Limited.
  - c. The works proposed are directed to both refurbishing the interior of the building and altering its furnishings and layout to enable it to be used by the local community as an arts centre alongside its continuing primary function as a place of worship. For this reason substantial funding has been offered by the Council to make this ambitious project financially possible.
  - d. Among the potentially more contentious alterations are the replacement of the nave pews with moveable modern chairs and moving the pulpit from one side of the nave to the other.
  - e. A number of Objections were received by the Diocesan Registry, and most of these will be taken into account by me under Rule 16(3)(a), but two Objectors have pursued their objections to the point of becoming Parties Opponent: the Victorian Society and Mr Cooper.
  - f. As in any case involving the potential radical alteration of the interior of a Grade 1 Listed Church, the burden of proof is firmly on the Petitioners to overturn the presumption against change and to justify the need for such changes. It is recognised by all Parties, I think, that this is a case whose outcome will largely be decided upon applying the tests set out in what are colloquially described as the “Bishopsgate Questions”, arising from the judgment in the case of In Re St Helen's Church Bishopsgate (26<sup>th</sup> November 1993), and subsequently approved by the Court of Arches in In Re St Luke the Evangelist, Maidstone (1995) Fam. 1. These were the subject of a useful updated summary by the learned Chancellor of the Chichester Diocese in the case of In the Matter of St Mary, Newick (4<sup>th</sup> July 2008), which summary was commended by the Court of Arches in the recent case of The Church of St Peter the Apostle, Draycott (2009). It will obviously be necessary for me to set out the law in greater detail in my substantive Judgment on the merits when the time comes, but for present purposes I incorporate by





- e. Mr Cooper's decision to purchase a property in the Parish to ensure that "I could be right at the heart of matters in order to lead the campaign against the reordering."
  - f. Mr Cooper's own suggestions as to how the Church could be "turned around" spiritually and liturgically.
  - g. Mr Cooper's perceptions as to the shortcomings of the present Incumbent of St Mary's and of the Borough Council.
8. Having put Mr Cooper on notice (as indicated above) that there was a danger that he could find that I would make a ruling at the Directions Hearing excluding these and similar matters as irrelevant unless he could persuade me otherwise, I then invited Mr Cooper to address me on these matters at the Directions Hearing. He did so, urging me that what he characterised as such pastoral issues were of relevance to the issue of whether the proposed works were necessary for the pastoral well-being of the parish (see the first Bishopsgate question). "There is" he told me "a pastoral problem in this church. Would you trust these people (i.e. the Incumbent, Churchwardens and PCC) with making changes to this church. I and others are being continually hampered in growing this church." He pointed out that in the Judgment of the Chancellor of Salisbury in the case of Re All Saints Burbage (14<sup>th</sup> February 2007) reference was made to pastoral well-being and the degree of opposition to the proposed changes to the Church. "To allow that change" said the Chancellor "would not make for pastoral well-being in its wider sense."
  9. I fully recognise that pastoral well-being will be one of the critical issues in my decision in this present case. But I am wholly unpersuaded that any of the above matters on which Mr Cooper seeks to rely are properly relevant to that or any other part of this case. Matters of liturgical practice (subject to the caveat in paragraph 10 below), and historic disputes between Mr Cooper and others on such subjects as bell ringing, the Choir, the Church Archives, his membership of the PCC, and the mission strategy and general conduct of the Incumbent are all outside my jurisdiction, as well as irrelevant to the issues in the case. To devote time to them would be not only disproportionate but wholly wrong, in my judgment. Mr Cooper has some good points to make: to pursue irrelevant or even peripheral ones would endanger the integrity of this trial and risk undervaluing the genuinely pertinent matters he should (and I am sure will) be advancing.
  10. Having said that matters of liturgical practice are not within the remit of the Commissary Court exercising the Faculty Jurisdiction, I should however make clear that this ruling should not silence Mr Cooper from advancing an argument – assuming that he can justify it on the facts - that the proposed changes would or might inhibit or preclude the possibility of certain particular accepted liturgical activities. I am not encouraging him to do so; but in an appropriate case it *could* be relevant to a Faculty Petition that, if it were granted, the changed interior of a church could (say) no longer be usable for processions. Thus, for example, whilst I am not willing to allow Mr Cooper to canvass whether or not incense *ought* to be used, if he could establish (if I may be forgiven a silly example) that the proposed smoke-alarm system would prevent its use entirely, then that might be a relevant issue. The Court would then be ruling not on the propriety or desirability of a particular liturgical practice, but on whether the proposed changes to the building and its furnishings assisted or hindered the performance of the liturgy. I am not wishing to encourage Mr Cooper to pursue such arguments, but I must in fairness allow him and all the

- Parties to appreciate the *limits* as well as the *extent* of the consequences of my ruling on relevance.
11. I should add that this issue of relevance had also specifically been raised by the Petitioners in advance of the Directions Hearing and that the Victorian Society, when invited by me to comment on the points argued by Mr Cooper, politely declined to do so.
  12. I turn now to the reason for my further ruling (above) that Point 9 of Mr Cooper's Particulars of Objection is also excluded as irrelevant. Point 9 reads thus:

“What I believe to be an unacceptable length of time for a temporary licence on which the four front pews of the nave (two either side) and runners were removed to permit a nave altar and performance area. I believe that fixing down of carpet should have had a Faculty and moving lectern to sidelines is unacceptable. I would like this investigated please.”

The Petitioners urged on me that this also was in any view another historic dispute and not relevant in a case in which, were the Petition to be granted, the whole or most of the nave pews would be removed. Again the Victorian Society did not wish to make any observation on this point. Mr Cooper indicated that he was hoping that in the course of my Judgment dismissing (as he would hope) the entire Petition, I would also rule on this further alleged shortcoming on the part of the Incumbent, Churchwardens and PCC., and order the reinstatement of these missing pews.
  13. Whilst it could probably be said that this is in effect an invitation to me by Mr Cooper to exercise my powers under Section 13 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 to make a Restoration Order, I am not satisfied that any useful purpose would be fulfilled in spending time at the Hearing of this significant Petition in carrying out an exercise in historic enquiry, when, depending on the outcome of the proceedings (and that outcome is obviously far from certain), it may well be of entirely academic interest – if that. I am therefore firmly of the opinion that this point should not be allowed to take Court time, and risk the expenditure of additional costs, at the substantive Hearing at which the matter is actually entirely irrelevant to the question of whether the Faculty should be granted. If at the end of the day the Petitioners fail entirely, then I will allow Mr Cooper to raise the point again, and I will then give any directions which seem useful, proportionate, and in the interests of justice.

**RICHARD WALKER**  
**27<sup>th</sup> APRIL 2010**