

## **In the matter of St Michael and All Angels, Berwick**

### **Introduction**

1. This judgment concerns a petition for the removal of the existing pews and chairs at St Michael and All Angels, Berwick. Specifically, the petitioners seek faculty for the removal of (a) six pews dating from the 1850s, (b) five pews dating from the 1970s, and (c) a small number of rush-seated chairs dating from the 1930s. The petitioners wish to replace that seating with stackable benches made by Treske. The petitioners are the Rev'd Peter Blee (Incumbent), Mrs Ruth Nares (Churchwarden) and Crispin Freeman (PCC member).
2. The existing seating is currently in storage, following temporary removal pursuant to my directions of 23 February 2021 related to a previous petition (number 0945) encompassing, among other things, restoration works to the wall paintings and new flooring. I granted faculty for those works: see my judgment with neutral citation [2019] ECC Chi 3. By their current petition, the petitioners seek faculty for the permanent replacement of the existing seating with Treske benches. The proposal is that the current pews be sold, with the memorial plaques on the 20<sup>th</sup> century pews being retained and archived. Very little has been said about the rush-seated chairs. This judgment accordingly focuses to a large extent on the pews, except where I make specific reference to the chairs.
3. There are no party opponents to this petition. The Diocesan Advisory Committee, however, is unable to recommend the proposal. Its position is that it "*does not object*" to the proposals being approved by the Court. As I discuss below, of the thirteen DAC members who considered this case only three support it; five members opposed it. Historic England does not support the proposal, and the Victorian Society opposes it. In addition, the Court has received numerous representations, both for and against this proposal, in part pursuant to my own directions that sought to ensure that the Court had before it the widest range of relevant input that was reasonably practicable in these circumstances.
4. In this judgment, I seek to distil and cite from what seem to me to be the most salient contributions from the extensive representations before me. I make clear that while this

exercise in distillation and citation is not exhaustive, I have considered the contents of those representations in full.

5. I record my gratitude to the petitioners, and to Mr Blee in particular, as well as their counsel, for their very comprehensive and thoughtful input in support of this proposal. I am also grateful to all others who have provided their input for the Court's consideration.

### **Some procedural background**

6. As is sometimes the case with faculty petitions, this case has had a rather long and complex procedural journey. It is not necessary to refer to all aspects of that journey, but the following specific points merit reference in this judgment.
7. First, I mention that – at Mr Blee's invitation – I visited Berwick church on 14 April 2021. This allowed me to view the church in its current state, i.e. with the works to the flooring and painting restoration complete, and with the body of the church empty of the pews that are the subject of this petition. I was also able to see a small number of the Treske benches *in situ*. I did not meet with anyone from the church on that visit.
8. The petitioners had expressly indicated that they were content for this petition to be determined on the papers, without a hearing; I was likewise content. I therefore proceeded to draft a judgment on the papers. I shared that draft with the Registry so that judgment could be promulgated if the petitioners confirmed once again that they had nothing further to add. On the basis of the submissions then before me, I had concluded that faculty should not be granted, and so I invited the petitioners (in an email from the Registry of 7 June 2021) to consider whether they wished to add anything further to assist them in seeking to discharge the burden they bear in obtaining faculty. The petitioners took up that invitation and requested an oral hearing, which was listed for hearing on 9 August 2021.
9. A Registry official inadvertently included in the hearing bundle a document that made reference to part of the draft judgment that I had shared with the Registry. Understandably, this caused the petitioners some confusion. Upon the petitioners' application, I decided that they should be provided with a copy of the draft judgment (i.e. the judgment on the

papers that would have been promulgated had the petitioners confirmed they had nothing to add).

10. This case is thus unusual in that, by the time the Court convened for the oral hearing on 9 August 2021, the petitioners had sight of my detailed reasoning based on the papers before me as at 7 June 2021. As I made clear in my decision of 5 August 2021 dealing with the petitioners' disclosure application, I remained "*open to being persuaded that my view on the papers should not be my final view. The ultimate decision will be based not on the papers that were before me as at 7 June 2021, but on those papers together with further materials submitted since, and on the oral presentation of the petitioners' case*".
11. The hearing took place as scheduled on 9 August 2021. The petitioners were represented by Mr Justin Gau of counsel. The petitioners and Mr Gau assembled in the church, communicating with me by video link. I admitted all evidence that the petitioners wished to put before the Court. Mr Gau had the opportunity not only to lead the petitioners' case but also – as I say, rather unusually – to make submissions on any aspects of my draft judgment.
12. At the end of the hearing, Mr Gau confirmed that the petitioners had said everything they wished to say. I am satisfied that the petitioners have had a full opportunity to adduce any evidence and make any submissions they wished, not only on any procedural matters, but also about the substantive reasoning and conclusions I had reached on the papers.

### **Summary of my decision**

13. Having carefully considered all of the petitioners' evidence and submissions, both on paper and at the hearing, my decision remains that faculty *for this petition* should not be granted.
14. I emphasise those words because a pivotal feature of this case is that the petitioners have opted for an "all or nothing" approach to seating, i.e. they have consistently maintained that *all* of the existing seating described at paragraph 1 of this judgment should be permanently removed. As I discuss further below, this "all or nothing" aspect is in my judgment the stumbling block for this petition.

15. I accept that the petitioners have established a sufficient justification to make changes to the existing seating arrangements in order to enhance flexibility of use and to better accommodate persons with limited mobility. I also accept that these are important missional objectives, and indeed this church is plainly doing (and wishes to do) admirable work in furtherance of its mission.
16. In my judgment, however, the petitioners have not discharged their burden of justifying the removal of *all* of the existing seating. They have not established that, in order to achieve those valuable missional objectives, they reasonably need to dispose of all of the seating that is the subject of this application. They have not made out their case as to why those objectives could not be furthered to a substantial extent by making changes that are less harmful than those they currently propose. If the petitioners' objectives could not be *fully* realised without the removal of *all* of the seating, they have not convincingly established that the incremental benefit of full removal (over and above a less harmful solution) outweighs its incremental harm.
17. The onus is on the petitioners to establish that the balance between harm and benefit tips in their favour, and in my judgement they have not done so by reference to the "all or nothing" approach they favour. I take no view on how a less harmful proposal would fare; the Court's role is to determine the petition before it, rather than to suggest or assess hypothetical alternatives.
18. In the remainder of this judgment, I explain why I have reached that decision.

### **Some context**

19. St Michael and All Angels, Berwick, is a grade I listed church in the South Downs National Park, between Lewes and Eastbourne. The building is of 13<sup>th</sup>-century origin and underwent extensive restoration in the mid-19<sup>th</sup> century, but its most striking feature dates from the Second World War.
20. This is the scheme of paintings on plaster panels, lining the nave and chancel walls, executed in 1941-42 by Duncan Grant and Quentin and Vanessa Bell, then resident at nearby Charleston. As has been observed by Sir Nicholas Serota, Chair of Arts Council

England and former Director of the Tate, this is “*the only example in the country of the complete decoration of the interior of an ancient rural parish church by twentieth century artists of repute*”. According to Sir Nicholas, this decorative scheme is of “*national and even international importance*”. As Historic England points out in its letter of 18 November 2020: “*these paintings draw many visitors to the church and they are a key contributor to the significance of the church and its grade I listing*”.

21. Works to conserve that decorative scheme, as well as to lay a new floor in the body of the church, are now complete. The seating that is the subject of this petition has been off site while those works were undertaken. The issue for the Court is whether that seating should return, or whether it can be permanently removed and replaced.
22. Historic England summarises the history of the pews as follows:

*“The church was restored by Henry Woodyer around 1856 which involved the removal of the original box pews and the addition of Victorian pews to the nave and aisles. Around 1934, a Lady Chapel was formed in the south aisle which resulted in the removal of all of the Victorian pews on the south side of the church. Following this, a number of single rush seats were placed in this area when extra seating was needed by the congregation. This would have most likely been the seating arrangement when the Bloomsbury artists painted the frescos in between 1941 and 1944.*

*In 1972, in order to redress this slightly lopsided appearance in the nave, five new pews, conforming to the pattern of Woodyer’s design, but lighter in colour were introduced at the front of the south side of the nave. These pews have memorial plaques on their aisle ends commemorating members of the congregation.”*

23. As is evident from that extract, this petition deals with three quite distinct types of seating (outlined at paragraph 1 of this judgment). As Mr Gau put it at paragraph 3 of his skeleton argument: “*whilst the 1972 pews are physically similar to the Victorian pews they are strikingly different in colour, not matching the existing pews at all*”. There is thus a marked distinction between the two sets of pews, both aesthetically and in terms of heritage value. The rush-seated chairs are of course also distinct, not least because – unlike the pews – they are not said to pose any obstacle whatever to the flexible use of the church space. However, as I have indicated

using the shorthand “all or nothing”, this petition is for the removal of all three categories of existing seating in their entirety.

### **The Court’s approach to this petition**

24. In determining this petition, I am guided by the judgment of the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158. At [87], the Court observed that “*there is a danger of imposing an unduly prescriptive framework on what is essentially a balancing process*”. It went on, however, to add that “*for those chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:*

*(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*

*(2) If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals: see Peek v Trower (1881) 7 PD 21 , 26–28, and the review of the case law by Bursell QC, Ch in In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146 , para 11. Questions 3, 4 and 5 do not arise.*

*(3) If the answer to question (1) is “yes”, how serious would the harm be?*

*(4) How clear and convincing is the justification for carrying out the proposals?*

*(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see In re St Luke the Evangelist, Maidstone [1995] Fam 1, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed.”*

25. In his submissions, Mr Gau correctly emphasised that *Duffield* offers “guidelines, not tramlines”. As to the ultimate question of balance, Mr Gau said this at paragraph 15 of his skeleton argument:

*“This question was helpfully dealt with in the Diocese of Oxford in the case of Re St Peter & St Paul, Aston Rowant [2019] Oxf 3 (at paragraph 7). When applying the Duffield guidelines, the court has to consider whether the same, or substantially the same, benefit could be obtained from other works which would cause less harm to the character and special significance of the church building. If, because the intended benefit could be obtained from other, less harmful, works, the degree of harm to the special significance of the church building which would flow from the proposed works is not necessary to achieve the desired benefit, then that is highly relevant. In such circumstances, it may be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit. At all stages when applying the Duffield guidelines, the court should bear firmly in mind that the desirability of preserving the listed church building, its setting, and all the features of special architectural or historic interest which it possesses, is a consideration of considerable importance and weight. The court should direct itself by reference to these expanded guidelines, and due regard, as it is enjoined to do by s.35 of the Ecclesiastical Jurisdiction & Care of Churches Measure 2018, to the role of the church as a local centre of worship and mission.”*

26. I accept the points Mr Gau makes in that paragraph. In particular, I am mindful that
- (i) The balancing exercise entails a proportionality assessment. If the proposed works would do more harm than is necessary to achieve the desired benefit, that is highly relevant.
  - (ii) Significant weight should be given to the impact of a proposal on the special architectural or historic interest of the church.
  - (iii) Significant weight should also be given to the church as a local centre of worship and mission, as expressly enshrined in legislation.
27. As to the last of those points in particular, I also bear in mind – as Mr Gau urged me to do – the summary of the Court’s discretion as set out in *Re St Stephen’s, Walbrook* [1987] Fam 146 at p191:

*“The right approach, in my view, is to exercise the discretion as I think Parliament intended that it should be exercised, namely, in accordance with established principles; and that includes the interest of the community as a whole in the special architectural or historic attributes of the building and to the desirability of preserving the building and any features of special architectural or historic interest which it possesses. The discretion, however, is to be exercised in the context that the building is used for the purposes of the Church, that is to say in the service of God, as the Church, doing its best, perceives how that service is to be rendered; and the weight to be given to the various aspects of the particular case is to be determined accordingly.”*

28. With those additional considerations in mind, I apply the *Duffield* framework to the evidence and representations before me, in particular as regards: the contribution of these pews and seats to this church’s special interest (and thus the harm that would be caused by their removal) and the justification advanced for the proposal, bearing in mind the church’s missional objectives in particular.

**The contribution of the seating to the significance of this church as a building of special architectural or historic interest**

29. The petitioners argue that the answer to the first *Duffield* question is “no”. For the reasons I outline below, I reject that argument.
30. On this issue, three sources of input are most notable.
31. One source of particular assistance to me is Historic England’s letter of 18 November 2020, in which it says this:

*“The Victorian pews are likely to have been designed by Woodyer. We agree that they are of a fairly standard design and they are not part of a complete intact scheme as there does not appear to be any surviving corresponding chancel seating and the south aisle pews were removed in the 1930’s. In addition, it could be argued that Woodyer’s input to the design of the present church is fairly well represented by the thorough restoration of the North aisle, chancel screen and pulpit.*

*However, the existing pews do order and fill the volumes of the nave particularly well. The mixture of pews and rush seated chairs is typical of and intrinsic to many rural parish churches. It tells the story how the village community, based on its means, furnished and patterned the church over the decades. The interior remains largely as when the paintings were executed and has a relatively modest and rural charm which is sympathetic to the Bloomsbury aesthetic and tradition.*

*This arrangement therefore has some significance as it contribute to the historic character and appearance of the church and illustrates the various phases of its history. It also provides an appropriate context for the paintings.”*

32. On the petitioners’ behalf, Mr Gau criticises Historic England’s assessment. He points out, fairly, that Historic England only says that the Victorian pews are “likely” to be by Woodyer. I accept that there is a degree of uncertainty on this point, but it deserves little weight: the petitioners do not dispute that the Victorian pews were introduced as part of Woodyer’s modifications in the 1850s. Indeed, Mr Gau was at pains to point out that this church’s liturgy follows the Catholic tradition stemming from around that time. While I accept Mr Gau’s point that the liturgical life of this church community in no way depends on or incorporates these pews *per se*, the fact remains that the Victorian pews are part of what is on any view an important phase in the development of this church’s life.
33. Mr Gau also criticises Historic England’s assessment in certain other respects. He suggests that its assessment of the contribution made by the pews is at odds with the list description for this church, which makes no mention of the pews. The list description is pithy. It reads as follows:

*“Built of flint with stone dressings and tiled roof. Chancel, nave with aisles, and west tower with broached shingled spire. C13 with later windows, spire rebuilt in 1774, the whole restored in 1856. The church contains a series of C20 mural paintings by Quentin and Vanessa Bell and Duncan Grant of 1942-3. Monument to John Nutt dated 1656. Easter Sepulchre and Piscina.”*

34. I accept that the list description makes no reference to any of the seating that is the subject of this petition. I give weight to that fact: for example, the harm that would be caused by the removal of the Victorian pews is not obviously as significant as would be the case if

those pews had received express treatment in the list description. I do not, however, accept that this materially undermines what Historic England has to say about the pews, as cited above.

35. As regards the list description, I also note the petitioners' submission that "*the only reason for the grade I listing of the building is the paintings*". I do not accept this submission. It is not what the list description says. In this regard, the petitioners also draw my attention to the unflattering commentary about the Victorian modifications to this church, as made in Frederick Etchell's report to the DAC in 1943. I do not accept, however, that this makes good their submissions that the grade I listing is based solely on the paintings, or that Historic England's assessment is questionable.
36. Sticking with Historic England's assessment, the petitioners also point out – again, fairly – that there have been significant changes to the church's interior since the paintings were executed in the 1940s. These include changes to the windows, the floor and (self-evidently) the introduction of additional pews in the 1970s. I give some weight to this point, but I remain of the view of that Historic England is entitled to comment that (leaving aside the 1970s pews) the church interior has very considerable continuity with the interior as it stood around the time these paintings were executed.
37. Lastly under this heading, the petitioners criticise Historic England's assessment as "*too vague to fulfil any of the 'Duffield' criteria*". I do not accept that criticism. Historic England's assessment is sufficiently clear and persuasive.
38. A second source on the significance of the pews is the heritage statement by Artemis Heritage, commissioned by some of those who oppose the proposal. As regards the pews, that statement says this:

*"Woodyer's style is most noticeable in the unusual window shapes and design in the north and south walls, the trussing of the roofs, the elaborate sedilia, the modest timber screen and the simple pews. Taken as a whole, these features have moderate-high significance for their craftsmanship and detailing."*

and

*“The five pews installed in 1972 have moderate-high significance on artistic grounds as well as for historical reasons, as four out of the five bear brass plaques commemorating members of the congregation including Rev Ellman’s daughter, Maude, who worked tirelessly for the parish from when she was widowed in 1902 until her death in 1937.”*

39. I find the first of the above extracts persuasive: it adds little that is particular to the pews, but in my judgment fairly characterises the overall package of 1850s contributions to this church. The second of the above extracts, concerning the 1970s pews, is much less persuasive. Overall, I do not place substantial weight on this report. Historic England’s assessment is more important, in my view.
40. Thirdly, the petitioners’ Statement of Need contains a section that stands as their Statement of Significance. As the petitioners have confirmed, they have not relied on the views of any independent specialist or expert in determining the significance of the pews, but have instead compiled their Statement of Significance themselves. The view expressed is that the loss of the pews would cause “relatively little harm”, though elsewhere the petitioners put the point more starkly: see my comments above about whether (as the petitioners argue) it can fairly be asserted that the grade I listing of this church is based solely on the wall paintings.
41. The petitioners’ Statement of Significance also argues that the seating in the church has evolved over time (which is plainly correct), and that this further stage in its evolution will be beneficial rather than harmful. Otherwise, the focus of this Statement of Significance is on the paintings. The view is expressed that the removal of the pews serves Grant and Bell’s decorative intentions. That question of the artists’ intentions is not something this Court needs to or can resolve. I understood Mr Gau to accept this point, on behalf of the petitioners.
42. I find nothing in the petitioners’ Statement of Significance that sheds any light on the contribution these pews make to the significance, qualities and interest of this church. I accept, as the petitioners and others urge me to do, that Mr Blee has very considerable expertise, particularly in relation to the paintings. I have taken this into account. For example, Mr Gau referred me to a comment in the DAC’s minutes that the pews “*may have*

*been a reference point for the decorative scheme*". Mr Gau says this is speculation, and not borne out by Mr Blee's research and expertise. I am content that Mr Blee is well placed to comment on this specific point, and I do not base my decision on a speculative suggestion that the painters may have used the pews as a reference point.

43. In short, I accept that Mr Blee's expertise is relevant to aspects of this case. It does not follow, however, Mr Blee's assessment trumps or outweighs that of Historic England as regards the contribution made by the seating to the historic character of this church interior.
44. As regards the positive assessment of the contribution made by the Victorian pews to the special interest of this church interior, as articulated by Historic England in particular, the petitioners draw my attention to (among certain comments by others) the following comments by the church's inspecting architect, Richard Andrews:

*"I am aware that there are those who consider the old pews to be important historically and providing context for the Bloomsbury paintings. Neither of those arguments can I take seriously: while the pews may date from Woodyer's 19th C restoration of the church, they are a stock pattern of no special quality; while the paintings were executed with the pews in place there is no record or other indication that Grant and Bell paid any attention to them, and indeed their subsequent painting over of the 19th C chancel screen and pulpit may well reflect their lack of regard for material of that period."*

45. Again, my judgment is that those comments do not undermine Historic England's assessment. The contribution made by these pews is not said to be based on their merit as isolated objects. Grant and Bell's views on the pews is not something this Court can realistically ascertain, and their views would in any event not carry overriding weight.
46. For all of those reasons, I find Historic England's assessment to be the most cogent summary of the contribution of the seating to the significance of this church as a building of special architectural or historic interest.
47. I therefore find that the proposed removal of the seating in its entirety would cause harm to the church's significance as a place of special architectural and historic interest. I do not

find that this harm would be at or near the most serious end of the spectrum, but nor would it be at the minimal end. If the adverse impact needs to be placed somewhere on that spectrum, I would assess it as moderate but tending towards the serious rather than the minimal end of the spectrum.

48. Importantly, this assessment is not based on the special qualities of these pews or chairs when seen as isolated objects. Rather, it is based on the contribution they (collectively) make to the character and appearance of the church as an evolving place (rather than one frozen at any particular point in time), including by way of setting for the paintings. In reaching this assessment, I give weight to the fact that the Victorian pews date from an important phase in this church's development. I also give weight to the fact that the Victorian pews and rush-seated chairs were part of the physical context in which the wall paintings were executed (though I repeat that I do not seek to determine one way or the other what view Bell and Grant took of the seating). My assessment is thus based on the contribution this seating makes by way of continuity of past phases of this church's life in an evolving church interior. At the hearing, the petitioners (through Mr Gau) understandably urged me to reach a different assessment on the facts, but they did not seek to argue that this approach – based on contribution and continuity – was problematic in principle.
49. In my judgment, the removal of this seating in its entirety would plainly amount to a very significant change to the character and aesthetic of this church, and would seriously diminish the extent to which it continues to reflect one notable phase of its history, i.e. the period of nearly 170 years which these pews have been in place (which, at least as regards the Victorian pews, encompasses the period during which the Bell and Grant paintings arrived).
50. As I have emphasised earlier in this judgment, the seating covered by this petition in fact falls into three distinct categories. My assessment would apply differently to each category: for instance, as compared to the Victorian pews, the rush-seated chairs make less of a contribution (both in terms of scale and in terms of age), as do the 1970s pews. My assessment of significance and harm might have differed if, for example, the proposal before me concerned only the 1970s pews, or a smaller number of pews. That, however,

is hypothetical. The petitioners seek faculty for the removal of all of the pews, as well as the rush-seated chairs.

### **The petitioners' justification for the proposed removal of the pews**

51. The petitioners argue that, if I am against them on the first three *Duffield* questions, the fourth and fifth *Duffield* questions should be answered in their favour, i.e. they say they have advanced a sufficiently compelling justification for the balance to tip in favour of allowing them to remove the current seating in its entirety.
52. I observe at the outset that the petitioners' case on justification focuses exclusively on the pews. Nothing at all has been said about why the rush-seated chairs installed in the 1930s need to be removed in order for the church to enhance disability access and inclusion or to further its missional objectives. I need say no more about this, however, given that faculty is sought on an "all or nothing" basis, i.e. for the removal of *all* seating.
53. The justification for the proposal is most fulsomely articulated in the petitioners' Statement of Need, which I note was revised following the input from Historic England and others. I have carefully considered this document, as well as supporting input from a host of sources (see further below), together with evidence submitted in time for the oral hearing dealing in particular with the church's experience of working with a fully flexible space while the pews and chairs have been temporarily relocated. Much of what I have to say below preserves my analysis when preparing to provide judgment on the papers, though I also deal with what seem to me to be the most important supplementary points made by the petitioners after 7 June 2021.
54. One theme of the case in support of the proposal is light, i.e. that the interior of the church is more light-filled without the pews, and that this assists in (among other things) appreciating the Bell and Grant paintings. I accept that this may be so, but this carries relatively little weight as part of the justification: as will be evident from my synopsis of the rival representations below, some (including Sir Nicholas Serota among others) argue vigorously the pews play an important part in appreciating the decorative scheme. In any case, new spot lighting was included in the previous proposals and will no doubt continue to serve the restored paintings well.

55. The Statement of Needs contains a short section on disability access and inclusion, with a comment from Simon Wilson, an independent disability consultant who has visited the church. He comments that *“it would be nicer if wheelchairs could be just part of an open space in the church so that they could feel more integrated among the congregation rather than having one place specifically for disabled people”*. I accept this as a matter of principle.
56. I also accept the evidence given in a witness statement of Monica Stoodley, served the day before the hearing. That statement supplements Ms Stoodley’s letter of 20 November 2020 in support of this petition. That letter made no mention of disability access and inclusion, but Ms Stoodley’s witness statement explains how the more flexible and open space significantly enhances the inclusion of her husband, a wheelchair user, in services at Berwick church.
57. It was made clear to me at the hearing that the issue of disability access and inclusion was important to the petitioners’ case. I make clear that I accept that, particularly in a relatively small church such as this, there is a strong case for the modifying of existing seating arrangements to facilitate access and inclusion. This is an important – indeed, increasingly important – objective to which I give significant weight in principle. The problem, however, lies with the “all or nothing” nature of the petitioners’ case: at the hearing, I asked Mr Gau whether the petitioners maintained that this objective justifies the removal of the existing seating *in its entirety*. His answer was yes. In my judgment, however, this simply does not follow from the case the petitioners have presented. The petitioners have not come close to demonstrating that all eleven pews and all rush-seated chairs should be removed in order for adequate disability access and inclusion to be facilitated.
58. The Statement of Need also discusses how the proposed removal of the pews would facilitate worship in a variety of ways. There is a wish to accommodate diverse worship styles from time to time; I accept that greater flexibility would assist with this and I give this factor some weight, though the extent to which such maximal flexibility is reasonably necessary for these endeavours to flourish is unclear. Reference is also made, for example, to discussion and prayer groups, ‘film literacy’ sessions, quiet mornings and bereavement groups. Again, it is not clear how any of those events would require the removal of all pews.

59. Most importantly, the Statement of Need contains a very full account of the charitable and community groups with whom the church has worked and/or wishes to work by way of events in and visits to the church. They are too many to describe or even list exhaustively here, but examples include: Blind Veterans UK; the 'You Raise Me Up' charity; the Oasis project; Survivors of Bereavement By Suicide; visits from care home residents; creative projects with schools (including Special Educational Needs projects); the 'Big Sing' with Glyndebourne and The Dome; possible events with Universities and galleries, and a host of community events, festivals and talks. The petitioners explain the significant funding that has gone into earlier phases of work, from the National Lottery Heritage Fund and from funds raised by the Berwick (Sussex) Conservation Trust and by the PCC. Understandably, the church wishes to pursue a wide and diverse programme in order to make the most of that generous financial support.
60. The programme of activities and aspirations outlined in the Statement of Needs is highly commendable. I certainly accept that such events and collaborations play or would play a very valuable role in the ongoing flourishing and mission (in the broadest possible sense) of this church in its community (again taking a wide approach to that term). I also give weight to the fact that a flexible space can make the hosting of some of the events described in the Statement of Needs easier.
61. The incumbent, Mr Blee, has supplemented the Statement of Needs with two thoughtful further letters.
62. In his covering letter of 13 January 2021, Mr Blee makes a number of points that I take into account. These include: that flexibility of use can facilitate inclusiveness and widen participation in the church's life, in both sacred and secular terms; the lack of evidence that Bell and Grant executed their paintings in a way that consciously responded to the furnishings of the church interior; the fact that the church now is not unaltered (including as regards furnishings) from the time when these paintings were executed. Mr Blee also counsels against views that seek to freeze the church at a particular point in its history. I accept and give weight to those arguments.

63. As to the proposed wholesale removal of the pews, Mr Blee says (reiterating a point made in the Statement of Need) that the option of partial retention has been considered and rejected: *“we have concluded that the space is so limited that retaining any of the seating, apart from the rush chairs, would negate the benefits we are trying to achieve as well as looking out of place”*. I am not persuaded, however, that this “all or nothing” approach has been justified in this case. I am not persuaded by this rejection of a more incremental approach, whereby *some* flexible space is freed up by the replacement of *some* pews with alternative seating. I do find, however, that the concern expressed by Historic England about the wholesale nature of this proposal is sound.
64. In a further letter of 23 March 2021, Mr Blee supplements the Statement of Needs in two respects. First, he relies on the impact of Covid (again developing a point made in the Statement of Need itself), suggesting that social distancing within the church, as well as the streaming or recording of services and events, are materially enhanced by the absence of pews. I am not persuaded that this point should be given weight. I am not persuaded that those impacts of Covid support a case for the removal of pews.
65. Secondly, Mr Blee draws my attention to a specific event, comprising spoken words and music, commemorating the 90<sup>th</sup> anniversary of Virginia Woolf’s novel *The Waves* which would not have been possible with fixed pews. I am told that the recording of that event will be of ongoing use, which *“might include our continuing work with students of English Literature at Sussex University or with bereavement charities. It will also help to raise funds and generate discussion about the relationship between creativity and faith.”* As indicated above, I do give some weight to the fact that events of this kind may be more difficult to host with fixed seating.
66. The petitioners supplemented their case on justification, as summarised above, with additional evidence provided for the oral hearing. In particular, Mr Blee provided a further statement that clearly and helpfully explained (and illustrated) the church’s actual experience of life without the seating that is currently off-site on a temporary basis but which the church wishes to remove permanently. This statement is further evidence of the church’s very admirable vision and energy in the use of its building in furtherance of its mission. The same point is reinforced by the supplementary evidence of Helen Ellis, Julian Bell (making points both about aesthetic appreciation and flexibility of use) and Ruth

Nares, as well as a summarised diary of events that have taken place at the church over the past sixteen months.

67. As regards its programme of events and activities, the petitioners placed reliance at the hearing on their receipt of grant funding from the National Heritage Lottery Fund, and on their need to deliver the activities they undertook to deliver when securing that funding. Neither this submission, nor the supporting documentation sent to me after the hearing, takes the case any further forward, in my judgment. I see no basis for concluding that compliance with the terms of this grant reasonably requires the petitioners to dispose of all of the seating from this church.
68. I record once again my acceptance that the church has used (and would no doubt continue to use) this flexible space – one without fixed seating – in a range of valuable and commendable ways in furtherance of its mission. I also accept a point on which Mr Gau placed great emphasis in his submissions, namely that the objectives the petitioners pursue via this petition are missional in nature, rather than merely an expression of aesthetic or practical preference. Mr Gau emphasised that the activities and events the church has hosted and wishes to host in future take forward its missional objectives, as enshrined in legislation, and are rooted in this church’s application of the Gospel.
69. Those points are undoubtedly important, but they do not resolve the problem raised by the “all or nothing” nature of this petition. The petitioners’ implicit argument is that, (a) numerous events have been successfully delivered in furtherance of the church’s mission without the seating *in situ*, and therefore (b) all of the seating should be removed in order for such events to continue. That argument is a *non sequitur*. I accept (a), but (b) does not necessarily follow. It may well be that substantially the same benefits could be achieved without removing all of this seating, for example by partial removal and/or modifications to existing pews. If the petitioners say this could not be done, they need to establish why; if they say that full removal would deliver material incremental benefit over a less harmful approach, they need to assist the Court in balancing the relevant incremental harms and benefits.
70. In my judgment, the petitioners have not made out any such case. At the hearing, I put this “all or nothing” point to Mr Gau, and sought the petitioners’ answers as to why

anything short of full removal of all seating had been dismissed, particularly given that Historic England and others had expressly urged the petitioners to consider less substantial interventions first. He explained that the church is relatively small, that it was not clear how many pews Historic England and others propose for retention, where any retained pews should go, whether they should be fixed or movable, and so on. In my judgment, this set of answers does not deal with the “all or nothing” concern. The petitioners have not discharged their burden of demonstrating that nothing short of full removal of all existing seating would suffice. Nothing in the materials or submissions presented to me indicates that the petitioners have carefully assessed how less intrusive proposals might work. In reality, their case boils down to an assertion that nothing short of full removal of all seating will do.

71. I draw together my conclusions on the overall case for justification below, once I have summarised the various representations made by those other than the petitioners.

### **Representations in response to the proposal**

72. I begin with the DAC. In its Notification of Advice dated 5 January 2021, the DAC records that it “*does not object*” to the proposals being approved by the Court. The DAC also draws the Court’s attention to the minutes of its discussion about this proposal. That minute concludes as follows:

*“The DAC was asked to vote on the application as it currently stands. When asked if they would like to Recommend the proposals for approval, 3 members of 13 voted in favour. When asked how many were in favour of Not Recommending the scheme for approval, 5 members of 13 voted in favour of Not Recommending. As it seemed that it was not going to be possible to achieve a majority in favour of either Recommending or Not Recommending the proposals, the Chair asked members to consider whether they would be content to Not Object; 7 members voted in favour of Not Objecting, with 6 abstentions.”*

73. The position of the three members of the DAC who support the proposal is summarised as follows:

*“The DAC noted that the application includes a lengthy Statement of Need, which has been created following consultation with many user groups, in addition to a collection of letters in support of the proposals from members of the congregation and local residents. The Statement of Need explains that the stackable pews would offer the flexibility that the parish needs to allow different seating configurations for worship and community and heritage events. Some members of the DAC felt that the needs of the parish and the benefits in terms of mission and outreach, outweighed any harm to the significance of the church as a listed building.”*

74. The position of the five members of the DAC who oppose the proposal is summarised as follows:

*“However, other members felt strongly that they did not feel that the benefits in terms of worship and mission outweighed the harm to the significance of the building . It was argued that the pews, whilst not particularly interesting or significant in themselves, contributed to the character of this rural church and the Bloomsbury aesthetic, and provided the context to which the decorative scheme responded. These members agreed that, like Historic England, they would like to encourage the parish to take an incremental approach to reordering and to consider retaining at least some of the historic seating. It was felt that the letters submitted by Ms Gage, Mr Witney, and Mr Shone were helpful as they put forward the view that the decorative scheme was not created in a vacuum but was responding to the context of this rural church and that the furnishings of the church therefore make an important contribution to the heritage significance of the building. In particular, it was felt that the observations about the levels of light in the building were helpful and members felt that the existing seating helped to keep the balance of light in the interior.”*

75. The position as regards the DAC is thus that, while its collective stance is that it *“does not object”* to the proposal, only three members involved in this matter in fact support the proposal, and five do not support it. I give considerable weight to this aspect of the case in my assessment of the case. I do so despite the petitioners’ submissions that I should apply a *“lightness of touch”* to the DAC’s input. The petitioners have argued, for example, that the DAC was *“barely quorate”* (because of Covid restrictions), and to assess the DAC’s concerns as *“emotional”* in nature but as unrealistic in practice. I reject those arguments that seek to diminish the DAC’s contribution. I also observe that, to my knowledge, the petitioners have never sought further engagement with the DAC (subsequent to January 2021) in order to persuade it to take a more favourable view of this petition.

76. The Church Buildings Council is content to defer to the DAC. The Society for the Protection of Ancient Buildings and the Twentieth Century Society have indicated that they do not wish to comment. The Charleston Trust expressed the opinion that the proposal “*does not detract from the significance of the paintings*”; it also pointed out, quite fairly, that Charleston and Berwick church serve different ends, the latter being “*first and foremost a working place of worship for the local community*”. I am mindful of that latter point, but do not consider that it detracts from my analysis of this case.
77. I now summarise the additional representations that are before the Court, both for and against the proposal.

#### In support of the proposal

78. The church’s inspecting architect, Richard Andrews, to whom I have referred above, supports the proposal. It seems to me that the following extract fairly summarises his position:

*“The old pews were removed to allow the new floor to be constructed, and it was apparent the moment they were removed what an improvement resulted to the spatial quality of the church, as well as enhancement of the wall paintings. This became more apparent when the new floor tiling was installed, with its soft colouring which further enhanced the paintings. The end of the original scheme was to have seen the old pews reinstalled, but to have put them back would have been visually and aesthetically detrimental...”*

79. The church’s project manager, Helen Ellis, is likewise supportive (including via a supplementary letter provided for the purposes of the oral hearing). So too are Christine Hall and Wenda Bradley of Artemis Arts, who have led projects at the church and support the proposal on the grounds of improving the flexibility of use and the effects on the light in the church without its pews. The latter point – about the perceived impact on the light in the church, and the consequent impact on appreciation of the paintings – is echoed by Rickerby & Shekede, the wall painting conservators who undertook conservation work pursuant to the previous petition. They say as follows:

*“The removal of the unremarkable Victorian deal pews (and the more recent garish modern ones) has been an essential part of the church’s transformation, further opening up and brightening the interior and enhancing its calm and harmonious atmosphere. Their removal facilitates appreciation not only of the church’s elegant proportions and ancient architecture but, importantly, of the unique paintings which adorn its surfaces.”*

80. Archdeacon Martin Lloyd Williams has also lent his firm support. This is partly for the reasons of flexibility and community engagement outlined in the Statement of Needs. He also relies on the input of Mr Blee who *“speaks as an expert, albeit an expert with a particular view, who is sincerely seeking to promote contemporary engagement with Grant and Bell’s work, and Bishop Bell’s vision, and not simply promote a church make-over project for its own utilitarian sake”*. I have addressed the relevance of Mr Blee’s expertise above.
81. Archdeacon Martin’s letter also points out that the promotion of the church’s paintings is part of its mission (a point which I accept), and goes on to argue that this church has now tipped decisively towards a modern interior that would better suit newer furnishings: *“It might be said that the current project, nearing completion, which changes the flooring, moves the organ and creates a small refreshment area have particularly and decisively modernised the interior in such a way that the replacement of the Victorian pews is now an obvious next step”*. I understand that aesthetic perspective, but do not find that it adds materially to the petitioners’ justification for these proposed changes.
82. In terms of those who live nearby and/or attend services at the church, I take into account the volume and nature of some strongly supportive input, citing in particular the flexibility of use, the consequent benefits for mission, the perceived enhancement of the light, as well as about the pews being uncomfortable. In addition to the input of the petitioners themselves, I have considered the input of Catherine Marsh, Monica Stoodley, Jane Fox-Wilson, Anne Michael, Robert Atkinson, J Chiswell-Jones, Mrs Jane Corkran, Mrs Julia Cockell, Miss Loveday Murley, Maggie Atkinson, Margaret Wilmot, Paul Lewis, Peter and Prue Heathcote, Ros Roscoe Ford, Susan Chiswell-Jones, AB Lewis-Gray (who also argues in some detail against the significance of the pews), Charity Miles, Charles Anson, Stephanie Lewis-Gray, Adrian Carney, and Lord Lloyd of Berwick.
83. I also take into account the supportive input from others, including:

- (i) Professor Frances Spalding, Emeritus Fellow of Clare Hall, Cambridge, and biographer of Vanessa Bell and Duncan Grant, who has written in support of the removal of the pews in principle, while also adding thoughtful caveats about the choice of replacement seating. Professor Spalding’s support reflects the points made in the Statement of Need.
- (ii) The artist Julian Bell, grandson of Vanessa Bell, who comments that “... *I believe Vanessa and Duncan would have welcomed the present alteration. They would be well aware that churches are bound to modulate and evolve through time.*”
- (iii) Nathaniel Hepburn, Director and Chief Executive of the Charleston Trust (but writing in a personal capacity), who says among other things that: “*Given that there is minimal conservation argument to the maintaining of the pews, this access argument is, in my assessment, paramount.*” Mr Hepburn also suggests that the removal of these pews would be reversible, in that replicas could in due course be constructed if that were desired, but I do not find this a meritorious point in this context. Mr Gau urged me not to dismiss this prospect of reconstruction, but I remain of the view that it is such a speculative possibility as to be of no real assistance to the petitioners’ case. It does not in any meaningful way ameliorate the harm that would be caused by the permanent removal of this seating. The same goes for the petitioners’ submission that photographic records of the current seating *in situ* would suffice.
- (iv) I have also taken into account the other points to which Mr Gau drew attention at the hearing. These include the views of Robert Atkinson (who argues that pew removal would enhance both artistic appreciation and the church’s devotional objectives, though the latter are more important); J Chiswell-Jones (who rightly emphasises that this church is primarily a centre of worship rather than a tourist attraction), Miss Loveday Murley (who argues that flexibility of space facilitates not only worship but also events that help with the cost of maintaining such an important building), Susan Chiswell-Jones (who contrasts a “living church” with museums and the like) and AB Lewis-Gray (whose input I have noted above).

84. A great deal of what is said in these expressions of support is cogent, and I give these expressions significant weight, in particular because they are rooted in this church's local community and its missional objectives. That said, these expressions of support, whether individually or cumulatively, do not resolve the problematic "all or nothing" aspect of this case that I have highlighted above. I repeat that the petitioners have not discharged their burden of showing that nothing short of the removal of all existing seating would suffice.

#### Against the proposal

85. Mr Gau submits that, in contrast to the case in support of the petition, the objections against it are not rooted in missional objectives. He characterised the concerns raised by Historic England, the Victorian Society and the individual objectors as essentially "aesthetic" in nature. To the extent that this is so, however, it does not devalue the objections: the objectors are expressing their views on issues that are relevant to this case, including in particular the extent of harm that would be caused and whether such harm is justified.
86. Historic England does not support the proposal. In its letter of 18 November 2020, it expressed its conclusions as follows:

*"Therefore, in light of our guidance, your application for faculty should attempt to convincingly demonstrate why wholesale removal is required and why more minimal intervention could not be trialled first. For instance, it is not clear from the Statement of Need whether the wholesale replacement of the pews is being proposed to facilitate possible new activities and events or whether there is a current demand that cannot be met in any other way.*

*We note that some additional space has already been created by the removal of the organ, and therefore we wonder whether alongside this an adequate space could be created by some smaller scale pew removal.*

*Our guidance explains that where a convincing justification for comprehensive pew removal is made, the design and quality of the replacement seating requires very careful consideration. With*

*this in mind we think that the lightweight and minimalist interior now being proposed may not be wholly the most appropriate context for the paintings.*

*We would therefore prefer to see a lesser intervention trialled here first to test whether it would meet the current needs of the church. If you still think comprehensive re-ordering is needed, we advise that the Statement of Need is used to make a sufficiently robust case. In addition, it would be necessary to show that the benefits of flexible seating outweigh the harm caused to the heritage significance of the church.*

*If we agree at that stage that substantial re-ordering is justified, it is likely that we would still wish some of the historic pews and chairs to be retained to illustrate the history of the seating. We also anticipate that we are likely to prefer a more contextual, solid, design for the new benches so that they order and fill the volumes of the space.”*

87. I am mindful that the Statement of Need submitted with this petition has been updated since and partly in light of that input from Historic England. As I explain below, however, I am not persuaded that the Statement of Need as put before the Court – including when read together with the supplementary materials adduced for the purposes of the oral hearing – sufficiently dispels Historic England’s reservations. Those reservations remain valid. I also observe that, as with the DAC, the petitioners have not sought to engage further with Historic England over the course of 2021.
88. The Victorian Society opposes the proposal. It considers, among other things, that the petitioners’ Statement of Significance fails to do justice to the contribution made by the pews to the significance and qualities of the church. In its email of 11 December 2020, the Victorian Society says this of the justification advanced in the Statement(s) of Need:

*“... this is a hugely ambitious vision, the detail and viability of which is impossible to determine. If the PCC is serious about pursuing this vision then far more information will be required before the appropriateness of what is proposed can really be considered. A business plan, activities audit, and a far clearer idea of how the building would actually operate in the context of what the Statement of Needs describes will be essential documents.”*

89. The Victorian Society confirmed its position in its email of 17 March 2021. As I understand its representations, it is not arguing for the preservation of the church at any particular point in time, but instead emphasises the cumulative value of the accretions and amendments to the church (including the pews) over time.
90. The petitioners accept that I am entitled to have full regard to the input of the DAC, Historic England and the Victorian Society. They invite me, however, to disregard the input of other objectors. This submission is founded on rule 10(1) of the Faculty Jurisdiction Rules 2015, where “interested person” in relation to a petition for faculty is defined as to include “(b) any other person or body appearing to the Chancellor to have a sufficient interest in the subject matter of the petition”. As to the meaning of “sufficient interest”, the petitioners invite me to apply or to derive assistance from case law on judicial review, as discussed for example in *AXA General Insurance Ltd v Lord Advocate* [2012] 1 AC 868 and *JS v Secretary of State* [2021] EHC 234 (Admin). In his skeleton argument, Mr Gau said this: “*It is a matter entirely for the [Deputy] Chancellor, but few of the persons objecting have, in the submission of the petitioners, ‘sufficient interest’ in the subject matter of the petition, particularly in terms of the statutory duties of the petitioners*”. At the hearing, Mr Gau accordingly invited me to disregard the input of all of those listed below, or alternatively to give their input little weight on account of what he submits is their limited interest in this petition.
91. In my judgment, this argument based on “sufficient interest” does not alter the outcome of this case. I am doubtful that case law concerning judicial review should inform the interpretation of “sufficient interest” under the Faculty Jurisdiction Rules 2015, but I do not need to decide this point. Even the judicial review case law relied upon by the petitioners shows that “sufficient interest” is applied liberally, albeit not so liberally as to encompass persons serving purely private interests. Given the undoubted national significance that the wall paintings give to Berwick church, I consider that a liberal approach to “sufficient interest” is justified, and that on these facts this would extend to those expressing concerns about significant potential changes to the setting for those paintings (i.e. the interior of the church). I therefore consider that the individuals to whom I refer below have “sufficient interest” in this petition, such that I am entitled to take their input into account.

92. I make clear that, even if I am wrong about that, this would not alter the outcome of this case. Even if these individual objectors lacked “sufficient interest” in their own right, I consider that I would nonetheless be entitled to take that input into account to the extent that it sheds light on the arguments advanced by Historic England, the Victorian Society and those members of the DAC who do not support this petition. In any event, because of those arguments, my decision would remain the same even if I were to ignore the input of the individual objectors (as the petitioners urge me to do). That is why I conclude that the petitioners’ argument based on “sufficient interest” does not alter the outcome of this case. That said, I am mindful that these individual objections come largely or exclusively from persons who are not directly concerned with this church’s missional objectives. To that extent, I agree with the petitioners’ submissions, and have taken care not to give undue weight to these objections.
93. With that analysis in mind, I summarise the most salient individual objections as follows.
94. The Court has received letters of opposition from some with notable relevant expertise. Richard Shone, Author of *The Berwick Church Paintings* (1969) argues in favour of the retention of the pews, drawing on his personal memories. He says, among other things: “*I believe I am the only person now alive who sat in a pew in the nave with Duncan Grant and discussed the interior’s decorations*”. (Quite fairly, however, Mr Gau reminds me that others with relevant expertise, such as Julian Bell, take the opposite position to that of Mr Shone in this case).
95. Mr Shone’s position is supported by Sir Nicholas Serota, former Director of the Tate and Chair of Arts Council England. As noted earlier in this judgment, the church’s website promotes Sir Nicholas’ assessment of the importance of the paintings. His input is that significant alterations to the interior of this church would be detrimental to the setting for these paintings. Mr Gau fairly points out that the pews are not directly addressed in the objections from Mr Shone and Sir Nicholas Serota. I accept this point, but they are clearly opposed to significant alterations that affect the interior character of the church. As I have explained above, my assessment is that the proposed removal of all of the seating would have such consequences.
96. I also note the input of Simon Watney, who was a friend of Duncan Grant and author of a monograph on his work, and is an experienced professional involvement in both art and

conservation. He argues that *“this dialogue between past and present which is maintained and embodied by the earlier fixtures and fittings at Berwick”*. This point about dialogue fairly summarises one of the major arguments advanced by those who oppose this proposal and who advocate the retention of the pews.

97. The Court has also received letters of objection from Dr Wendy Hitchmough (Senior Lecturer, Art History, University of Sussex) and Ms Deborah Gage, who I am told has experience both with heritage conservation in general and with Charleston Farmhouse in particular. They argue for the retention of the pews by reference to conservation and heritage principles, and express the view that *“Grant and Bell never intended that their paintings should transform the church into an art gallery”*. They also query the extent to which this church is the right (i.e. realistic and appropriate) venue for hosting the full range of events outlined in the Statement of Needs. Quite fairly, however, the petitioners point out that they have no suitable alternative venue at their disposal for the furtherance of their missional objectives. I accept that point.
98. In addition, I have considered the letters of opposition from Rev’d Georgiana Bell, John Gaunt and Jean Barrett.
99. Lastly as regards those who oppose this petition, I note Mr Gau’s submission that some arguments advanced appear to be directed at ulterior objectives, i.e. at (for example) criticism of previous faculty decisions or the faculty system as a whole, rather than focusing on the merits of this specific petition. I do not need to express a view on that submission. I have excluded any such arguments from my assessment.

### **Summary of reasons**

100. Having considered all of the input for and against this proposal, my assessment of the significance/harm issue remains as set out at paragraphs 46-50 above. That addresses questions 1-3 of the *Duffield* framework, though I remind myself that *Duffield* provides guidance rather than prescriptions, and that the ultimate question is one of balance. I also take into account that the seating is not addressed in the list description for this church.

101. Questions 4 and 5 of that framework ask whether there is a sufficiently clear and convincing justification for causing that degree of harm. I need to consider whether the case has been made out that the public benefit (in the widest sense, including by reference to the church's mission in particular) outweighs the detrimental effects of the proposal. In assessing the cogency and proportionality of that case, I need to bear in mind the strong presumption against proposals that will cause harm in this way.
102. My assessment based on all the input before me is that the justification goes a considerable way towards meeting that threshold, but that there is not a sufficiently clear and convincing case that the removal of all of these pews outweighs and is proportionate to the adverse effects of their removal. I repeat the points I have made at paragraphs 13-17 and 68-70 above about the "all or nothing" nature of this petition and the difficulties this poses in terms of justification.
103. In this regard, I highlight the following points in particular:
- (i) Aesthetic views about light and the optimal appreciation of this important painting scheme are not matters on which this Court can readily pronounce. As will be clear from the summary of competing perspectives above, there are significant arguments in both directions. Mr Gau accepted – rightly in my view – that this Court is not an appropriate forum for resolving aesthetic disputes, and I do not attempt to do so in this judgment. In those circumstances, the petitioners' arguments about the relative aesthetic benefits of their proposal do not constitute a sufficiently clear and convincing justification.
  - (ii) As to the relevance of disability access and inclusion, as well as the potential for hosting different worship styles, I repeat my assessments as set out above.
  - (iii) In my view, the most significant aspect of the petitioners' case is their programme of actual and envisaged activities that form part of the church's mission and its service to the public. I give this package of considerations very substantial weight in my assessment. That said, I am unable on the evidence and submissions before me, to conclude that a sufficiently clear and convincing case has been made out as to the likelihood and frequency of such events, their

importance to the church's mission and to public benefit, and – crucially – the extent to which those events would be impossible, unrealistic or substantially constrained without the desired removal of all of the pews. The Statement of Need, as supplemented by additional evidence submitted for the hearing, certainly makes assertions relevant to such points; those assertions may be meritorious, at least to some extent. However, my assessment is that, beyond assertions, the Statement of Needs does not suffice as a sufficiently clear and convincing justification for why all the pews need to be removed in order for these very good things to happen or to flourish.

- (iv) I make clear that, in reaching that conclusion, I have given significant weight to the strength of support and feeling behind this proposal, as expressed by numerous individuals and as outlined above. I have also given significant weight to the excellent ways in which this church furthers its missional objectives. I certainly do not seek to diminish any of that. On balance, however, I agree with the views of Historic England (which in my view are not undermined by the petitioners' subsequent additions to their Statement of Need) and the five members of the DAC who do not support the proposal. I also draw a measure of support from the input of the Victorian Society and from individuals such as Richard Shone and Sir Nicholas Serota, among others.
- (v) Therefore, assessing the elements of the case for the proposal both individually and cumulatively, my overall view is that the petitioners have not made out a sufficiently clear and convincing case that the proposal is justified and proportionate.

104. That aspect of my assessment addresses questions 4-5 of the *Duffield* framework. I reach the conclusion if I step back from the 5-part *Duffield* framework and consider the matter as one of overall balance: I find that the benefits of this proposal do not outweigh and are not proportionate to the adverse impact of the removal of all of the seating on the quality and character of this evolving church, particularly bearing in mind the presumption against proposals that will have harmful effects on a church's significance as a place of special architectural or historic interest.

## **Conclusion**

105. In conclusion, I repeat the following point made in my draft judgment. I make clear that nothing in this judgment precludes the petitioners from advancing further proposals at a later stage if so advised. I express no views on any such future or hypothetical courses of action; the point I make for now is that this judgment should not be read as a requirement that all of the pews in this church be retained forevermore.
106. However, for the reasons I have given above, based on the papers and then revisited and supplemented following the oral hearing, this particular petition for faculty for the permanent removal of all of the pews and chairs from this church is refused.

ROBIN HOPKINS

Deputy Chancellor

13<sup>th</sup> September 2021