

IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS

IN THE MATTER OF BOURNE END, ST JOHN THE EVANGELIST

Introduction

1. St John the Evangelist, Bourne End is a small Gothic Revival style church with a modern church hall adjoining it. The church was designed in 1855 by Sir George Gilbert Scott as a chapel of ease to Northchurch parish. It is believed to be the first rural church designed by Scott. The church has a small congregation and serves a small community.
2. The simplicity of Scott's original design is complemented by stained-glass windows in the apsidal east end of the church. The windows were designed by Alfred Bell and are noted in the church's listing as being his first works. Sadly in 2001 two of the windows were stolen. However detailed photographs had been taken only months earlier by a stained-glass artist who was then able to make high quality accurate replacements.
3. In 1889 the east end of the church was re-ordered at the instigation of Edward Curtis of Berkhamsted Hall as a memorial to his young wife, Elca Rose. He commissioned the highly regarded Berkhamsted architect, Charles Rew, to design the memorial scheme. Pursuant to it the chancel and sanctuary were decorated with an extensive scheme of frescoes on the semi-dome of the apse and sanctuary walls. Marble sanctuary steps, symbolically coloured black, red and white as they ascend, were introduced. A very large, ornate and striking combined reredos and communion table, carved in oak by a renowned craftsman Harry Hems, were also introduced. These are generally thought to be part of the memorial scheme and designed by Rew, although the detailed thinking that has subsequently gone into the progression of this matter has cast some credible doubts on whether this is in fact the case, or whether the reredos and altar may have been purchased from Hems "off the shelf".
4. This wealth of craft and design interest creates a striking impact in the small church. It has, however, led to a particular problem for the incumbent and congregation, which lies at the heart of this petition. For theological reasons they overwhelmingly wish to be able to celebrate communion facing westwards, ideally kneeling at the altar rail in the sanctuary. However, they are unable to do so because the celebrant cannot safely use the fixed altar table (attached to the reredos) without the risk of falling off the narrow rim of the upper step available to stand on, or finding that they are unable to use their elbows due to the jutting reredos shelf. As detailed further below the solution proposed, of which the most significant element is the relocation of the reredos to a short, glazed link passage adjoining the church and the hall, is heavily opposed by the Victorian Society (the "VS") which has chosen to become a party opponent in these proceedings.

5. I made a site visit during a break in COVID-19 restrictions on 1 September 2020. I was accompanied on that visit by the Assistant Diocesan Registrar and the Archdeacon, on a socially-distanced basis. Neither of the parties to the Petition was present¹.

The Petition

6. By a petition² dated 17 March 2020 (the “Petition”) the vicar and two of the churchwardens (the “Petitioners”) seek a faculty for:
 - (i) *Renovating the old table, which was hidden behind the attached communion table, for use in the chancel in place of the credence table used under the authority of a Temporary Re-Ordering Licence dated 18.09.18;*
 - (ii) *Dismantling and relocating the reredos in the glazed link between the church and hall;*
 - (iii) *Modifying the communion table so that it is freestanding.*
7. The former Archdeacon³ was involved in the development of the plans and the DAC has been consulted throughout.
8. On 18 September 2018 an Archdeacon’s licence was granted authorising the introduction of a movable altar table in the Chancel. On 16 October 2018 the Archdeacon and representatives of the DAC attended a site visit and reviewed the wider proposals in situ, including options for the possible separation of the reredos and communion table and the relocation of the reredos within the church.
9. As I discovered for myself during my subsequent site visit, there is very limited wall space in the church. It was during the Archdeacon and DAC’s site visit that the Archdeacon first floated the idea of exploring the link corridor (also referred to as the lobby), a glazed area which joins the church with the adjacent hall. After further exploration the unglazed wall in the link corridor was found to be suitable in terms of weight-bearing and was universally approved of as a new site on the Petitioner’s side. The proposals advanced from that point on the basis of a relocation to the wall in the link corridor, although it also visited other options subsequently. I will consider the process of options appraisal in this case in more detail below.
10. The DAC considered these proposals at a meeting on 21 November 2019 and issued its Notification of Advice recommending the works in their entirety and without proviso. It recommended that the Petitioners consult with the Church Buildings Council (the “CBC”) and the Victorian Society (the “VS”).

¹ Save that the vicar attended briefly to open and lock the church. She was not present at and played no other role in the site visit itself.

² Which has the unanimous support of the PCC, as per the vote held at its meeting on 11.03.20 (certified copy of minutes dated 17.03.20)

³ The Archdeacon of St Albans at all relevant times, save for the site visit, was the Venerable Jonathan Smith. He has now retired and in March 2020 was succeeded by the Venerable Dr Jane Mainwaring.

Consultations and views of consultees

11. Consultation duly took place and the key points that have emerged from both the consultees and the Petitioners are considered below.

Determining the matter on the basis of the parties' written representations

12. This is an opposed petition and I have given careful thought to whether or not a hearing should take place in open court. I have come to the conclusion that it is not necessary or expedient in this case and that the matter can be dealt with by consideration of the papers before me. Both parties have given their written consent to this⁴.

13. I have considered the following points:

13.1. Having regard to *Re St Lawrence, Oakley with Wootton St Lawrence*⁵ and *South Bersted, St Mary Magdalene*⁶, this petition relates to neither church treasure nor to disposal of any of the items which are under consideration as part of the works. This means that the considerations which lend such strong weight in favour of proceeding via an oral hearing in such cases are not present in this case.

13.2. There are, all the same, other factors here which speak in favour of proceeding by a hearing. For example the importance of the outcome to both sides and the existence of a non-party opponent of the proposals with a particular interest in the outcome. However, despite the strength of feeling about the proposals, in my view both sides have had ample time and opportunity to put matters to me and express their views about the works. Indeed I have pressed for further information and comments on several occasions. I judge from the responses I have seen that both sides' cases are fully before me in as far as they wish or are able to press them. There is nothing requiring cross-examination or assessment of the veracity of witnesses in order to determine this matter. I am also able to take the non-party opponent's views into consideration in a written process just as well as in an oral hearing, and her interest in the outcome will be satisfied by the publication of this judgment in due course.

13.3. The works themselves, although potentially impactful in the small space of the church and perhaps somewhat unusual in nature, are limited in scope. Likewise the issues raised by the petition are relatively uncomplicated.

14. In my judgment it would add little - and be disproportionately expensive - to convene a hearing in circumstances where the parties have indicated that they are both content to proceed on paper and the context is as I have described it. Dealing with the case on the basis of the written representations before me seems to me to be in furtherance of the court's overriding objective and compliant with rule 14 of the Faculty Jurisdiction Rules.

⁴ Email from the VS 01.05.20 and from the Petitioners 02.05.20

⁵ Court of Arches, 14.04.14

⁶ Diocese of Chichester 03.09.14

Submissions by the VS

15. The substance of the VS's submissions for the purposes of this written process is to be found in an email to the vicar dated 27 February 2020, a letter to the Registry dated 24 April 2020 and an email to the Registry dated 20 July 2020.
16. The first of the proposed works, i.e. restoring the original communion table (currently hidden within the communion table) for use as a portable altar, is not contested. The second and third proposals (dismantling and relocating the reredos and modification of the communion table to make it freestanding) are opposed. The key submissions made by the VS may be summarised as follows:
 - 16.1. The primary reason for opposition is the harm the VS asserts would be caused to the significance of the church as a building of special historic and architectural interest. It is acknowledged that the church itself is "*...a modestly pleasing structure, and a good example of Scott's simple, small-scale, rural work. There is nothing about it, however, that is genuinely extraordinary, with the exception...of the chancel and its wonderful decorative scheme.*" The VS states that the memorial scheme is "*by far*" the most interesting and important feature of the church (and refers to the reference in *The Buildings of England* to the interior decoration of the chancel as being the church's "*chief interest*"). The VS contends that it is unusual, artistically and symbolically rich, contains elements (including the reredos) of notable intrinsic quality. The scheme should be considered holistically and when it is so considered the loss of the reredos would "*...strike a severe blow to its integrity, appearance and interest, and that of the church as a whole*".
 - 16.2. The VS complains at the lack of information and detail supplied by the Petitioners in support of the works. This has made it difficult to understand and assess the works and gives cause for concern that they have not been properly thought through or fully understood by the Petitioners themselves. The VS asserts that neither the Statement of Significance nor the Statement of Need are compliant with part 4.3 of the Faculty Jurisdiction Rules. In particular the VS criticises the Statement of Significance as failing to acknowledge the interest and importance of the reredos (either in its own right as the work of a distinguished and significant craftsman, or as part of a coherent and unusually fine decorative scheme which is almost entirely intact).
 - 16.3. Initially there was doubt on the part of the VS about the accuracy of the Petitioner's assertion that there would be insufficient room for west-facing worship if the altar were to be moved forward and the reredos left in place. This was a matter in respect of which the VS (rightly in my judgment) complained that the information and visual aids initially provided in support of the Petition were scant and lacking in detail. I intervened in this aspect and over the course of May and June 2020 required further detailed measurements and drawings to be produced to enable all concerned to better understand both the actual space available and that said to be required for dignified west-facing worship. Following receipt and consideration of the further information

the VS was ultimately (i.e. by the date of its 20 July 2020 email) sufficiently satisfied to concede the point. However it was not accepted that there were not other potential solutions involving retention of the reredos in situ. In particular it was mooted that the altar could be moved further westward to overhang the top step and be supported by a frame (which could be decorated to blend in with that step), leaving the reredos where it is and creating sufficient space behind the altar to allow for the west facing worship by that means. Alternatively, or even as a complement to moving the altar westwards, the VS noted that the (unobjectionable) introduction of the portable altar would also give further scope for west-facing worship.

16.4. The VS denies that relocation of the reredos would achieve secondary (aesthetic) benefits that the Petitioners rely on, namely revealing the stained-glass window behind it and reinstating Scott's original arrangement of the east end of the church. The VS asserts that:

16.4.1. The removal of the reredos would only reveal the upper parts of the stained-glass windows. (This point is, I find, incorrect. I accept the evidence of the Petitioners that the whole window would be revealed were the reredos to be relocated. I also observed this to be the case at my site visit).

16.4.2. It is not necessary to reveal the stained-glass crucifixion scene presently hidden behind the reredos because the altar contains a central image of Christ's crucifixion such that imagery in the Chancel as a whole tells the complete story of Christ's life, albeit reading across several elements of the furnishings rather than deriving that from the stained glass alone.

16.4.3. Scott's arrangement would only be truly reinstated if every element of the 1889-91 interventions were to be removed. By removing only the reredos one is left with neither Scott's nor Rew's arrangement.

16.5. The VS also stated that there were no drawings or photographs of the space in the glazed link area where it is proposed that the reredos should be relocated.

16.6. The VS complains that there is a lack of information about the structure of the communion table which, under the proposals, would be adapted to become freestanding.

Views of the CBC

17. Following some email exchanges with the vicar on behalf of the Petitioners, the CBC's position was encapsulated in an email dated 28 January 2020 which stated as follows:

“The Council is content with the majority of the proposals but does not consider the wall in the linking passage to be a suitable location for a reredos. The proposed location is too high up for the reredos to be seen as intended and removes the reredos from its liturgical context. The glass panels in the roof also mean the reredos would be liable to damage from

sun bleaching. The Council does not object to the reredos being moved and is pleased that the church do not wish to dispose of it. However a better location should be chosen for its re-siting. Is there nowhere more suitable for it [to] go within the church?"

18. The CBC's question was answered in the negative by the parish in its response.
19. However the suggestion of undertaking an options appraisal was then raised by the CBC email on 30 January 2020, noting in particular the risk of bleaching due to sunlight coming through the glazing in the link and the lack of concrete information about the potential susceptibility of the reredos to environmental changes which might be more evident in the link. It was noted on 1 April 2020 that no such appraisal had been undertaken, and I have been asked to take this into consideration in reaching my decision in relation to this Petition.

Views of the objector (not party opponent)

20. On 25 June 2020, Susan Johnson, a resident of Berkhamsted and Chair of the BCA Townscape Group, wrote to the DAC Chair, Dr Christopher Green, expressing concern over the Petitioner's proposals. She explained that she had only become aware of the proposals by reading an article in the casework section of *The Victorian* in June 2020. She was therefore substantially out of time in expressing her objections as the public notice period had taken place across January and February 2020. Nonetheless the lateness of Ms Johnson's objection causes no particular difficulty in this case and I have taken her views carefully into consideration in reaching my decision.
21. In her letter to Dr Green, Ms Johnson explains that she lives in a house designed by C.H. Rew and is "...*fiercely protective of his designs and do not like to see them compromised.*" Her concerns very much echo the representations made by the VS. She regards the reredos as integral to the memorial scheme and regards the piece as fine in its own right. It is, in Ms Johnson's view, more significant than the stained-glass window it conceals and adds considerably to the "*otherwise modest*" Gilbert Scott design of the church itself. She regards the coming together of Gilbert Scott, Hems and Rew as fortuitous, worthy of preservation and important to Berkhamsted. Ms Johnson queries whether sufficient space might be available behind the altar for west facing worship even if the reredos were retained.

The Petitioners' submissions

22. In response to these points, the Petitioners make a number of points, summarised here:
 - 22.1. The Petitioners point out a number of errors of fact the VS's submissions. Amongst the most significant of these are:
 - 22.1.1. The fact (which I have already made a finding in respect of) that the removal of the reredos would reveal the entirety of the Bell stained-glass window behind it, not only part of that window as suggested by the VS.

- 22.1.2. The carved communion table cannot be moved without moving the reredos because the two are attached and the table keeps the reredos in place. I also find the Petitioners' position on this to be accurate. This has relevance to (a) the VS's suggestion that there is a simple solution involving moving the communion table westwards independently and leaving the reredos in situ, given that the VS objects to the proposed works to the table to make it freestanding; (b) the recently discovered old table, hidden inside the carved communion table, cannot be removed and restored (which work the VS finds unobjectionable) without moving the reredos (which is supported by the communion table) to enable access.
- 22.2. The Petitioners argue that the reredos' significance should be considered within the overall context of the church and its fittings. Its significance as a piece in its own right is relatively low given that it is incomplete following the theft of two integrated statues and its lack of prominence in the assessment of expert guides.
- 22.3. The church's grade II listing is primarily due to it being the first church designed by Sir George Gilbert Scott.
- 22.4. The majority of the features in the church by significant Victorian-era artists will remain in situ and either be enhanced by or substantially unaffected by the proposed works.
- 22.5. The ability to administer Holy Communion at the sanctuary communion table while facing west is the primary need for re-ordering. The Petitioner's view is that this has been significantly undervalued by the Victorian Society in their submissions. The Petitioners felt it had been minimised as a questionable "*desire*" instead of acknowledging the theological driver behind it, placing proper emphasis on the church's existence as a place of worship and characterising it more fairly and accurately as a need for the proposed changes in order to be able to carry out such worship safely and reverently. It is also important to the Petitioners and members of the congregation that they should have the ability to kneel when receiving Communion which is not possible during west-facing worship if the only west-facing solution is using the moveable table elsewhere in the church, one of the alternatives proposed by the VS.
- 22.6. The Petitioners assert that the alternative of moving the communion table westwards, supporting it as it overhangs the step and retaining the reredos in place does not give enough space for two people to administer communion, remains hazardous because of the jutting shelf on the reredos, leaves insufficient space for the congregation to kneel at the altar rail to receive communion and is also unsatisfactory as it would impede the way in which the symbolic colouring of the steps would be read.
- 22.7. An incidental but important benefit for the church would be the revelation of the apsidal design of the east end by Scott. It would include the (full) remaining Bell stained-glass window hidden behind the reredos, which is universally picked out by

expert guides as a work of importance. Furthermore the re-exposure of the east end would be beneficial in understanding the architectural and artistic origins and significance of the church.

22.8. The Petitioners accept that the memorial scheme was commissioned by Edward Curtis (although there is no record of a faculty having been granted for the original reordering) and that the design of the scheme is attributed to Rew. It is also accepted that the reredos was introduced by Edward Curtis at the time of the reordering. However subsequent investigation has raised questions as to whether the reredos itself was actually part of the Rew scheme of frescos and symbolically painted sanctuary steps. In particular the fact that the steps do not form a foundation for the reredos but are built up in front of it strikes an odd design note. Furthermore size of the reredos, its awkwardness within the apsidal space, the fact that it obscures some of the fresco work which is painted behind it and the fact that the semi-dome of the apse had to be cut into in order to accommodate it all make it less obvious that it was part of Rew's design.

22.9. The Petitioners explain the relatively scant information supplied at the outset by saying that plans and drawings were kept simple because the very small church has limited resources and because the proposed works are uncomplicated. The Petitioners have since been responsive and sent through additional information, including diagrams and measurements, as requested throughout the process to aid in developing a complete understanding.

22.10. The Petitioners regard the VS's objections as being insufficiently informed in the absence of it having conducted a site visit to inspect the reredos and to see it in situ.

Legal principles

23. The proposed works will lead to a marked alteration in the internal appearance of this grade II listed church. Therefore the approach laid down in *Re Duffield: St Alkmund*⁷ (as affirmed and clarified by that Court's later decision in *Re St John the Baptist, Penshurst*⁸ and *Re St Peter, Shipton Bellinger*⁹) is to be followed, namely:

23.1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

23.2. If not, have the Petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason, change should not be permitted.

⁷ [2013] Fam 158

⁸ (2015) 17 Ecc LJ 393

⁹ [2016] Fam 193

23.3. If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

23.4. How clear and convincing is the justification for carrying out the proposals?

23.5. In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, will the benefit outweigh the harm?

In considering the final question I must bear in mind that the more serious the harm the greater the level of benefit needed before proposals can be permitted.

24. When applying the *Duffield* guidelines, I need to bear in mind at all stages that the desirability of preserving a listed church, and all of its features of special interest in their settings, is of considerable weight and importance. With that in mind I also agree with the consideration articulated by Hodge Ch. in *St Peter and St Paul, Aston Rowant*¹⁰, where he stated at paragraph 7:

“In applying the Duffield guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other, less harmful works, then that is highly relevant. In such circumstances, it would 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.”

25. The court is also required (by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*) to pay due regard to the role of the church as a local centre of worship and mission.

26. I have directed myself by reference to all of these guidelines in reaching my decision in this case.

Discussion

Introduction of the old, hidden table for use as a communion table

27. The first proposal (renovating the old table, hidden behind the attached communion table, for use in the chancel in place of the credence table) is not objected to and I find would cause no harm to the significance of the church¹¹. The Petitioners have explained that they wish to use this table in place of a less historically significant and interesting credence table that was trialled successfully under the Archdeacon’s licence. This enables them to carry out informal west-facing communion services, but does not allow for the type of worship

¹⁰ [2019] ECC Oxf 3

¹¹ See my full assessment of significance below.

desired, kneeling in the Chancel. It is therefore part of the solution to problems raised in this case, but not a full answer. These factors, coupled with the interest and connection the old table has to the Hems oak pieces and the Rew memorial scheme, having been hidden within the carved communion table, amount to a sufficiently good reason for change to overcome the ordinary presumption against change and provide clear benefits to the church which justify a grant of faculty for the introduction of the old table.

Modification of the carved communion table

28. The reredos and the carved communion table which supports it will need to be parted in order to extract the old table in the first place. At this point, given that neither object is freestanding, either the reredos and communion table would then have to be re-joined and left in situ or, if the separation were to be made permanent, as a minimum the communion table would need to be altered to render it freestanding.
29. Although the VS has said that it objects to this element of the proposed works, no real suggestion has been made that the significance of the church (or indeed the communion table itself) would be harmed by modifying the table (the third element of the Petition works). Indeed the alternatives to relocation of the reredos which have been suggested rely upon the table undergoing some works to ensure it can stand alone.
30. The works were investigated and suggested in a detailed inspection by a local craftsman. The table is a hollow carcass with one cross strut and the proposed actions (making and fitting a plinth, base and shelf in a finish which is a close match to the original materials, plus repair and restoration of stretchers which were damaged when the old table was forced inside the carcass) are minimal and unobtrusive. I find that there is no basis before me to conclude that there would be any harm caused to the significance of the church by permitting these modifications in order to render the communion table freestanding. The ability to move the table to create space to conduct communion is an important and good reason, sufficient to overcome the ordinary presumption against change. These are clear benefits to the church which justify a grant of faculty for the modification of the communion table so that it is freestanding.

Relocation of the reredos

31. This leaves only most controversial of the proposed works, the relocation of the reredos.

Duffield questions 1 & 3

32. The *Duffield* questions 1 and 3 can conveniently be considered together. In order to answer them I must begin by identifying the significance of the church as a building of special architectural or historic interest.
33. The VS complains that insufficient assessment and understanding of significance has been carried out by the Petitioners in this case. I agree with the VS to the extent that when the Petition was first presented it was accompanied by only scant, less-than-single-page

Statements of Significance and Needs. Although I find that those documents covered the key elements, a more in-depth appraisal would have been preferable in order fully to understand the architectural and aesthetic importance of the church and the contribution the reredos makes to that from the outset, as well as evaluating in detail the particular difficulties the reredos causes.

34. The VS appears to argue that this position persists despite the much fuller and further consideration that has been given over the course of the Petitioners' responses since. I take a different view and find that the Petitioners have developed their understanding of significance and the evidence before the court on this point to a sufficient and appropriate degree¹². Given the submissions of the VS on this point, I should also add that despite my observations that the Statements of Significance and Need were very brief I do not find that there was any breach of Part 4.3 of the Faculty Jurisdiction Rules by either of them. The Rules do not lay down specifics as to content, but only outline what the Statements need to convey. The documents in this case covered all of the required points, albeit in a high-level way, sufficiently to convey the understanding rule 4.3 is aimed at achieving. (The Statement of Need did not include the basis on which it is said public benefit outweighs harm per rule 4.3(2) because both parish and DAC were of the view (prior to this decision) that it did not cause harm.) The Statements are also supplemented by subsequent detailed development by the Petitioners in correspondence and reply materials (for example the Petitioners evaluated public benefit versus harm in their email to the VS of 23 March 2020.) There has, overall, been sufficient information and consideration of both significance and need supplied - and sufficient opportunity to consider and comment upon it - in this case.
35. The materials from which the significance of the church is to be gathered therefore include: the listing description, which dates from June 1986; the outline contained in the Statement of Significance; the views of Thomas Cadbury, an assistant curator at the Royal Albert Museum, Exeter with knowledge and expertise on Hems; and details contained in correspondence (in particular the Petitioners' Reply of 5 May 2020, the Reply of August 2020 and the response (dated 18 August 2020) to the VS email of 20 July 2020).

36. The relevant parts of the listing description state as follows:

“Parish church. 1854 by GG Scott for Cannon Sir John Hobart Culme Seymour as a chapel of ease....Apse windows by Alfred Bell (his first windows) made by Powells in 1854 (Pevsner (1977)107)...Chancel and sacristy walls and roofs have polychrome fresco painted decoration designed by Charles Rew architect of Berkhamsted and executed by David Bell of Davidson and Bell dated 1891. Semi-dome in apse has Christ in majesty. Roof of chancel ceiled between scissor braces with painted motif decoration between and on rafters, on walls and window mullions. Large carved wooden altar and tall tabernacle work reredos with figures of Christ in a vesica, Mary his mother, and St John...”

37. I note that the reredos is mentioned (although the listing entry does not record that the figures of Mary and John have sadly since been stolen from the reredos). It is not, however,

¹² And opportunity has been given to the VS to consider and respond at each stage.

picked out for special remark in the way that, for example, the Bell windows are (or the font in a later part of the entry, which refers to its “*unusual*” qualities).

38. Thomas Cadbury, the assistant museum curator, provided a response by email to enquiries from the parish into the work of Hems. He was able to locate records which confirmed that the reredos is by Hems and he provided details of Hems’ life and work. Although he does not appear to have been requested to do so by the parish, he also visited the church’s website and viewed photographs of the chancel. In addition to the information he supplied, he added “*I...was struck by how beautiful it was. The fresco is amazing and the altar and reredos looks to be amongst Hems’ best work. It must be difficult to balance the needs of the current community with the aesthetics of the space.*” He was unable to answer categorically the parish’s question about whether Hems would have made the table and reredos to Rew’s design by way of a special commission or whether it was a pre-existing piece, adapted to fit the space, although he speculated that it probably was commissioned (on the basis of being unable to find references to earlier unfulfilled commissions, albeit admitting that his list was incomplete).

39. From the various responses of the Petitioners dealing with significance and the VS’s points in answer, the following considerations may be identified and conclusions drawn regarding significance:
 - 39.1. The Petitioners assert that the primary basis for grade II listing is because it is believed to be the first church by Gilbert Scott. This is challenged by the VS on the basis that the memorial scheme is “...by *far* the most interesting and important aspect of this nationally important building”, a view it takes in part from the statement in *The Buildings of England*¹³ that “...the chief interest of the church is the interior decoration of the chancel by C.H. Rew as a memorial to Elca Rose Curtis, died 1889. Painting by David Bell of Davidson & Bell, a scheme replete with symbolism, devised by the rector, A.F. Birch”. In assessing this statement the Petitioners urge the court to note the contrast between Bettley’s warmth about the memorial scheme and his attitude to the reredos. Noting Bell’s stained-glass windows Bettley remarks “...the centre two, alas, hidden by the reredos”. The VS counters by saying that the memorial scheme (which the Bell windows preceded) needs to be reviewed as a whole. Taking all of these points into consideration and given, in particular, where the emphases are placed in the listing details and in the Bettley entry, on balance I prefer the views of the Petitioners regarding the likely primary basis for the listing in this case, although I would add that it seems to me that the importance of the Bell stained-glass appears to be considered of comparable importance.

 - 39.2. The Petitioners agree that Hems produced the table and the reredos but point out that this is not a point of significance sufficient to have been reflected in the listing details, nor warranting special reference in the very detailed records Hems kept of his own work. Hems was highly prolific and the Petitioners note that the awkwardness of the fit of the reredos into the space tends to suggest that this was not

¹³ Hertfordshire, 2019 revision by James Bettley

a bespoke piece for the church but rather something “off the shelf” – a point which remained inconclusive after being put to Mr Cadbury, the assistant museum curator, although he expressed his own guess that it had been commissioned. The VS refer to the enthusiasm of Mr Cadbury about the reredos. I find that the fact that Hems produced the reredos is all that we know or can safely conclude about it. This is a factor of relatively minor importance of itself in assessing the significance of the church and the contribution of the reredos to that.

- 39.3. The Petitioners point out that the Rew scheme is no longer fully intact, given the theft of the Mary and John statues from the reredos. Although technically accurate I found this to be stretching a point regarding significance, given the size, scale and impact of the reredos in the interior and the relatively small impact that the loss of the figures has upon the scheme as a whole.
- 39.4. The Petitioners argue that more significant than the reredos are the Alfred Bell windows, which are his earliest recorded design. These are singled out for special mention in the listing details and by Bettley in *The Buildings of England*. I have already commented that the importance of these windows seems to me to be an important factor in the church having achieved its grade II listing. It is of note that the window obscured by the reredos is the only surviving original window (although any viewer would still be able to read across the three windows as a result of the successful and careful recreation of the two missing windows). These factors lead me to find that the surviving Bell stained-glass is a significant individual contributor to the proper assessment of significance of the church. I also conclude that their significance exceeds that of the reredos. I draw this in particular from the importance placed upon the windows by *The Buildings of England* and their unique feature of interest in that they were the first windows designed by Bell (which the listing entry also flags up), in contrast to the neutral, arguably relatively dismissive, treatment of the reredos (above).
- 39.5. The Petitioners point out that there are real questions about the coherence of the memorial scheme design attributed in full to Rew. In particular the awkwardness of the reredos in the space, the gauging of the Rew-designed frescos to make room for it to fit, the lack of spatial interaction with the symbolic steps and the covering over of the frescos by the structure of the reredos all point to the possibility that, although undoubtedly part of the memorial reordering arrangements made by Edward Curtis, the reredos was not necessarily part of the design conceived of by Rew. There is insufficient evidence before me to draw any firm conclusions on this point. However the observations made by the Petitioners about the way the reredos relates to the apsidal chancel are accurate and indicate a degree of unsuitability of the reredos to its present location.
40. In respect of significance and in particular the holistic assessment of the Rew memorial scheme, the Petitioners also point out that, under the proposals, the Hems carved communion table would be left in situ and carrying out its intended function, that the remainder of the scheme would be left intact, with an improved appreciation of the whole

of the Rew-devised frescos (currently partly obscured by the reredos). The ability to see the scheme majority intact would also be coupled with the advantage of having the full scheme of the Bell windows and the original Gilbert Scott simplicity of design revealed. The VS comments that removal of the reredos would simply lead to a position where neither Scott's original arrangement, nor Rew's subsequent scheme were fully represented (Scott's design could only be recreated if all of the Rew design elements were to be removed, including the symbolic steps). In my judgment, neither viewing the Rew design scheme holistically nor taking into account fact that the removal of the reredos will fail to achieve a full recreation of the original Scott arrangement and leave the Rew scheme incomplete lead me to conclude that the reredos and its present location add a special degree of importance to the significance of the church. This is particularly so where, as I find is the case here, the advantages of removing this particular single element of a scheme would be to allow the majority, and the most noteworthy, of all of the artistically important elements to remain in their context and the various arrangements to be substantially revealed.

41. The above points and my assessment of them lead me to the following conclusions about the reredos. It undoubtedly makes a contribution to the significance of the church, in particular by reason of its inherent aesthetic quality, its provenance from a craftsman of note and its scale and impact within the small church. However it is not on its own an especially important piece, nor, in the way that it relates to the elements around it (including the facts of its detrimental impact on other, more important items of significance to the church such as the (liturgical) stained-glass, which it obscures, and the frescos, which it has damaged) is it wholly an enhancement to the church in its present position. In my judgment the contribution the reredos makes to the significance of the church is therefore limited.
42. It follows that my assessment of these various factors in relation to the *Duffield* questions (1) and (3), is that the removal of the reredos will harm the significance of the church to a moderate degree.

Duffield question 4 and assessment of Aston Rowant considerations

43. Moving to the fourth of the *Duffield* question: how clear and convincing is the justification for carrying out the proposals? I am again confronted by fair comment from the VS that the scant Statement of Need and an absence of measured drawings, photographs and plans accompanying the Petition made it (at least initially) difficult to fully understand the asserted justifications in context.
44. However the Petitioners' need is simple and was at least outlined clearly and readily understood from the Statement of Need, even if arguably initially insufficiently detailed in terms of drawings and dimensions. The need is, in summary, to celebrate communion in the sanctuary, facing west, safely and reverently. This is presently impeded by the layout of the sanctuary and in particular the presence of the reredos because the steps beside the communion table are very narrow with the risk of falling off, the communion table is narrow, giving little room to work in and the shelf jutting from the reredos both further reduces the available width of the table and is a hazard to elbows.

45. At my direction the Petitioners commissioned their architect to revisit the church and subsequently supplied further measurements and drawings. The VS remains unimpressed that these were not available earlier and at the quality of their presentation. However, the substance was sufficiently effective to enable the VS to understand the proposals and needs better, such that it ultimately conceded that there is insufficient space to conduct west facing worship with the reredos in situ and with the altar moved anything other than very substantially westwards.
46. I have reviewed all of the dimensions, drawings, plans and photographs supplied by the Petitioners. By particular reference to the dimensions provided for the depth of the carved communion table attached to the reredos, the height and width of the reredos shelf on which it stands, the depth of the reredos base, the space in front of the table, the dimensions of the plinth, tri coloured steps and rail and what I find to be a fair assessment¹⁴ of the minimum “pinch point” for free movement behind the altar (as indicated on the plans submitted by the architect) I am satisfied that the primary need the Petitioners have submitted is clearly and convincingly made out. As accepted by the VS, leaving the reredos in situ and moving the communion table forward, even as far as the very edge of the front step, would not provide enough space for the necessary free movement.
47. Furthermore, I am also satisfied that leaving the reredos in situ, detaching the carved communion table and moving it so far forwards that it overhangs the step to achieve sufficient space for free movement would still leave a complicated and potentially hazardous arrangement of the jutting reredos shelf and angled altar steps to be navigated by a priest and eucharistic assistant. This would, in my judgment, potentially impede the dignified, focussed and reverent administration of communion as the space would still be very tight and the need to be watchful and avoid tripping would remain. I also accept the Petitioners’ argument that such an arrangement would leave insufficient space between the table and the rail for administration of communion at the rail. The point was made that it would also affect the tri-colour symbolic design of the steps by hiding the white step, but I accept the VS’s argument on this that the effect could be ameliorated by suitably marbling or otherwise appropriately decorating the support. Despite this, the more serious safety and dignity concerns regarding the celebration of communion outweigh the purely aesthetic questions relating to the step, in my view, and I conclude that this is not a viable alternative which sufficiently meets the needs of the Petitioners.
48. In their Reply the Petitioners also referred to the secondary justification for the proposed works as being the revelation of the original form of the apsidal east end of the church and restoring the remaining original Bell stained-glass window to view. The DAC felt that this additional justification was a further powerful reason for the works, noting it in detail in its original site report and concluding its decision to recommend with: “*The works would retain the significant timber elements, although not the full composition, but would open up the original view of the east end of the apsidal sanctuary and allow the stained glass and decorative paintwork to be seen in their entirety.*”

¹⁴ I note the architect revisited this measurement several times and checked his assessment by reference to more objective standards including current Building Regulations.

49. I am satisfied that the proposed works will have the secondary benefits described. I am not convinced by the VS's argument against this that because relocating the reredos leaves the majority of the Rew scheme in place a complete return to the original Scott design is not achieved and therefore the objective would not be achieved. This misses the point of the secondary justification as expressed by the Petitioners themselves, i.e. the "*revelation of the original form of the apsidal east end*" rather than a strict return to the original Scott design. This way enables strong and complementary features of all of the elements of design and workmanship by significant Victorian designers and craftsmen (Scott, Rew and Hems) to work together. It will also have the beneficial effect of introducing more light into the dark east end of this small church by the reintroduction of the window. This will, in my judgment, complement the increased simplicity and enhance the features of all of the design schemes that will be present in that space.

50. In terms of locating the reredos on the link passage wall, I find as follows:

50.1. Although it accepted the principle of relocating the reredos, the CBC was not satisfied that the glazed link was an appropriate place for its relocation. The CBC's request that there be an options appraisal in this case has not been complied with by commissioning or undertaking a formal appraisal.

50.2. Despite the lack of a single formal appraisal, I am nonetheless satisfied that all reasonable options have in fact been fully explored and that both the CBC's request (as well as the need to be satisfied that there is no lesser option that can meet the need, as articulated by Hodge Ch. in *St Peter and St Paul, Aston Rowant*) have been complied with. As well as reviewing the limited available wall spaces, the options of leaving the reredos in situ and moving the communion table forward to various positions, including overhanging the step, have been explored. A further option of siting it inside the hall in a position that would enable it to be seen from the road as well as by those using the hall was also explored with the assistance of the new Archdeacon. That option proved impossible because the walls in the hall are not load-bearing and there is also a loft access in the hall wall which would be blocked by relocation of the reredos. This is a large reredos and a very small church. There is extremely limited wall space with windows occupying each of the walls and curved, frescoed walls in the east end. I am satisfied that the only feasible option for relocation and retention within the church is the load-bearing wall in the glazed link passage.

50.3. As the CBC observed, the relocation will mean a loss of liturgical context for the reredos. This is to be regretted. The CBC felt that this loss coupled with the thoroughfare nature of the link passage location mean that it would be better for the reredos to be disposed of altogether. I disagree. Although by no means a full compensation for the loss of liturgical context, I accept the Petitioners' argument that the new location opposite the communion table will at least enable the two formerly conjoined elements to continue a relationship. In my judgment this adds important value to the new location and is a benefit of retaining the reredos within

the church which outweighs any benefit that might be said to flow from disposing of it completely.

50.4. The CBC also rightly makes the additional points that the link location is unsatisfactory because it will place the reredos high on the wall and that there may be a risk of damage due to the high levels of UV light entering the glazed area. As to these points, although the reredos will be high up its scale is such that it will undoubtedly make an impact wherever it resides. It will also beautify and give greater interest to what is presently a plain and functional area and provide greater connection between the modern link and the historic original church. I am also satisfied that the risk of bleaching or other light damage to the reredos has been properly considered by the Petitioners. Although the evidence of the effect of light entering the link of a wooden door in place there suggests that there may in fact be no problem, a suitable and specialist window film has been identified and I will set conditions for its application.

51. It follows that although the present appearance of the east end will be very much changed by the relocation of the reredos and I have found that there will be harm caused by that change to a moderate degree, nonetheless I find that the Petitioners have clearly and convincingly justified the relocation of the reredos to the link wall on both the ground of enabling the safe and reverent celebration of communion in the sanctuary and that of revealing key elements of design which are presently concealed by the reredos.

Duffield question 5

52. As to the fifth *Duffield* question, the changes proposed would lead to public benefit in terms of safety, freedom of movement and the assurance of dignity for those involved in administering communion and to benefits for the congregation in enabling them to worship facing west and kneeling at the altar rail in the sanctuary. It would also lead to the incidental but, to my mind, significant, advantages of revealing the remarked-upon Bell stained-glass window, bringing increased light to the east end of the church, restoring the ability to understand the simplicity and shape of the Scott design of the east end and preserving all of the Victorian features within the church, the majority of which remain in situ. These important benefits of relocation outweigh the moderate degree of harm that will be caused. In reaching my view on this question I have borne in mind that the more serious the harm the greater the level of benefit needed before proposals can be permitted and I have also borne in mind at every stage of my consideration that the desirability of preserving a listed church, and all of its features of special interest in their settings, is of considerable weight and importance.

Conclusion

53. I direct that a Faculty be issued in the terms sought in the Petition. The works are to be completed within 18 months and the grant of Faculty is subject to the following conditions:

- 53.1. A photographic record and measured drawings are to be made of those parts of the church affected by the works before they begin. Copies are to be placed in the church log book;
 - 53.2. Before commencing any works, the Petitioners must notify the church's insurers and comply with any requirements or recommendations they may impose or make;
 - 53.3. Detailed joinery drawings showing the adaptation and any associated making good of the carved communion table are to be agreed with the DAC;
 - 53.4. Damage to the domed ceiling caused by the introduction of the reredos and made evident by its removal shall be made good and properly restored to ensure visual contiguity with the fresco decoration. The detail of repair and restoration works shall be agreed with the DAC prior to commencement;
 - 53.5. The Petitioners shall consult with the DAC to arrange for a specialist stained-glass conservator to survey and develop an appropriate methodology for the care and preservation (including in relation to prevention of theft) of the remaining original Bell stained-glass;
 - 53.6. A suitable protective film to prevent sun-damage to the reredos shall be agreed with the DAC and applied to the glazed areas of the link passage.
54. I have considered the guidance on the award of costs. There has been nothing unreasonable in the conduct of the VS. Indeed its contribution has led to helpful and important further consideration of aspects of the proposed works. Accordingly the ordinary rule that the Petitioners shall bear the court costs shall apply.

LYNDSEY DE MESTRE QC

22 MARCH 2021