

Neutral Citation Number: [2025] ECC S&N 5

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWELL AND NOTTINGHAM

Before: the Chancellor

IN THE MATTER OF THE CHURCH OF SAINT SWITHUN, EAST RETFORD

JUDGMENT

1. This Petition relates to a major re-ordering project in the church of St Swithun, East Retford.

The church building

2. Saint Swithun's is the principal church of the town of Retford, which comprises the old settlements of East Retford and West Retford, now contiguous. The church stands in a commanding position in a churchyard just off the main market square. It consists of a nave with aisles, north and south transepts, chancel with south aisle and extending presbytery, an eastern aisle to the north transept, a small vestry north of the chancel (now a kitchen), south porch and a central tower of four stages. The external appearance is largely of uniform perpendicular fenestration, with decorated work visible in the north transept and an earlier west door.
3. Inside, the position is not quite what might have been expected from the outside view. The nave, west of the western tower arches, is fully pewed, with special pews for the corporation in the front rows, and canopied pews, probably for churchwardens, on each side of the west door. The western end of the north aisle is occupied at ground level by an accessible WC and a servery. The font is in the south-west corner of the nave. The space under the tower is furnished as the choir, with inward-facing seating, and there is further inward-facing seating in the chancel before the steps to the presbytery. The chancel aisle is divided into the organ chamber and an area called the 'sacristy'. The former vestry, which can be reached from the north transept and from the chancel is, as indicated, the kitchen. The north transept and its eastern aisle, called the Lady Chapel, are treated as one space behind a glazed partition extending the whole height of the relevant voids, with a door to the north aisle. The south transept is divided from the nave by a wooden screen about 2m high. It is used as a store for furniture and other paraphernalia.
4. The church has suffered dilapidation and has been much restored and rebuilt. The first record is from the thirteenth century, and there is a series of monuments starting at the very end of the fifteenth century. In 1651 the tower fell, virtually destroying also the chancel and the south transept. Rebuilding took place immediately and was finished by 1658; thus substantial parts of the fabric date from the Commonwealth, a period when rather little church-building work was undertaken. Further major rebuilding took place in the eighteenth century and the nineteenth, particularly under the Nottingham architect G G Place (1852-54), including new roofs to the nave and aisles, floors of 'Yorkshire flagging' and benches) and later under G F Bodley. In the aisles, the flagstones of the floors were replaced with red tiles in 1905. Despite all this work there are numerous signs of the history of the church and the building preserves very much the external appearance it had before Place began work. There is a very fine collection of glass.

The furniture and fittings are almost all of the late nineteenth century or later, except for the font, which seems to have fifteenth-century origins.

5. The church is listed grade II*, so is to be regarded as a particularly important building of more than special interest. The listing refers to the features and history I have described, and mentions 'Fine set of priests' and choir stalls, and also fine set of pews in nave and aisles'. I shall need to say a little more about that later. The church is on the Historic England 'Heritage at Risk' register. Its condition is recorded as 'poor' and priority A: 'immediate risk of further rapid deterioration or loss of fabric; no solution agreed'.

The church family, and the church in the community

6. The role of St Swithun's in the life of its people and in the life of Retford is not what it has been in the past, even the recent past. I need to try and assess how the church works today in order to have some context for the proposals, and in order, amongst other things, in due course to assess the extent to which changes to the church are justified.
7. Besides the Rector, there are two others described as pastors; and the Rector's wife is Operations Manager of the church. There is a single churchwarden, and (in addition to those just mentioned) four members of the PCC. I do not know the number on the electoral roll. I have looked at the Register of Services from the very end of 2021 to March 2025. Until the arrival of the present incumbent, the Revd Reuben Crossley, who was licenced in September 2022, there had been an interregnum lasting about five years, with cover provided mostly by retired clergy. Attendance at most services was modest and no doubt disappointing. The regular services were of Holy Communion on Sundays and Thursdays and the attendance and communicant figures were in the mid to high teens on nearly all occasions.
8. Since September 2022 the pattern has changed. The Thursday services continue, and have roughly the same numbers. The Sunday congregation is for the most part different people. There is Holy Communion usually twice a month, the services being 'Morning Worship' on the other Sundays. The attendance seems to have settled down to an average of a little over 80 adults; what is particularly noticeable is that there are also young people aged under 16, usually between 11 and 17 of them. It is said that there are 'new visitors to the services every week', but the figures do suggest that if that is the case there is a turnover, with the new visitors replacing some who are not attending. The Sunday collections have been rising steadily and are now usually between £200 and £300, sometimes more; although the amount per person is probably less than it was, because the much smaller former congregation often managed a collection of £50 or so. The figures for communicants at the two major feasts are as follows. 2022 Easter 23; Christmas none recorded (there were 33 at the service). 2023 Easter 52; Christmas 41; 2024 Easter 64; Christmas 33. So far as concerns the occasional offices, there have been, in the period covered, several funerals and memorial services. On seven Sundays within the period of rather over four years there have been baptisms, sometimes no doubt more than one. There have been only two weddings.
9. There are many difficulties in trying to derive facts from these figures. The collection figures say nothing about regular giving; and there is no information on the extent to which the congregation is Retford-based. It must, however, be clear that the church is fuller than it was, and that young people are coming to the church for the first time in years.

10. There are other activities in the church apart from services, although I do not have a list of them or a calendar. Anybody not already a regular member of the congregation would presumably look online to see what was happening at the church and whether they might want to, or be able to, attend. The church's page on www.achurchnearyou.com lists Holy Communion on Thursdays and Sunday services without any mention of Holy Communion, but no other activity. The church's own website at www.stsretford.org does not mention the Thursday services, and does not mention the Sunday services of Holy Communion either: the description is 'Join us Sundays at the 11! Doors open at 10:30am for free coffee & donuts. What happens at the service? The service takes the form of a welcome, a few contemporary songs (which are easy to pick up or you can just listen along), prayers from the front, a short message about how Jesus is relevant to our daily life, and ends with a couple more songs'. It appears that nobody who is not there will know whether there will be Communion on a Sunday. A weekly youth group for those aged 11-16 started last month, but no other regular events at the church are apparent, although there is said in the church's statement of needs to be a 'drop-in-group' on Thursdays, said to include a service, evidently not in the Register. Concerts have taken place in the church: I am told of three. On Sundays before the service there are sandwich-boards and welcomers outside the main door, to encourage attendance at the service, but otherwise, as I found on my visit during a normal weekday, the exterior of the church is forbidding. The present worshipping community do not find it possible to open the church except when an activity is taking place inside. The fact that the impressive main church of a relatively populous community is not favoured for weddings is a matter of note.
11. Thus, in my assessment, although there are many good things happening at St Swithun's at the moment, and under the current leadership, the church cannot really be described as an asset to the general community. It does not appear to be lively except to those who are already involved with it; it is not readily available to members of the community as a whole, and research on-line would be unlikely to lead to finding out what the congregation is really doing. At the moment, the main body of the church is used for some meetings, for worship for about 90 minutes a week, and for fellowship before and afterwards; I understand the Thursday services usually take place in the north transept, sometimes in the chancel. The needs to be addressed are in realistic terms limited to those of the present worshipping community, not those of Retford as a whole.

Proposals

12. The original proposals have been modified in the light of comments from the heritage bodies and from me. In the context of this case, the history of the proposals is of some importance and I shall set out the salient facts of that below. The proposals have been prepared by Aaron Walker of AWA Building Consultancy.
13. The currently-proposed work is as follows. The pews are to be removed and disposed of, with the exception of the Corporation pews, which are to be re-sited in the chancel, the pews immediately behind them, which are to be re-sited round the font, and one of the canopied pews flanking the west door. Existing heating radiators in the body of the nave and aisles are to be removed, except for two Victorian cast-iron radiators, which are to be disconnected and installed for show only against the outside walls of the aisles. Radiators against the aisle walls will continue in use. The stone and tiled floor in the nave, aisles, south transept and central part of the choir (below the central tower) is to be covered with a raised floor incorporating heating pipes, which will be connected to the existing boilers. The floor itself is to be carpeted, save for the western quarter of the nave and aisles, which is to have an engineered wooden finish. Chairs, number unspecified,

are to be introduced into the nave for seating. The organ console is to be moved to its former position in the chancel, beneath the organ. The WC and servery are to be replaced by three WCs (including one that is accessible). A new servery is to be constructed in the northwestern corner of the nave, immediately adjacent to the west doorway, replacing the canopied pew that is there at present. Subsidiary electric fan heaters are to be installed above the (main) south door from the porch, and the west doors. A new, electric, subsidiary boiler is to be installed to provide hot water for the servery and the basins in the WCs. The floors of the WCs and the servery will have a vinyl finish. There will be a new audio-visual system, with digital displays and speakers, controlled from a new desk fixed towards the rear of the nave. The new fittings are to include screens on the inner westerly-facing angles of the west arch of the central tower, and on the outer westerly-facing angles of the next piers west, so giving views from the aisles. (The system does not appear adapted to the use of screens by a congregation in the western part of the church). There are to be speakers mounted on the west arch of the nave and the central pier of each aisle. There will be high-level lighting bars in the nave above the arch between the first and second bays from the east, and uplighting from below the floor level.

Statements of significance and need

14. The proposals are supported by a statement of significance by Mr James Edgar, which includes a gazetteer listing the old features of the church affected by the proposals, and assessing their individual significance. A particular feature of this work is an investigation of the history of the seating in the church. Mr Edgar challenges the listing description of the pews as 'a fine set'. He assesses their significance as low.
15. The statement of needs provides the thinking behind the proposals. The background is the need to respond to the increased use of the church by larger congregations on Sundays, and the intention to be able to use the east end of the church for smaller and more traditional services. Hospitality is a feature of the congregation's mission, and proper facilities are essential. The space needs to be adaptable, so that it can properly accommodate the services, the drop-in and proposed similar groups, Alpha Course meetings and meals, and other courses. The heating needs improving.
16. The raised floor, incorporating the heating, will eliminate steps and lesser irregularities, and provide adequate warmth. The carpet will be acoustically valuable and will enable children to sit and play throughout the church. These changes will be reversible and protect the existing fabric. The new screens will be 'large', as the present ones are too small. The new chairs have to be metal because lightweight stackable chairs are essential to secure adaptability. The increase in the toilet accommodation is demanded by the numbers of people, and careful consideration has been given to the arrangement of the cubicles and their impact on the visibility of the west window of the north aisle.

Responses from the heritage bodies

17. The Diocesan Advisory Committee sought comment from Historic England (HE), Historic Buildings and Places (HBAP, but called 'Antiquities Society' by the architect), and the Victorian Society (VicSoc).
18. VicSoc and HBAP agreed with the assessment of the significance of the pews as 'low', but all three bodies sought more precise details of the proposals for siting the corporation pews in the chancel. Molly Edwards of HE not surprisingly adhered to the listing assessment and opposed the removal of all the pews. All the consultees were prepared

to countenance removal of the benches in the nave and aisles provided that a representative sample was installed somewhere in the space. All the consultees thought that the chairs needed to be reconsidered. Authoritative advice of the Church Buildings Council on chairs should be followed. As Matthew Saunders of HBAP said, the proposal runs directly counter to the advice of the authoritative Church Buildings Council, and there are many designs of lightweight stackable wooden seats.

19. The design and exact placing of the WCs was subject to comment and query on the details, but there was little objection to the proposals in principle, although it was noted that the window behind them would be partially obscured. Historic England sought further details of the design and justification of the placing of the servery. VicSoc could not see why the servery should be against the west wall, damaging the scope of the view from the west and the symmetry of the view from the east as well as requiring the jettisoning of one of the pair of canopied pews.
20. All the bodies were concerned about the raising of the floor level and its covering. HE sought more detail on the reasons for the choice of this way of delivering underfloor heating and justification of the exact level of rise chosen. The description so far offered 'utilises modern techniques unsuitable for traditional construction'. Details of the existing floor and its performance by way of insulation were also sought. Connor McNeill of VicSoc also expressed concerns and sought further detail and justification. He wanted to know how the new floor would interact with the existing and retained features of the interior, particularly as the proportions of the nave piers will have been part of their design. He said that if a new floor is required, it should reflect the articulation between nave and aisles, even after removal of the benches. Mr Saunders agreed. He noted that the raising of the floor to a uniform level required further explanation and justification in terms of the potential for archaeological damage and adverse visual appearance. He objected to the (then) proposal for uniform carpet tiles, but his comments are relevant to the use of carpet generally, that a uniform surface would be 'visually quite disastrous' after removal of the benches. Carpet is liable to stain and wear out; a need for children to be on a carpet can be met by carpeting an area rather than the whole, and anyway, carpets may harbour germs. Any uncarpeted areas should not have engineered or varnished surfaces, 'more suited to a school gym than a sacred and historic space'. Mr McNeill agreed with his comments on carpet. A further response from VicSoc reiterates its objections, particularly to the proposed treatment of the floor. Even if the existing floor is not damaged, it will be permanently hidden from view and the raised floor and carpet would reduce the charm and interest of the space. VicSoc had also noted that the large radiators at the back of the block of benches are of historical interest and was glad to see a revised proposal that they be retained and relocated, non-functioning, against the aisle walls.
21. Mr Saunders, who said he knew the building well, expressed sympathy with the endeavour to update the building but urged strongly that 'the fragile character of the historic interior should not be countered by workaday changes that do not do justice to this glorious building, by far the most glorious and numinous space in the town'.

Reply from the parish

22. The architect prepared a point by point response on behalf of the petitioners. A number of the points are taken: the carpet tiles are replaced by sheet carpet in colours reflecting the historic divisions of the church; the large radiators are to be preserved; there is a partial elaboration of the AV and lighting scheme, not wholly consistent with the

statement of needs and not providing all the information sought; and there is amendment to the detail of the edges of the flooring. For the most part, however, the response simply restates the parish's choices. This is particularly so in relation to chairs (where the response does not suggest that any other seating has been considered following the strong opposition from the heritage bodies and the reference to the CBC Guidance), and carpeting, on which it is simply said that there is what is called a 'strong precedent' in favour of carpeting. The canopied pews are dismissed as simply benches with canopies. The servery position reflects the parish's choice and will not be further considered; putting it in the north aisle would reduce the space available for seating, which it is important to maximise, and the servery needs to be the first thing seen on arrival. The height of the new floor has been carefully chosen. No details are given about the heating, but the details of the floor are part of a section called 'Underfloor heating comments'.

DAC advice

23. The DAC's notification of advice was that it did not object to the work being approved by this court. It said, in the form permitted by the Rules, that the parish's explanation of the way in which it had had regard to the net zero guidance was adequate. Its only substantive reservation was whether a handrail might be needed near the servery and the west door, where there would be a change in level. In its opinion the parish response to the heritage bodies' objections went even further than necessary: 'Each question raised by each society has been answered within a document uploaded to the supporting information by the architect. The DAC were happy that the points raised by the committee and others had been satisfactorily answered and the need for the proposals outweighs any possible [sic] objections'.

Initial consideration of the petition

24. The above summary is of the principal material offered for consideration by the court. It was appended to the petition itself, which indicated that the total cost would be £150,000, to be paid wholly from funds paid to the PCC for the purpose. In fact the parish has an award from central Diocesan funds for work to the building, in recognition of the needs of mission in Retford and in this important church. There is a PCC minute of a resolution on 27 October 2025 approving the proposals as prepared by Mr Walker, including 'revised heating system' and 'an AV refit by Noise Boys'; and there is a reference to a Noise Boys specification uploaded to the online faculty system. I have also considered anecdotal material in the form of photographs, and supporting letters from three parishioners who, themselves or their families, have special needs.
25. On 29 January 2025, having reviewed the documents uploaded to the Online Faculty System and submitted to me a few days earlier, I indicated that I would need to visit the church to understand both the proposals and their likely impact on the building. I added this:
1. In the mean time it may be worth the parish thinking very hard about the proposal to carpet the new floor, which is (as I assess the proposals at the moment) the single thing most likely to cause harm to the building as a heritage asset, and would appear to be by no means necessary in order to adapt the building for its proposed use. It is true that some churches have carpet, but many do not, including many that have been subject to recent schemes similar to this one.
 2. It looks as though it will also be desirable to finalise the programme for the refitting of the chancel including the Corporation pews.

3. I am not sure at all that I understand about the heating. Evidently the DAC saw material that explained the choices being made, but I do not think that has been uploaded. Please upload it (or let me know where it is in the material already available).
 4. I think that what I have is a proposal for an entirely new system to be run from the present boiler, a gas boiler whose emissions have been increasing. What are the carbon implications of this please, and what is the position likely to be in 2030 five years from now, less than that from the date these works are completed)? I note in that context that the existing heating system, said to be inefficient, is said to be only ten years old in the information entered in the toolkit.
 5. There are also carbon implications in the lighting and other use of resources. These also need to be justified, given that the church obtains its electricity from non - 'green' sources.
 6. I should emphasise that none of the above indicates any concluded view adverse to any part of the scheme.
26. The Registrar and I visited the church on 14 March. I am very grateful to those who met us there and made us welcome, and spent time with us showing the church and answering my queries. Following the visit I entered notes on the online faculty system, for the attention of the petitioners.
27. There were some relatively minor issues to be settled about the precise configuration of the proposed floor near the great west doors, and in relation to some of the proposals for the seating. My principal questions related to the heating system, and came under two heads. First, I sought information about the way in which the decision to have the proposed system had been reached, its capacity, its effect on the church, the capacity of the existing boilers, and the net zero issue. I wrote as follows:

Thank you very much to those who made time for me and the Registrar last week. I learned a lot about the church and its mission, and about the proposals. At the end of our meeting, I indicated some areas where the church may want to make its case more precisely, bearing in mind that the Court has to balance interests and concerns against one another. Following any new submission, the amenity bodies will probably need to be asked again, in the hope that they may be sufficiently satisfied by what is by then said.

There are a few other things that I still need, too complex in one case to be dealt with orally on Friday, and the others simply arising out of our discussions.

1. Please upload a detailed treatment of the position inside the central west door as it will be after the new floor is fitted.
2. Please upload a detailed treatment of the position inside the south door, including the area of the font, as it will be after the new floor is fitted. (The above are obviously to do with steps, large and small, and the vertical distances will need to be shown).
3. Please upload photos (or, if it is electronic, the relevant details) of the Register of Services for the period during which Reuben and Portia have been at St Swithun's . The figures I was given on Friday are obviously impressive and I should like to mull over the whole picture.
4. I am afraid I still do not understand about the heating. I have been through the new and old papers and cannot find the specification, and I was not able to make a great deal of progress with the questions I was able to ask on Friday. As we (I more recently than those involved in the parish) know, the building is a large one, of considerable height and volume, with not much to affect or hinder

air movement between its parts, save that the N transept/Lady chapel are glazed, which certainly does provide the possibility of the separate heating in that area being kept in that area.

a. The Statement of Needs refers to the need to have better heating, and following my visit I am not particularly surprised about that. What I cannot find is the calculations relating to the proposed work.

b. As I understand it, the current boiler (which has a substantial output, unknown to me) is to be retained in use. The various draughts are to be left as they are for the moment, and there is no proposal for insulation (except within the new floor itself). The existing radiators are to be taken out of service (or some of them are), and the heating is largely to be provided by hot water pipes below the new floor. So far so good, as an idea.

c. What I would expect to be behind all this is, first, an aim in terms of what increase in temperature is sought, and what that will require at the various times of the year. Then there would need to be calculations of the volume of the building, because that is the air that will need to be heated; there would need to be judgments about heat loss by lack of insulation and draughts; and there would be allowances for the fact that the heat will start near where people are, but will rise, and will disperse into the chancel and the S transept, and if it is necessary to turn the heating on before the building is in use in order to reach the required temperature, quite a lot of the heat will disperse upwards and eastwards without passing any people and warming them. All that will produce an approximate figure in terms of required thermal output. Only after that will it be possible to say how that will be achieved, in terms of amount and calibre of underfloor piping required, capacity of the boiler, heating schedules, and (last but not least) running costs. The last are said to be difficult to cope with at the moment in order to provide a warm church, although the required thermal output (and hence the work needing to be done by the boiler), and therefore the cost, may not be very much different after this work.

I appreciate that all this has presumably been done somewhere, although I have not yet been able to discover even the (almost) final part of the work, which would be the plan of exactly what new pipes are going to go where under the floor.

28. The second issue I raised with great hesitation, because the Court has no expertise in heating systems, and these proposals had the backing of the architect, the PCC and the DAC. But, try as I could, I was unable to discover that the proposed work included any heating system at all. There were the proposals for decommissioning part of the existing system, and the raised floor was capable of taking a new under-floor system, but, as I pointed out,

1. There is a further problem in the materials as I have them, which is that there is in fact (again, so far as I can see) no actual provision for the installation of any heating at all. The drawings refer to the Collecta flooring having an integrated heating system, and refer to separate Collecta papers dealing with that, but the latter do not seem to have been uploaded. I have been onto the Collecta website, and the best I can find is that in their underfloor heating systems the whole of the piping, together with all other requirements of a heating system, are 'supplied by third party' The Gobi flooring system can manage pipes of between 10 and 20 mm - the latter would have, I think, four times the output, and running costs, of the former.

2. I do not think the materials currently uploaded specify even who the third party will be, let alone what he is going to supply. Paragraph 11 of (eg) the DAC notification seems to assume the heating system comes with a Collecta floor, and drawing B1-00-DR-A-2002C has, as its legend, 'Collecta Gobi - Cradle and batten levelling system incorporating underfloor heating and highly conductive floorboard', but as I understand the Collecta materials, flooring system simply has channels in it, in which heating pipes, as separately specified and delivered (and costed), can be installed. It does not 'incorporate' the heating unless somebody else puts it in. The Gobi installation manual has much about making sure the pipe channels are properly lined up, but nothing about the piping itself. A similar misapprehension appears in para 3.20 of the specification, which refers only to the connecting of the installed new piping to the existing system. There is no allowance in the specification for the installation of the piping itself. Earlier, again, there is a reference to the installation of the 'integrated' system in accordance with Collecta and other specifications, but none of those import separate consideration of, or supply of, piping.
3. Any Faculty will be issued for the work proposed (only), so in due course I shall also need to see a scheme of work that actually includes the installation of the appropriate piping.
4. I take it that all the calculations of what is needed in the way of piping must all have been settled by an independent advisor (not merely someone anxious to sell or install pipes). I need to be able to see the workings, because the piping that is said to be going to make all the difference to the heating is one of the major justifications for the need to raise the floor. Part of the balance will be just how much warmer the building will be with that system. Simply saying (or worse, presuming) that it may be warmer, by an unspecified amount, is not making a strong case.

Further developments

29. There was no direct reply to my questions about the heating system. It is, however, clear that my concerns were well-founded, because the next step was the production of a 'revised schedule of works', which for the first time included a heating system, consisting of 16mm heating pipes within the floor: there is no indication of why this particular bore has been selected. There are various other changes, and the cost has risen to £211,000 including VAT, but excluding the cost of any chairs (which would be about £13,500 for 200 chairs of the pattern the parish has chosen). There is a new document seeking to justify the proposals in the light of the principles which the Court will need to apply. Appended to it are a Peak Heat Loss Calculation, undated, and an Underfloor Heating Assessment, dated May 2025, as well as the letters of support, and the photographs of the register of services, to which I have already referred. The amendments were considered at the next meeting of the DAC and the Secretary records that there was no concern expressed, so the advice already given still applies. I have considered whether the changes to the proposals require a further public notice. To a large extent they implement what the original proposal purported to detail. No further notice is needed.
30. I asked whether there was to be any more material or anything further the parish wished me to take into account; I indicated that I thought the matter was now suitable for determination without a hearing and sought the petitioners' opinion on that. I received the response that there was no more material, and that nobody sought an oral hearing. I therefore proceed to determine the petition on the basis of the material before me.

Duffield

31. In considering a scheme such as this the Court has to bear in mind the heritage value of the church, recognised in its listing. The considerations are not the same as those which would apply if the building had secular use, but they nevertheless need to balance the proposals and the advantages of carrying them out against any harm to the significance of the building. The principles to be adopted are formulated as a set of questions in the judgment of the Court of Arches in **Re St Alkmund, Duffield** [2013] Fam 358 at [87]. They are as follows.

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, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary’s, White Waltham** (No 2) [2010] PTSR 1689 at 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 at p.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 2*, where serious harm should only exceptionally be allowed.
32. There is no requirement to show that the changes are necessary. The fact that changes are reversible is of relevance, but only to a limited extent. If there is a clear and convincing case for the proposal, reversibility may make it easier to tip the balance in its favour.
33. The questions have to be answered in relation to the individual project, in its elements and as a whole. There is no principle that what has been allowed by faculty in one church will be allowed in another, although comparison of other projects may help to show what will or will not provide a satisfactory result.

Floor and heating

34. I must start with the floor and the heating. It is fair to say that from one point of view the proposals look to be an ideal solution. If the pews are removed, the floor, which already has some irregularities, will have further obstructions and trip hazards in the form of the pew platforms, about 50mm high, and perhaps little in the way of solid floor beneath. If a new floor could be laid above them it could be at the level of the step into the church from the south porch, so allowing the whole body of the church to be accessible and step-free. Not only that, but the void beneath the new floor could be exploited to contain heating pipes that would constitute a solution to the necessary warming of the church.
35. The principal difficulty is that there is no doubt that the raising of the floor in the manner suggested, coupled with the removal of the pews, would cause serious harm to the

significance of the church as a building of special architectural or historic interest. The floor would conceal all but the very top one-seventh of the bases of the piers, which would seem to rise from holes in the floor rather than being solidly and proportionably raised on it. The architectural integrity of the design would be lost while the floor was in place; and the historic interest would suffer by the obliteration of a characterful and varied floor surface and its replacement by a uniform stretch of modern materials: uniform in texture even if there were some variation of colour. In the choir the raising of the central floor would clash with the stalls, which would remain at their original level. In striking the Duffield balance I therefore need to consider how clear and convincing is the case for undertaking this work.

36. Although the raising of the floor is presented as in part justified by the need for accessibility, the latter can be achieved in numerous other ways and there is a great deal of experience in numerous churches with considerably more varied floor levels. The pew platforms could be removed; there could be repairs to the floor; there could be a ramp from the south door. The new raised floor only really comes into its own as an idea because it could also include the heating, for which, without the new floor, another solution would have to be found. It seems to me that if the floor is to be justified, the justification is likely to be found in the excellence and suitability of the heating solution.
37. At this point in the discussion the gaps in the materials taken into account by, and uploaded by, the parish become crucial. The technicalities of heating a vast, draughty, uninsulated building like this are obviously not within the Court's own knowledge and although the Chancellor can properly challenge material put forward by the Petitioners or others, particularly by identifying any lacunae, it would be quite wrong for the Chancellor to try and reach any conclusion on these technical issues without full expert information. The parish, however, seems to have been prepared to do exactly that. When the decision was made to proceed with the present scheme, there appears to have been no technical information relating to (1) the required rise in temperature; (2) how it is to be obtained; (3) whether it will be obtained by the proposals; (4) whether the existing boiler or boilers can do it; and (5) what running cost impact there will be. There is a series of assertions about the replacement of the heating but nothing showing that it will be fit for the specific purpose of raising the temperature in any meaningful way in this specific building.
38. The new 'justifications', which are new and cannot have had any part in the original thinking, are not much help. The heat loss calculation is a basic estimate and on its face is subject to an actual survey of the building, which is not said to have taken place. The Underfloor heating assessment is in very general terms and does not indicate any of the material derived by the writer from the two different contractors consulted. Despite the feature of the heat loss calculation noted above, this assessment is based on it; and it is also based specifically on the continuance of the existing heating system which is recorded as raising the ambient temperature to 14C on cold winter days. No allowance appears to be made for the decommissioning of the large radiators in the main space of the nave. The advice is given that the process of underfloor heating is to warm people rather than air and that the floor temperature to be attained will be 26-28C, (the latter being, I believe, the 'heatwave threshold' for the East Midlands). That raises some obvious further questions about the scheme proposed. Why so hot? Is the chosen bore the right one? Why is there to be heating in the south transept, always on when the underfloor heating is on? (I have seen no proposals to isolate it.) In general, why is the heating not to be zoned?

39. I do not doubt what is said about the way in which such a system works: it provides much the same effect as previous generations of churchgoers achieved by wearing warm clothes – but it does not at all look as though the scheme proposed has been designed with that in mind. In any event, the document, which runs to only three pages, (including one devoted wholly to heat pumps, one half-page pointing out that underfloor heating can in fact be installed on top of the floor, and an executive summary) does not purport to be an analysis of the detailed needs of the building, its uses and its users, and is clearly not calculated to enable anybody to make an informed choice about how to heat St Swithun's.
40. What makes justification more difficult still is the lack of any consideration of fuel costs or net zero considerations. The DAC's statement that the Petitioners' explanation is adequate is incomprehensible, as there was no explanation (just as, in the heating scheme they considered, there was no heating). No responsible parish could think of commissioning a new heating system without any idea of what the energy consumption and costs would be, or whether the existing boiler could produce the necessary output. Besides, the parish's existing reliance on gas and on electricity apparently from non-renewable sources, with no clear plans to make any change by 2030, is problematic in itself. In this context, the declaration on the checklist that draught-proofing windows is 'not a priority right now', and that the possibility of insulation under pew platforms is 'not applicable' are matters that would need to be taken into account in any proper evaluation of the parish's explanation of its following of the net zero guidelines.
41. The truth of the matter is that there has been no proper or persuasive justification for the adoption of this heating system. It follows that the raised floor could be justified only on accessibility grounds. For the reasons given above, those grounds are insufficient of themselves to justify the serious harm caused by raising the floor.

The pews and benches

42. I agree with the assessment of the benches made in the statement of significance. They are of their time, and their removal will result in some harm to the significance of the church as a building of historical interest, but that harm will be lesser. The justification will be a much more flexible space, capable of supporting the present activities and a wider range of activities, especially if the present or any future church family make the building available to the wider community. The benefit comfortably outweighs the harm. That harm will in any event be mitigated by the preservation of some benches near the font, and possibly others in the presbytery.
43. The removal of the corporation pews and their re-siting in the chancel will cause wholly insignificant harm. They are fine work, constructed in the years before the First World War, but they have already been moved at least once and they will find a satisfactory home beside the other traditional and near-contemporary furniture in the chancel.
44. I am more concerned about the removal of one of the pair of canopied pews flanking the west door. This would, however, be necessary if the proposals for the servery and WCs have approval, so it is to them that I turn.

WCs and servery

45. The proposal to extend the toilet facilities seems to me of itself to cause no harm to the significance of the building, given that the proposed footprint is already occupied by the

WC and the servery. The only difficulty is that the necessary height of the cubicles will obscure the lower part of the aisle west window, itself a piece of some significance by O'Connor. The justification of the facilities, and their necessary height, is clear, and the benefit is sufficient to tip the balance in favour of the proposal. If the raised floor is not installed the obstruction of the window will be about 180 mm less. The introduction of a subsidiary boiler will need to be considered in conjunction with net zero guidance.

46. The petitioners want a servery that shouts to those entering the church that hospitality is to be had there. Hence the reason for having it at the north-west corner of the nave, next to the west door but at an angle facing the south door, the entrance generally used. The site proposed will result in harm to the architectural and historic significance of the building, essentially for the reasons given by the heritage bodies. The view from the west doorway will be asymmetrically bounded by the servery; the view to the west door will cease to be balanced and will be a coarse contrast of old and new; and the integrity of the pair of canopied pews will be lost. I assess the harm as moderate to serious. I note what is said about the loss of seating and of immediate visibility if it is in a different place, but in my judgment the justification for its proposed placement is not, on the material I have, clear or convincing.
47. It is supposed to be being used in combination with the existing kitchen, but is placed about as far away from it as it could be. If chairs replace the benches, their flexibility greatly reduces the impact of the loss of a particular potential seating area; and as there is no indication of how many chairs are to be introduced (except a plan showing a suggested arrangement of 210 chairs, produced well after the decisions about the servery were taken), there can be no substance to an argument that there will not be room for them. As for the message, it is possible to have notices, and given that the visitor needing a welcome will only be entering when there is an activity taking place, there are many ways of making it clear that hospitality is available. There is no doubt that placing the servery somewhere in the north aisle would be very much less damaging to the significance of the building, and it might well be much more useful if it was within reasonable reach of the kitchen. There are assertions but it does not seem to me that alternative sitings have been properly explored, and that is why the justification provided is in my judgment less than persuasive. There is clear justification for a servery, but not for one in the proposed position. Further, the benefit of that particular siting is not by any means shown to outweigh the harm it would cause.

Seating and carpeting

48. If the benches are removed the congregation will have nowhere to sit, so permission to remove the benches would entail permission to introduce some substitute. The petitioners seek to introduce upholstered metal-framed chairs, on the ground that the chairs they need must be readily movable and stackable. The introduction of furniture so alien to the materials associated with the building and in general with an atmosphere of calm and peace would cause moderate harm to the significance of the church. That is why, as has been pointed out in responses to the proposals, the Church Building Council's authoritative guidance is that neither metal frames nor upholstery should be used. The justification is vestigial, and the parish's responses seem to me simply to demonstrate that not sufficient attention has been given to how that guidance can readily be followed rather than being ignored. It is interesting that the petitioners buttress their position by a photograph of their proposed chairs in use elsewhere, in circumstances where they appear an entirely unsympathetic intrusion into a listed building. Numerous less damaging seating solutions are available. I do not say that upholstery of a suitable

quality and in a suitable colour is ruled out if a proper case is made, but I do not accept the case for metal frames.

49. Carpeting a large expanse of space such as the nave, aisles and chancel would also cause moderate harm to the significance of the church by erasing the historic variety of surface treatments, reducing the impact of divisions of the church as reflected in its flooring patterns and, if the treatment of floor covering proposed for the raised floor were to be repeated on the existing floor, introducing a new division across the church. Further, carpet may quickly look shabby, is difficult to maintain (particularly if meals are going to be served and eaten in the carpeted area, as appears to be proposed for Alpha courses) and is more difficult to keep clean and germ-free. The mere fact that some other grade II* listed churches have carpet does not very much help in deciding whether the introduction of carpet is justified at St Swithun's, and it does not appear to me that such justification as has been formulated begins to deal with the matter: as I pointed out, some churches are carpeted, but most are not. In acoustic terms the position is dubious and the papers supporting the petition are not entirely consistent on what the effect would be, particularly when the relevant impact is of music played to a congregation, clothed and itself providing a softening of resonance, in circumstances where it is said (as it is said in relation to the siting of the servery) that the congregation is of a size to occupy much of the possible seating area. Realistically, the benefits to be obtained by carpeting the area are unknown and as such, coupled with vague justification, do not outweigh the harm.

The organ

50. The proposal to re-site the console near or under the body of the organ itself will cause no harm to the significance of the church. The console is movable anyway, so there is really no change involved in the proposal. I agree with the DAC that the DAC's organ adviser should provide supervision and give any necessary advice.

AV system and lighting

51. The proposal as approved by the PCC and as approved by the DAC is said to be contained in a specification by a firm called Noise Boys. The architect's schedule of work refers to the same document. It has not been uploaded, and therefore was not, I assume, seen by the DAC before it gave its advice. Wiring diagrams and information about supporting brackets is uploaded, but there is no information about the size of speakers, screens, or the associated lighting. Ms Edwards of HE pointed out that these details would need to be provided. They have not been provided by the contractor, and nobody seems to suggest that they are available anywhere else. The statement of need says that the existing screens are too small, but in the response to objections it is said that the existing screens will be re-used. The latter document refers to an apparently unavailable specification for the speakers.
52. The light bar, its treatment, placing and effect are unspecified in the documents available, and this feature is not shown on any of the architect's drawings. The Noise Boys plan shows six uplighters in the nave and two on the eastern (far) tower arch, but there is no assessment of what the effect of either or both schemes will be in use: neither the light bars nor the uplighters appear to be calculated to provide any light in the aisles. Again, there is no energy assessment.
53. The desk in the nave is a more or less essential feature of such a system. I have not seen any particular justification of its positioning. It is bound to be obtrusive, as the only fixed

furniture. If I have understood the Noise Boys plan correctly, the proposal is to put it directly in the sightline between the south door and the servery. Given what was said about the need for position of the servery, I do not understand that choice.

Decision

54. The outcome is that there will be faculty permission for the removal of the pews as sought (except the canopied pew), subject to relocating the corporation pews to the chancel, the benches immediately behind them to be around the font, and other benches to be retained for the time being for consideration for use in the chancel or presbytery. Nobody has suggested that the pew platforms be removed. Wooden stackable chairs may be introduced to a pattern to be approved by the Court. There will be faculty permission for the moving of the organ console. There will be faculty permission enabling the installation of the three new WCs in place of the existing WC and servery, and for a supplementary electric water heater, the latter in accordance with arrangements to be approved by the Court.
55. No faculty permission is granted for any of the other proposals, for the reasons given above. It will be noted that in relation to many aspects of the scheme the position is not that the proposal cannot be permitted but that in the material before the court there was insufficient detail or justification for the choice of solution adopted, often despite specific requests for information.
56. There must be a full photographic record of the interior of the church as it is now, before any work commences, which must be deposited securely in the church archives. All work must be completed within twelve months of the sealing of the faculty.
57. In the circumstances it may be that the parish will wish to consider whether to proceed with any of the work, or to formulate another scheme after full consideration of alternative solutions and in line with the church's guidance on the relevant topics.

Conclusion

58. There are lessons to be learned. If the scheme as originally proposed had been carried out, not only would the church presumably have been colder than it is (because of the removal of the large radiators), but the new floor would have had to be extensively compromised in order to insert heating pipes at a later date. That would have been disastrous.
59. The PCC can perhaps be forgiven for the failure to notice the lack of any provision for the introduction of heating in the original proposals. No doubt they relied, as they were entitled to rely, on the architect; but the parish's Operations Manager appears to have shared the misapprehension. I have to say that it is a matter of the very gravest concern that the architect put forward the proposal he did in response to the parish's expressed needs, and appears to have led the parish and the DAC to think that he had included a heating system. It will be for the parish to decide what action to take about that, in relation to both his fees and his professional regulator.
60. I need say no more about the DAC than I have done elsewhere in this judgment.
61. There may be a further concern arising from the financing of this proposal. The Court is not usually engaged with the decisions about priorities and how money is spent. But the position here is that money coming from the Diocese was to be spent by the parish, which

it appeared to be prepared to do without proper consideration, and when a quite large increase in cost arose in modifying the proposal did not need to reconsider any of the details, or what had gone wrong. Possibly, the governance structure of this funding model should be reviewed in relation to its approach to economy and to stewardship. Finally, if the move to net zero is to be treated seriously (and the Church has decided that it is, and has embodied it in the law) there must be a proper basis for relevant proposals, informing the decision-making at the outset, so that anybody looking at the proposal can see its workings and its rationale.

C M G Ockelton MA BD

Chancellor

18 December 2025