

IN THE CONSISTORY COURT
OF THE DIOCESE OF WORCESTER

Petition No. 14-31

Date: 14th October 2015

Before:

Robert Lawrence Fookes

Deputy Chancellor

In the matter of All Saints with St. Lawrence, Evesham

And in the matter of a petition for a faculty made by the Reverend Andrew Spurr, Mrs Lindsay Ladbroke and Mrs Helen Gray

And in the matter of objections lodged by the party opponent Ms Anne Elizabeth Schmidt and by other objectors who have submitted letters of objection

JUDGMENT

Appearances

The Petitioners were represented by Miss Caroline Daly of Counsel. She called five witnesses:

- i) Reverend Andrew Spurr
- ii) Sarah Jayne Hewitt
- iii) Lewis Douglas Littlewood
- iv) Helen Gray
- v) David Hawkins

The Petitioners' evidence was contained in a bundle with sections referred to in this judgment as "P 1" etc.; in witness statements referred to as "WS" and in a supplementary file "SF".

There was a letter of support from the Methodist Minister, Mr Haslam.

The Party opponent, Ms Schmidt gave evidence and cross-examined the Petitioners' witnesses.

The Objectors were given permission to be represented by Mrs Philippa Hodges who gave evidence, cross-examined the Petitioners' witnesses and called:

- i) John Smith OBE
- ii) Joyce Doyle
- iii) Alan Cox

Mrs Hodges also produced, with permission, a written statement from David Way who had to leave the hearing before its conclusion. The Objectors produced a bundle of statements and documents.

The Church

1. The church is listed Grade I, largely of fourteenth to sixteenth century fabric but restored in 1874-6 by Frederick Preedy. Preedy was a notable ecclesiastical architect who originally practised within the diocese but after 1859 his practice was based in London and covered the southern counties of England.

The Petition

2. The Vicar and two Churchwardens submitted a draft petition to the Diocesan Advisory Committee ("DAC") on 31st January 2012 which was stamped as received by the DAC on that date.
3. The petition was authorised to be submitted to the DAC and to the Chancellor pursuant to a resolution passed by a majority of the parochial church council on 18th November 2013¹. It was signed by the Petitioners on 19th December 2013.
4. Public Notice in Form No.3 of The Faculty Jurisdiction Rules 2000 (S.I. 2000/2047) ("the 2000 Rules") was signed by the Petitioners on 17th December 2013 and displayed both inside and outside All Saints Church between 17th December 2013 and 14th January 2014.
5. The petition was advertised under the 2000 Rules in the Evesham Journal of Thursday 26th December 2013 as an application for a faculty to authorise:

"the removal and disposal of pews and their replacement with Howe 40/4 chairs".
6. The petition envisages disposal of the pews by sale. Although referred to throughout as "pews", the listing particulars refer to them as "benches".
7. The DAC had first considered the proposals on 31st January 2012. It reconsidered the proposals with details of the chairs proposed and issued a note at its meeting on 26th November 2013². The DAC then issued a Certificate, valid for 12 months (taken from Appendix C, Form No. 1 of the 2000 Rules) on 27th November 2013. It recommended the works but identified that the proposals:

¹ P 1, p 3

² P 2, p 4 and p 2; P 2, pp 15-18/22

"involve alteration of or extension to a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest".

8. The petition was submitted to the Registrar on 7th January 2014. Form 10: Notification by Registrar for Register of Petitions was served on the Secretary of the DAC on 15th January 2014. The petition contains various dates and somewhat confusingly is spread between two different sections of the Petitioners' bundle³. This Form was served under the 2013 Rules and not under the 2000 Rules. It seeks:

"Removal and disposal by sale of the existing pews
Their replacement by Howe 40/4 chairs
In accordance with the Statement of Need lodged in the Registry" ⁴

9. The draft petition originally recorded a cost of the proposed seats as £4,950. By an undated amendment this was altered to £49,825⁵. The cost now stands at £66,862.80⁶. On 8th June 2015 the number of seats to be acquired was stated to be 360: 72 with arms and 288 without.
10. The seats are to be procured immediately⁷ from "voluntary giving, legacies and grants and monies generated from its activities" as well as the PCC continuing "to sell investments to raise cash to meet its obligations" ⁸.

The Responses to consultation

11. On 9th January 2014, English Heritage (West Midlands Office)⁹ made observations of which the following are key extracts:
- i) "the pews appear to be of a late Victorian type, considered to be very common with plain unmoulded rounded end panels. As items of furniture they are not considered to be of high significance, nevertheless they occupy a considerable part of the nave of the church and are a defining part of its present architectural character";
 - ii) "while English Heritage is receptive to applications to remove historic pews as part of a process of change and adaptation in historic places of worship we are not convinced that the wholesale removal of the pews here is warranted nor beneficial" (*sic*);
 - iii) "we do not understand how the parish intends to use the interior of the building which would then require the removal of all the pews";

³ P 1, p. 3 and P 2, pp. 5-13

⁴ This was dated 2nd January 2012: P 1, p.2 and P 5, p.7

⁵ P 2, p.7 at para. 10a; p.10 at para. 25d; and p.14 Annex C

⁶ WS Mr Sheehan, para. 12, 8th June 2015

⁷ P 2, p.11 - Petition para. 31(a)

⁸ WS Mr Sheehan, paras. 13 and 7, 8th June 2015

⁹ Now known as Historic England

- iv) "we recommend that not all the pews be removed, but that a significant amount could be...approximately 50%"
 - v)
 - a) how long will the new chairs last?
 - b) stored pews should be removed
 - c) where will the 200 extra new chairs be stored?
 - d) what new associated furniture would be required? [summary]
 - vi) "In summary English Heritage considers the proposed removal of all the historic pews in this church will have a negative impact on the architectural character of the church and its significance. We support the choice of new chairs but would recommend that a significant proportion of the historic pews be retained and used within the church."
12. On 27th January 2014, the Church Buildings Council indicated¹⁰ that:
- i) the retention of the four-five pews in the shallow north transept be included in the petition for removal;
 - ii) the retention of the more significant churchwardens' pews at the west end of the nave was felt to be appropriate;
 - iii) the absence of pew platforms and the distinction provided to the interior by the herringbone pattern wood block floor was noted; and that
 - iv) "removal of the pews will emphasise the hazards of the grilles and the Council was pleased to hear that discussions were already in hand to address the risks".
13. On 28th January 2014 the Victorian Society sent an e-mail to the DAC indicating that the Society did not wish to comment on the type of chair chosen¹¹.
14. On 4th February 2014 the Society for the Protection of Ancient Buildings sent an e-mail to the Petitioners deferring to the views of the Victorian Society.

Objections

- 15. Ms Anne Elizabeth Schmidt entered particulars of objection on Form 5 dated 31st January 2014 and was the Party Opponent.
- 16. Mrs Philippa Hodges spoke for the Objectors. She spoke for 63 objectors, who had each submitted written objections, as well as calling witnesses.
- 17. I refer to Ms Schmidt and Mrs Hodges collectively as "the Objectors".

¹⁰ P 4, p.7

¹¹ P 4, p.3

The Proceedings

18. A number of Directions were made:
19. On 3rd July 2014, the Chancellor gave certain preliminary directions, following an unaccompanied visit to the church. These included:
- that, in view of the importance of the church and the number of objectors he was not willing to determine the petition solely on the basis of written representations and that there should be an oral hearing,
 - identifying the party opponent: Ms Schmidt,
 - indicating that Objectors would be allowed to present oral evidence at the hearing,
 - requesting plans of existing and proposed seating arrangements - possibly with various configurations of chairs,
 - requesting the PCC accounts for the last five years.
20. On 8th September 2014, the Chancellor issued a letter which, inter alia, directed that:
- "6. All parties send to the registry at least 42 days in advance of the hearing a written statement from each witness intending to appear at the hearing, summarising what he or she wishes to say. Along with a copy of any letter, photograph or other document that they wish me to take into account.
-
7. Once all of the written statements have been received, they should be copied and circulated to all those on the other side, who will then be given an opportunity to respond, by not later than 21 days before the opening of the hearing.
- "
21. On 18th December 2014: the Chancellor having recused himself,
- I identified that no witnesses, expert, specialist or individual had been identified by either the Petitioners or the Objectors as wishing to give oral evidence or to present any witness statements or documents.
 - I directed that Monday 13th April 2015 should be notified as the first day for the hearing, continuing until Tuesday 14th April if necessary, and that the Chancellor's directions of 8th September 2014 should be applied accordingly.
22. On 13th February 2015 I issued a Direction for the Hearing:
- it repeated that the parties were to serve witness statements of any witnesses they proposed to call and that those witness statements

would stand as the evidence in chief of the witness in question (see paras. 3(c); 4(a); (6)).

- a timetable was set out and the Petitioners were to be responsible for preparing and circulating 3 copies of a paginated bundle 17 days before the hearing (para. 7).

23. On 26th March 2015 a further direction was issued that the hearing be postponed until 18th June 2015 on the reasonable grounds of the unforeseen personal circumstances of Mrs Hodges. The Direction required that:

- the Petitioners must lodge any further documentation they wish to rely upon by 7th May 2015; and that
- the Objectors must lodge their documentation by 28th May 2015.

24. On 19th May 2015, the Objectors lodged their witness statements.

25. By 7th May 2015, the Petitioners had not lodged any witness statements. None were lodged by 28th May 2015 and no paginated bundle containing all documents to be relied upon had been prepared as directed.

26. By the 1st June 2015, the Petitioners had not produced any witness statements. Nevertheless, in order to avoid a subsequent late application to produce witness statements or for further adjournment, I directed that:

- if the Petitioners did intend to call any witnesses to give oral evidence, they should serve witness statements on the Objectors and the Registrar by 5pm on Monday 8th June 2015 at the latest;
- that those witness statements would stand as evidence in chief; and that
- the Objectors would then have until 5pm on Monday 15th June 2015 to submit any responses, should they so wish.

27. The Petitioners, having previously omitted to follow the Directions of the Court, finally filed extensive new material and witness statements on 8th June 2015.

28. The Objectors had only one week in which to share and consider this material which should have been made available in 2014 or early 2015. I refused the Objectors request for an adjournment but waived the requirement for them to submit written responses to the new material. I indicated that the objectors could give oral evidence on the new material at the hearing.

29. On 18th June 2015, I held a hearing in the Parish Church of All Saints with St. Lawrence, Evesham between 10am and 5pm.

30. The Petitioners subsequently filed additional written material on 26th June 2015 upon which I invited the Party Opponent and Objectors to make further representations, should they so wish.

The character of the church

31. The DAC certified that some or all of the works or proposals involved alteration of a listed church to such an extent as was likely to affect its character as a building of special architectural or historic interest.¹²

32. I have already set out above extracts from the written comments of English Heritage which culminated in their advice that:

"In summary English Heritage considers the proposed removal of all the historic pews in this church will have a negative impact on the architectural character of the church and its significance."¹³

33. At the outset of the hearing I informed the parties that in preparing for the hearing I had visited the Town website for visitors, where the first item I saw was "The Preedy Trail" through Evesham. All Saints features on the trail but I could see no obvious reference to the trail in the church itself.

34. The Petitioners called no expert evidence on the overall special architectural interest of this church or to its special historic interest. Mr Spurr said that he did not consider that the proposals contributed to or would cause harm to the significance of the church as a building of special architectural or historic interest¹⁴ because the summary section "Reasons for Designation" as Grade I did not include the pews. He said that the pews are neither notable nor contribute to the building's Grade I listing.¹⁵ He acknowledged that the proposals would change what is currently the conventional expectation of what the interior of an older parish church would look like, but said that, in his view, that is not the same as the proposals causing harm to the significance of the church on either architectural or historic grounds¹⁶.

35. I had been specifically asked by the Petitioners to read the Statement of Significance for All Saints Church¹⁷ before the hearing. I had done so. The 1873-6 "comprehensive" and "expensive" "Victorian Restoration" by Frederick Preedy is dealt with shortly on pages 65-66 and Figure 13¹⁸ of the Statement. One of the key features identified is "provision of new seating (the pews and galleries were removed and rows of benches, nearly all free, were placed in the nave, aisles, and transeptal

¹² P 2, p.3

¹³ P 4, p.15

¹⁴ WS Mr Spurr at paras. 3 and 8

¹⁵ WS Mr Spurr at paras. 6-8

¹⁶ WS Mr Spurr at para.12

¹⁷ P 7. It has 144 pages; is unsigned and undated but I understood it to have been written by Mr Brotherton

chapels)⁴⁷¹". The footnote reference takes the reader to an 1841 paper entitled "Twenty-four Reasons for Getting Rid of Church Pews".¹⁹ There is a critical quote from the author of a publication on Preedy's Stained Glass. The assessment of Preedy's work in the section on Contents of the Church records Low or Low-Moderate significance to any works by Preedy²⁰. I asked for an explanation of the significance scores and was informed that they were based on Church Building Council methodology which ascribed Low - Moderate significance to works by local architects. However, Preedy was not a local architect when he carried out these works. He was by then based in London and worked across southern England. The Statement of Significance concludes on page 111 with the words "The presence of pews restricts the uses and flexibility of the nave and south aisle". Without evidence from the author or knowledge of the author's qualifications, I am unable to attach any significant weight to this document which appears to conflict with the English Heritage perception of the work of Frederick Preedy.

36. My own perception is that this ancient church has an interior the appearance of which today is that created in substantial part by a comprehensive re-ordering commissioned from a well known architect, Frederick Preedy. It is a designed interior in which he combined chosen, available fittings with his own stained glass windows in a comprehensive re-ordering. That re-ordering was both positive and beneficial to the architectural and historical character of the Church. That architectural character is made special by the composite and comprehensive nature of the 1844 restoration and re-ordering and the historical interest is special because the present appearance of the Church reflects the comprehensive nature of the works then carried out, as listed at P 7, p.65 of the Statement of Significance. In both cases the pews form a part of that special character and interest.

37. I note that:

"In the case of listed buildings, and particularly those listed Grade I, any adverse effect on its special character (whether or not defined in terms of loss to its significance as a heritage asset) requires justification."²¹

38. I have considered, therefore, the proposals and their justification and whether the proposed alterations may, nevertheless, be acceptable.

¹⁸ Albeit the reference to the comparison between P 7, Figs 13 and 18 appears to be in error on p.65, paras.3 and 4

¹⁹ Which in fact sets out 23 reasons for introducing the benches/pews which Preedy introduced to replace earlier box pews and reserved pews.

²⁰ P 7, p.93ff

²¹ *In re St Alkmund, Duffield* [2013] Fam. 158, at p. 197, para. 63.

The Proposals

39. The proposal is to remove all the existing pews located in the nave and side aisles. These pews are not fixed; have been mounted on felt for very many years; and are placed on parquet flooring.
40. The pews were described by English Heritage as very common with plain unmoulded rounded end panels which,
- "as items of furniture are not considered to be of high significance, nevertheless they occupy a considerable part of the nave of the church and are a defining part of its present architectural character."²²
41. The proposal is to replace the 49 pews with 360 Howe 40/4 chairs with stacking trolleys at a cost of £66,862 inclusive of VAT²³. 288 would be basic chairs without arms; 77 would have arms. The 2 pews at the west end of the Church would remain as would the seating in the chancel.
42. The Petitioners said that the figure of 360 chairs had been derived from the Fire Certificate. Unfortunately, no one could explain how the figure in the fire certificate had been arrived at.
- At the time of the hearing there were 12 rows of pews on each side of the nave. It was suggested that an average of 5 people per pew was reasonable. The nave would, therefore, seat 120 as presently laid out.
 - In the south aisle there were 14 pews stored hard up against each other. Some were in need of repair but these could seat 70.
 - There were 7 pews in the south transept and 4 in the north transept, not all currently available for use. These could seat 55.
43. At a maximum, the pews proposed to be removed could seat 245 of which only 120 seats are located within the nave.
44. A Statement of Need had been produced in January 2012; reviewed in December 2013 and in April 2014²⁴. There was no justification in these documents for the purchase of 360 or any other specified number of chairs.
45. There was confusion in the evidence as to the number of stacking trolleys required to store and move the chairs; also their capacity; their loaded weight and their ease of movement. The wrong trolley was exhibited in the south transept. A consequence of an over-provision of chairs, in addition to the extra cost, would be the requirement for greater storage areas for the chairs. The illustrative sketches did not show any such

²² Partially quoted in the WS of Mr Spurr at para. 5. Full sentence is taken from the second English Heritage letter of objection to removal of all the pews, dated 9th January 2014: P.4, p.15

²³ WS Chris Sheehan at para.12

²⁴ P 5, pp. 1-11. These formed the basis of the WS of Mr Spurr

areas. If such additional numbers of chairs could be justified, they would only be used very infrequently, if at all, on the evidence before me.

46. One of the criticisms of the existing pews concerned sight-lines to the altar, caused by the location of the pillars to the nave. The sketched proposed layouts show that there are, effectively, no sight-lines to the altar for collegiate or other worship in the round. Furthermore, if all the chairs are laid out there would be a greater number of seats with obscured view than from the existing pews in the Nave. Mr Hawkins offered to produce a sketch of such a layout but this has not been forthcoming. The sketch layout showed a number of seats with views obscured by pillars.
47. No evidence was produced as to how the proposed moveable chairs would meet current fire standards, requiring rows of three or more chairs to be joined together, or how convenient such requirements might be to a flexible and changeable layout. A condition in respect of fire safety would be required on any faculty.
48. The proposals would be funded from reserves with a small return anticipated from sale of the pews.
49. The Petitioners justified the removal of the pews as follows²⁵:
 - i) principally, to make more flexible space available for a variety of liturgies as a means of modernising and enhancing worship in the church:
 - in a quest for spiritual depth and diversity;
 - for the church to be a centre for more than liturgical rites;
 - to facilitate the organising principles of the Five Marks of Mission²⁶ in the deployment of resources;
 - to use the church space for alternative forms of worship in order to promote the whole mission of the Church by hosting varieties of Christian spirituality and practice drawing from ancient traditions to enhance existing liturgical provision;

²⁵ WS of Mr Spurr at paras. 19-27 and.28-30

²⁶ The Five Marks of Mission are:

- To proclaim the Good News of the Kingdom
- To teach, baptise and nurture new believers
- To respond to human need by loving service
- To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation
- To strive to safeguard the integrity of creation, and sustain and renew the life of the earth

- to locate principal ritual acts in the midst of the gathered body by positioning members of the congregation in such a way that they are visible to each other;
- ii) secondarily, to provide a more flexible environment for wider use of the church for secular activities
- as a welcome place to people of all faiths and none;
 - for alternative forms of worship;
 - for creative secular activities.
50. The Petitioners criticised the existing pews:
- as essentially locking-down a large space;
 - for determining that the only ritual transactions that can take place involve central action and spectators;
 - for resulting in problems with line of sight for congregations due to placement of the pews in relation to pillars at civic and carol services.
51. Notwithstanding the proposals, the Petitioners listed the alternative and flexible uses of the church in the recent past:
- during 2009, the 1300th anniversary of the founding of the Abbey, including a "Monk's Supper";
 - hosting the Northumbria Community during Holy Week 2009, including use of a labyrinth;
 - in 2010, by a diocesan schools festival;
 - In 2014, by a new ecumenical Sunday evening service *Soul Food* preceded by a shared meal, utilising the current ability to re-arrange pews;
 - on specific Sundays moving the pews into college-chapel style layout;
 - in 2015 business gatherings to mark the 750th anniversary of Simon de Montfort's death.
52. It was anticipated by Mr Spurr that future use of the church:
- would continue to include the *Soul Food* service;

- would require the relocation of the font²⁷ (a matter which is not included in this petition);
 - would facilitate Lent and educational lectures in the round;
 - might include hosting Tai Chi (although this idea appeared to have lapsed by the time of the hearing);
 - would involve sculpture installations; prayer stations; labyrinth, coffee mornings; Beer and Carols; and cafe-style church.
53. How worship will be taken forward has not yet been addressed:
- whether by taking everyone forward in a moderately reformed parish communion rite;
 - or, by creating two services, the second of which would be a collegiate style parish communion.
54. Illustrative layouts were put forward. The first series of six was put forward in 2009 but was stated to be illustrative and not to depict what was to be the subject of the faculty to be applied for.
55. A second series of five possible layouts with photographs was put forward which was intended to be more representative of what was being proposed. These showed a relocated Nave Altar; a relocated Font and a maximum layout for 182 chairs only. There is no indication as to where the remaining 178 chairs would be stored.
56. Neither set of drawings corresponds to or is limited to the terms of the petition sought²⁸.
57. It also emerged, in evidence from Mrs Helen Gray and from representations by the CBC, that removal of the pews would exacerbate a problem with the grills over the heating ducts that run along the floor at the central ends of the Nave pews. Children's fingers, clothing and shoes are easily caught within the open pattern of the brass grills. These ornamental grills would be further exposed contributing to the existing hazard. It was anticipated that a further faculty would be required but the Church Architect had not yet advised on a solution. In any event a condition would be required on any faculty.
58. Mr Hawkins gave evidence in support of removing all the pews and replacing them with chairs. His exact role was unclear. He is a member of the DAC, was present when the proposals were considered but was unaware of the published opinion of the DAC. He disagreed with it. He is an advisor on historic woodwork and re-ordering schemes in a number of Dioceses. He has a role as ambassador for the company marketing Howe 40/4 chairs. In answer to the first question put to him by the Party

²⁷ WS Mr Spurr at para.44

²⁸ The drawings are combined at P 5, pp 18-28

Opponent, Mr Hawkins replied that he considered that pews should be removed and replaced by chairs in all or almost all circumstances.

59. At paragraphs 5-6 of his evidence Mr Hawkins said that the proposed changes and additions would result in no harm to the significance of the church and that the fine details of the historic building would benefit from the removal of all the pews as it would be easier to see those details in the open and adaptable space proposed. He also supported removal of pews on missional and community use grounds so that people of all ages would feel that they belonged in the church.
60. Mr Hawkins concluded:
- "11. I note that re-ordering projects similar to the one proposed by this petition are taking place in many churches in England. I have recently been involved with re-ordering projects in churches in Southwold and Blythburgh in Suffolk, both of which are nearing completion. I am also involved with a similar project that is about to commence in Halesworth."
61. On receiving his proof of evidence I considered this concluding paragraph to be sufficiently important to his evidence to require me to make an unaccompanied visit to those churches named to see how comparable they were to All Saints. The facts as I observed them are:
- i) Southwold: No faculty had been sought and the current future proposal described on boards within the church explains that it is only proposed to remove pews from the rear two bays of the Nave. Equivalent space already exists at All Saints;
 - ii) Blythburgh: The rear half of the Nave has no pews; there are no proposals to remove the existing pews from the front half of the Nave;
 - iii) Halesworth: No faculty has been sought for the removal of pews.
62. When I asked Mr Hawkins about his paragraph 11, he replied that the first and second/third sentences were unrelated. Had I not visited each church mentioned, I would have misunderstood this paragraph. None of the examples referred to support the removal of all pews at All Saints. On the contrary, in each case, substantial numbers of pews have been and are proposed to be retained.
63. Mr Hawkins was unable to give me examples of any faculties being granted for the removal of all moveable (unfixed) pews from a comparable church.
64. Mr Littlewood gave evidence for the Petitioners that the pews needed to be kept in repair and that 4 of the 49 currently required attention. The principal cause was the drying out of the pews which was possibly a result of heating.
65. There was conflicting evidence between the Petitioners and the Objectors as to how difficult it was to slide the pews across the parquet flooring on their felt bases. Evidently, it has been possible to re-arrange the layout in the past and it would

obviously be less strenuous if there was to be a re-ordering involving chairs rather than pews. However, as 120 chairs would be stacked on 3-column trolleys (although fewer chairs with arms can be stacked on each trolley) the weight of a laden trolley would be significant. In addition, it appeared to be the intention to store an unspecified number of chairs elsewhere.

The Objections

66. On 2nd January 2015, the Objectors put forward a summary of their case under the following main headings:

- i) An unproven case for the complete replacement of pews with chairs (variations to the number of chairs sought), including support for the approach of English Heritage that the church can accommodate both pews and chairs²⁹;
- ii) Practicality (type of chair chosen); which was a part of a wider criticism of the adequacy of consultation outside the PCC);
- iii) Cost (funding).

i) Variations

67. The Objectors had put forward a compromise restricted to removal of the pews from the south aisle only. This was "roundly rejected" ³⁰ by the Petitioners because the point of removing the pews is to be able to utilise the entire nave space. The Objectors continued to encourage compromise generally, although some objectors had been opposed to any change.

68. English Heritage had suggested³¹, notwithstanding their lack of conviction that the wholesale removal of pews here was either warranted or beneficial, a compromise involving removal of half the pews from the nave. This was rejected by the Petitioners on the ground that removal of all the pews would not result in any harm to the significance of the church as a building of special architectural interest³².

ii) Consultation

69. The Objectors questioned whether there had been adequate consultation on the proposals. The Petitioners relied upon observations concerning consultation contained within *In re St Mary's Churchyard, White Waltham (No.2)* [2010] Fam 146 at para.8 where Bursell QC Ch said:

²⁹ Objectors Statement of Case, p.3, highlighting EH's response referring to the pews as being "... **a defining part of its present architectural character**"

³⁰ WS Mr Spurr at paras.54-56

³¹ P 4, p.13: letter of 9th January 2014

³² WS Mr Spurr at para.11

"I entirely accept that consultation is not a tick box exercise and that it ought to be undertaken in a spirit of openness and in an attempt to reach the right and fair result. It is also important in my view as a vehicle by which the proposals are brought before the widest possible audience. However, a court must be careful not to elevate a recommendation ... [to consult] ... into a strict requirement of law .. the question of consultation is one that I can properly take into account when exercising my discretion .. [authorities cited including *In re Emmanuel, Northwood* (1998) 5 Ecc LJ 213]".

70. In the *White Waltham* case the Chancellor felt able to accept that the views of the parochial church council represented those of the silent majority of the parish and that the views of the objectors represented a vociferous minority. He found on the facts that the consultation process had been sufficient (para. 60). In the present case there are some 63 written objections.

71. The case in support of the current proposals relied upon a perceived reduction in congregations since 2006³³: The evidence produced from the electoral roll did not, however, show a significant numerical reduction over that period³⁴:

2007 116 on the electoral roll;
2015 110 on the electoral roll.

72. Unsurprisingly, the evidence did show an ageing congregation over that period.

73. Mr Spurr referred to "an extensive analysis of the essential needs and qualities of chairs"³⁵ as being an analysis of the consultation process. He was not able to answer questions about the document. The author of the document, Mr Sheehan, did not attend the hearing and does not refer to it in his written statement. After the hearing I was sent a file of supplementary material ("SF") which repeated Mr Sheehan's Compilation Table with a few additional notes. The Objectors did not object to me considering this material after the close of the hearing. I extract the following from these documents:

17/11/2008	Item 2	Circulation PCC minutes	The long term aim is that all pews eventually be replaced by chairs.... Initially the 12 pews from the transepts, which are rarely used, will be removed. We must ensure there is no financial risk. ... Cost an experiment involving the sale of 12 pews to be replaced with ecclesiastical chairs in a way that the sale covers the cost of the replacement. This costed proposal to be presented to the January meeting of the PCC (As a guide we would like 60 chairs)
19/1/2009	SF	PCC	Church pews - ongoing. Delayed by 1300th celebrations

³³ WS Mr Spurr at para. 23

³⁴ P 9, p.7

³⁵ WS Mr Spurr at para. 58 referring to "Compilation of Material relating to discussion of Pews at All Saints - Chris Sheehan 3rd May 2013". That document was exhibited as P 5, pp 30-50. The numbers in the Table above refer to the item number in that document.

20/9/2010	6	PCC minutes	Plan to be produced for DAC. Issues: finance; whether pews are replaced incrementally, storage of chairs, consultation with congregation
Nov. 2010	7	Magazine	Account of visit to Burford where a different type of chair had been viewed. Discussions with congregation proposed.
11/10/2011	14	PCC	SWOT (strengths, weaknesses, opportunities and threats) exercise evaluation - 19/9/11 report: 103 comments 54 Strengths or Opportunities 49 Weaknesses or Threats Strengths etc. considered. Weaknesses and Threats etc. listed but comment: "will be the framework of our discussion at next PCC". [No record of any such discussion at the meeting of 17th October 2011; seating deferred until 21st November 2011]
21/11/2011	16	PCC	Resolved to seek a faculty "to embark upon a process for replacing all or some of the pews with chairs..."
Dec. 2011	17	Magazine	Invited views on decision to seek faculty to remove "all or some" pews
12/12/2011	18	PCC	"The faculty for replacing pews with chairs needs to be worded so that all rather than some is in the wording even though our fallback position is a mixture"...
Jan. 2012		St. of Need	Statement of Need seeks to justify the removal of "all the pews at present in the nave, south aisle and south aisle chapel of the church and to replace them with chairs". Referring to August, September and one other PCC meeting and consideration of the PCC SWOT exercise and the weakness or threats identified. Cost was a particular threat. There was no number of chairs referred to and it appears that the cost at that time may have been entered as £4,950. The dates do not accord with those in P 5.
16/1/2012	SF	PCC	"A repeat vote was taken on the faculty wording (faculty for the removal and disposal of 10 rows of pews) .. unanimously approved".
Feb. 2012		DAC	First submission.
Sept. 2012	25	Magazine	Opportunity offered by Evesham Journal to 'clarify misunderstandings' [No subsequent article exhibited]
21/10/2012	27	Letter	Chris Sheehan wrote to those who had written letters to the Parish Magazine stating that "I have decided that continual publication of letters relating to pews in the magazine, which is an important part of our outreach, is not in the best interests of our mission... I expect that the faculty process together with PCC interaction will allow all views to be aired."
7/1/2013	SF	PCC	Seating specification: "120 regular and 190 stackable with 2 trolleys,retain 12 pews".

22/1/2013	32		2-day chairs exhibition
28/1/2013	33	Church	Five Marks of Mission supper
March 2013	34	PCC	Chairs sub-Committee (Alan Whitehouse, Lindsay Ladbrook Helen Gray and David Hawkins - for one day only) resolved to look at 50% solid frame beech chairs for major usage and 50% folding stackable type chairs (Aspire Virco V188) for larger gatherings.
April 2013	35	PCC notes	Current fire regulations allowed 285(?) guests in the church and when the latest fire regulations have been enforced this figure will increase to around 360 people ³⁶
9/5/2013	SF		Open evening congregational meeting (no details given)
11-18/11/2013	SF	PCC	Chair voting process by PCC. Prices given for all but Howe chair. On overall scores SB2M favourite with 8 full scores - £35 A1LSA second favourite with 7 full scores - £56 Howe 40/4 third favourite with 5 full scores - £?
18/11/2013	SF	PCC	PCC resolved that the Howe 40/4 chair be taken forward by a majority of 13 with 1 abstention. SB2M 3rd and A1LSE 4th. No explanation for change of order.
26/11/2013		Petition	Removal and disposal by sale of the existing pews. Their replacement by Howe 40/4 chairs. No number of chairs was given but the cost was entered as £49,825
7/6/2015		WS Sheehan	First notification of: number of chairs - 360 at a cost of - £66,862.80 (i.e. ave. £186 each)

74. The Objectors point to the changing type and number of chairs selected and to the change in the number of pews to be replaced. I note that:

- i) The PCC requires one third of its members to be present to be quorate³⁷. No attendance numbers are recorded in the extracts of meetings provided, however, no suggestion is made that any meeting was not quorate.
- ii) There is no clear record of any consideration of the SWOT Weaknesses and Threats being considered (14)
- iii) It was resolved to replace all or some pews (16) and views were invited on the proposal to seek a faculty for all or some replacement (17).

³⁶ The first figure is illegible and may be 205. 360 total would include 40 in the chancel.

³⁷ P 5, p 39. item 25

- iv) The PCC decision was subsequently amended in the minutes to replacing 'all pews' ... "even though our fallback position is a mixture" (18).
- v) It is unclear why partial replacement became full replacement of pews or why the PCC rejection of the Howe 40/4 was overturned within days. It is unclear whether any comparable costs were given for the Howe 40/4 chair (SF 11-18/11/2-13)
- vi) The final number of chairs and their cost does not appear to have been presented to the PCC or to objectors before the witness statement of Mr Sheehan was circulated.
- vi) There is no record of the level of support for Mr Sheehan's proposals beyond the PCC.
- vii) The only recorded involvement of parishioners beyond the PCC was a Five Marks of Mission supper on 28th January 2013 and an open evening congregational meeting on 9th May 2013. There is no information before me as to what the latter involved.

75. However, the PCC is of course elected by the parishioners and those whose names appear on the electoral roll. On the 31st March 2015 there were 110 people on the All Saints Electoral Roll of which 52 live within the parish and 58 live outside³⁸.

76. There were letters from numerous objectors before the Court and the Objectors represented 63 Objectors.

77. Applying the approach set out in the *White Waltham* judgment, I am unable to be certain that the evolving views of the parochial church council represented "those of the silent majority of the parish". The objectors appear to represent a significant element of the congregation and there is little evidence of proper consultation or assessment of the views of the congregation as a whole.

78. The Objectors gave clear and measured evidence and had unsuccessfully requested consideration of a compromise. In my judgment, their representations deserve careful consideration of the justification for the removal of all the pews.

iii) Funding

79. The Petitioners submit that funding of the proposals is a matter for the PCC unless those proposals are wholly unrealistic or improper. They rely upon *In re St Mary's Churchyard, White Waltham (No.2)* [2010] Fam 146 at p.171, para. 49:

"Cost

³⁸ P 9, p.7 2014 Annual report

49 Goodman Ch said in *In re St Mary the Virgin, Hayes* 22 Consistory and Commissary Court Cases, case 30 , para 42:

“In any event it is for the parochial church council to determine questions of priorities with regard to funds at its disposal. If, as I believe, it is a proper use of such funds to meet particular needs of this parish at the parish church, that may have to result in fund raising for the completion of the refurbishment of the Old Church Schools being postponed.”

Later the chancellor also said, at para 62:

“questions of priorities in parish spending are matters for the parochial church council and not for me, unless I come to the conclusion that the proposed expenditure was improper or wholly unrealistic, or that there is no prospect of raising the necessary funds, none of which I find to be the case here.”

Similarly, in *In re St Mary the Virgin, Bathwick* 1 June 2005 , Briden Ch at p 3:

“Provided its general funds are put towards lawful objectives (which include the maintenance and improvement of the church building) the democratically elected parochial church council is entitled to set its own financial priorities. It is not the function of the court to interfere still less to impose its own notions of spending. As I said in *In re St Catherine, Montacute* (1996) (unreported) ... the settled practice of the court is to refrain from interfering with decisions reached by parochial church councils in accordance with their rules of procedure as to how parochial funds are to be applied. In considering whether or not to grant a faculty the Chancellor or Archdeacon will want to know whether funds for the intended project are available, lest the purpose of the faculty is defeated through lack of resources. There may be other exceptional circumstances in which the proposed manner of funding will affect the decision whether to grant a faculty. But it is not a ground for interference that a parochial church council decides one call on its assets to be more pressing than another.”

50 Equally, in my view it would be for the court to refuse a faculty if the proposed expenditure were to be in breach of trust; for example, if an extension to a church were sought to be financed from a charitable trust set up for a different purpose. I do not, however, accept Mr Petchey's submission that the court should refuse a faculty if 'the expenditure is disproportionate to the need', such as "eccentric millionaire' cases where there [is] limited need for a costly proposal'. In my view the question of need should be considered quite apart from the question of cost: a proposal does not become a 'need' just because someone can pay for it, nor does a 'need' cease to be a need because it cannot be paid for.

51 I appreciate the point made by Goodman Ch in relation to cases where an expenditure is 'wholly unrealistic' or where there is 'no prospect of raising the necessary funds'; but in the majority of cases that is unlikely to be clear cut until an attempt to raise the funds has actually been made. In my view the appropriate course in such cases is for a faculty to be made subject to a condition that no work may commence until the court is satisfied that sufficient

funds have been, or will be, raised. Of course, in such cases the church authorities must be very careful how the sums are raised and keep a proper note of donors so that monies can be returned if the proposal is incapable of fruition."

80. Earlier in his judgment the Chancellor at para. 8 had adopted another decision of Goodman Ch which referred to *In re Emmanuel, Northwood* (1998-2000) 5 Ecc LJ 213, a decision of Cameron QC Ch. That report is only a summary. The original judgment states:

"Some of the parties opponent have raised the question of the morality of spending such large sums of money on the buildings. It is not the first time that such an argument has been presented to me. I have to make it clear that it is not the function of the consistory court to refuse to authorise works because they will be costly, nor to seek to direct the parochial church council as to what proportion of the funds at its disposal should be spent on various aspects of mission, both at home and overseas. The court is always conscious of the need for the parochial church council to have funds to make its proper contribution towards the diocesan budget, the common fund. If this primary obligation can be met, and fund-raising by way of an appeal to the congregation and elsewhere is to be undertaken, then a condition can be attached to the faculty prohibiting the commencement of a phase of the work until evidence has been produced to the Registrar demonstrating that funds are available for that phase...."

81. The Objectors objected to incurring expenditure on re-ordering when the Parish was in arrears with its payment of the Parish share to the Diocese. They called Mrs Doyle, a former Treasurer of the Parish.
82. Mr Chris Sheehan, who had been the PCC Treasurer for two months at the time of the hearing, produced a written statement but did not attend to give evidence.
83. The Accounts for the year ended 31st December 2014³⁹ state at page 31, para. 18:

"As detailed in our accounting policies, parish share is a moral and operational obligation (not a legal one).

At the PCC meeting held on Monday 16 February 2015, it was decided to pay in full the outstanding balance of parish share for the year 2014. The PCC remains acutely aware that, for the last ten years or so, it has been unable to pay the full amount of parish share only out of incoming resources. However, the PCC also recognises its obligations to and fellowship with the wider church community in the diocese.

The PCC has been in ongoing communication with the diocese regarding outstanding balances from earlier years (namely 2004 through to 2008). In the light of known future commitments (see Note 22), and bearing in mind occasional unforeseen costs such as theft, the PCC is keen to ensure its resources are expended on the future of the church rather than its historic debt.

³⁹ P 8

The diocese has expressed understanding of and sympathy with these aims, but currently wishes to maintain a watching brief before entering into detailed discussions regarding debt forgiveness. Common practice for 'writing-off' outstanding parish share is by agreement between parish and diocese."

84. The parish share outstanding at the 31st December 2014 was £89,829. The excess expenditure over unrestricted income was £40,081 over the same period.
85. The Petitioners called evidence from Ms Hewitt, the Lay Missioner. Her evidence which supported replacing pews with lighter chairs was given "from a purely missional perspective" (para.2). It could be argued that expenditure on mission in this parish is at the expense of such spending on mission by other parishes in the Diocese if All Saint's parish share arrears are not paid.
86. Non-payment of arrears of parish share may not be a reason for refusing a faculty. It is a ground for considering the imposition of a condition requiring that any faculty granted should not be implemented until payment or agreement as to the arrears in payment of the parish share has been reached with and documented by the Diocese and notified in writing to the Registrar⁴⁰. This would apply whether part or all of the expenditure has been fully justified.

The Issues identified by the Chancellor

87. In his initial Directions of 3rd July 2014 the Chancellor said:

"I would direct the attention of all parties to the recent decision of the Court of Arches in Duffield, St Alkmund,⁴¹ ... "

88. That decision was influenced by parallel considerations of the law relating to listed building and conservation area consents under town and country planning legislation from which the present proceedings are removed by the ecclesiastical exemption. By the date of the present hearing, there had been further consideration by the courts of the relevant approach to be adopted under the parallel, secular, listed building and conservation area consent legislation.
89. I asked Miss Daly if she would prepare a note considering whether recent judgments in respect of secular town and country planning applications affect the considerations underlying the Duffield, St Alkmund judgment. I consider the note and the recent High Court judgments in my final section below.
90. The approach in Duffield, St Alkmund is summarised at para. 87 of that decision:
 - "(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

⁴⁰ In re Emmanuel, Northwood

⁴¹ [2013] Fam 158

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

91. In *In re St John the Baptist, Peshurst* 2015, at para. 22(d) the Court of Arches stated:

"Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article".

I take this to mean "... directed at the effect of the works *or other proposals* on the character of the listed building..." and that it is not intended to limit Questions (1), (3) and (5) to the effect of works only on the character of the listed building, in a case such as this where the application relates to a proposal to remove items, whether fixed or moveable, from a church. I do not take the Arches Court to mean that only Question 4 applies to a proposal to remove pews.

Is it Q1 or Q2 that applies to the current proposals?

92. Question 1: Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
93. The DAC considered that the proposals "involve alteration of or to a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest"⁴².

⁴² P 1, p.3 Form No 1, Appendix C, Part 2, para.2(i) of the Faculty Jurisdiction Rules 2000 and dated 27th November 2013.

94. The first question is whether that amounts to harm to the significance of the church as a building of special architectural or historic interest. I have assessed the architectural and historic interest of the church at paras. 31-36 above.
95. It was suggested by Mr Hawkins, on behalf of the Petitioners, that the proposals did not result in harm as identified in Duffield, St Alkmund question 1. He confirmed that he was a member of the DAC when it resolved that the proposals "involve alteration of or to a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest". However, he said that he had no knowledge of this resolution being issued by his Committee.
96. English Heritage stated:
- "Despite the removal of a number of pew rows since Preedy's floor plan was produced ... those remaining do nonetheless occupy a considerable part of the nave of the church and are a defining part of its present architectural character"⁴³;
- "In summary English Heritage considers the proposed removal of all the historic pews in this church will have a negative impact on the architectural character of the church and its significance"⁴⁴.
97. The Petitioners' case is that there would be no harm and Mr Spurr says that English Heritage do not say that there would be harm to the significance of the church as a building of special architectural or historic interest⁴⁵. The written views of English Heritage are criticised for a lack of reasoning and because they consider some but not all pews may be removed. The absence of specific reference in the reasons for designation within the listing particulars to the pews was also raised by the Petitioners.
98. The fact that Preedy had not designed the pews himself but had merely purchased Douglas-fir pews from a supplier; the significance or otherwise of the present condition of the pews; and the absence of harm generally were matters which were also raised.
99. This approach seems to me to elide Duffield, St Alkmund questions 1 and 3. Those questions or stages reserve the degree of seriousness of harm to stage (question) 3. Seriousness of any harm is a consideration that follows a decision as to whether any harm exists. If it does question 1 and not question 2 applies. I find that there would be harm to this Grade 1 listed building arising from the removal of pews which contribute to the Preedy re-ordering and that Question 2 does not arise.
100. The reliance upon a failure by English Heritage's Reasons for Designation Summary to identify a particular item or aspect of a Grade 1 church relating to the pews and, presumably, to Preedy himself⁴⁶, is not to be read as determinative of the

⁴³ P 4, p.25 letter dated 4th April 2012

⁴⁴ P 4, p.15 letter dated 9th January 2014

⁴⁵ Skeleton argument: para.25 and WS Mr Spurr para. 11

⁴⁶ Skeleton at para.3; WS of Mr Spurr paras. 6 and 7

significance of the parts of the extensive full listing particulars or as superseding them. The Court of Arches indicated that 'Reasons for Designation' are merely the "principal reasons" for listing a building as Grade I ⁴⁷:

101. In fact, the full listing particulars for All Saints Church, Evesham identify the work of Preedy at the outset:

"Parish church mainly of C15 and C16, restored in 1874-76 by F. Preedy."

and go on to state:

"Nave benches have shouldered ends and apex roundels".

The particulars also identify the parquet floor⁴⁸ and that:

"There was a major re-ordering 1874-76 during restoration by Frederick Preedy (1820-98), architect of Worcester, although initial plans had been prepared by Barry & Sons of Liverpool. Apart from general repairs, they enlarged the chancel and added a new vestry and organ chamber, rebuilt the north aisle, and provided new seating."

102. Even had they not been specifically mentioned in the listing particulars, the Preedy restoration works would have been part of the listing by reason of section 1(5) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ⁴⁹.
103. I agree with English Heritage that the proposals would have a negative impact on the architectural character of the church and its significance if all the pews were to be removed. I also consider that the pews contribute to the historical interest of the evolution of this Grade 1 church and that their removal would harm that recorded historical interest. I find that such a negative impact to the special architectural and historic significance of the listed building⁵⁰ does constitute harm to be considered under *Duffield, St Alkmund* Question 1 and not under Question 2.

Q3 How serious would the harm be?

104. The harm arising to the character of the listed building must be considered in the context of its listing as a Grade I building in recognition of its exceptional architectural and historic interest. Only 2.5% of listed buildings are Grade I. Any harm to a Grade I building requires clear and convincing justification⁵¹.

⁴⁷ *In re St John the Baptist, Penshurst* 2015, Court of Arches at paras. 51 and 90

⁴⁸ P 7, p.119 EH listing particulars ref:1081351

⁴⁹ *In re St Alkmund, Duffield* [2013] Fam. 158, at p. 187D, para. 50.

⁵⁰ As identified in paras. 31-36 above

⁵¹ *In re St Alkmund, Duffield* [2013] Fam. 158, at pp. 191C and 193B:

para. 56 "The starting point must be that this is a Grade I listed building and in this regard we accept EH's assessment that the grading is "in recognition of its exceptional architectural and historic interest"..."

para. 63 "In the case of listed buildings, and particularly those listed Grade I, any adverse effect on its special character (whether or not defined in terms of loss to its significance as a heritage asset) requires justification...."

105. The removal of some pews from All Saints has previously been authorised by faculty and has been effected. That removal was justified on the specific grounds of the need for an access ramp in the north aisle.
106. In my judgment:
- i) Some further removal of pews from the aisles and transepts alone would cause slight harm to the special architectural character of the Church as listed and to its historical interest, both of which interests arise from the work of Preedy carried out as a piece before the building was listed.
 - ii) Removal of pews from the aisles and transepts and some of the pews from the nave would cause moderate harm to those special architectural and historical interests.
 - iii) Removal of all the pews from the aisles, transepts and nave would cause significantly serious harm to this Grade I building in terms of both the architectural character and the historical interest of the church both of which are, in part, derived from the comprehensive re-ordering carried out by the architect Frederick Preedy.

The degrees of harm arise because, the architectural and historic importance of the Preedy re-ordering are both equally important contributors to the character of the church. Removal of all the pews would be an irreversible change and a harmful loss of an important element of that re-ordering ensemble. In my judgment, that degree of harm would be significantly serious for this Grade I church.

That character could still be easily read if some element of this part of the re-ordering remained. There would not be the same degree of harm to the listed building. If half the pews were retained only moderate harm would arise. That harm would be moderate. It would need to be justified on the evidence.

Q4 How clear and convincing is the justification for carrying out the proposals?

107. The aspirations of the Petitioners for new forms of worship and increased attendances are sincerely held. If new forms of worship are to be implemented, I accept that they do require some flexibility in the use and layout of the Church.
108. This Church is unusual in that the pews are not fixed and are moveable. To that extent the justification for flexibility within the floorspace from the removal of fixed pews is not the same as that arising from unfixed pews.
109. As I have shown, the number of chairs sought has changed from time to time. This has not assisted the presentation of a convincing justification for the 360 seats now sought. The escalation of costs for the chairs following, on the evidence, the decision to acquire the Howe 40/4 model has not been explained or justified.

110. The Petitioners presented various possible layouts⁵² all of which show the removal of all pews. Some of these include assumptions such as a relocated Nave Altar or a relocated font and a new south transept chapel etc. These proposals are not the subject of this petition. However, the maximum number of chairs shown on any layout is 182 (p.18) for "civic occasions, weddings and funerals". For normal services 105 seats are shown. There is no justification provided for 360 seats. Alternative, smaller layouts are shown. None justify the provision of 360 seats. The number of 360 seems to have been derived from current fire risk requirements for escape routes derived from the aperture of the doors.

111. What has not been assessed is the capacity for temporary (moveable) chairs. The 2006 risk assessment was included in the further submissions of the Petitioners submitted after the hearing and states:

"In general, no seat should be more than seven seats away from a gangway. If temporary seating is provided, these should be secured in lengths of not fewer than four seats (and not more than 12). Each length should be fixed to the floor."⁵³

This requirement for linking temporary seating and fixing such lengths to the floor has not been taken into account. It would appear to negate the purpose of the petition.

112. The existing seating⁵⁴ provides:

Nave:	24 pews	= 120
South aisle:	14 pews stored	= 70
South transept	7 pews	= 35
North transept	<u>4 pews</u>	<u>= 20</u>
	49 pews (at 5 per pew)	= 245

113. No clear and convincing justification has been produced for removing all 49 pews. None of the proposed uses or initiatives proposed by Mr Spurr or the Statements of Need explain why 360 seats would be required to be provided. The maximum requirement justified by the evidence is 182 seats.

114. Increased capacity could be achieved by retaining the 24 Nave pews and replacing the remaining 25 pews, including any currently damaged pews, with chairs. The capacity would remain at 245, well in excess of the 182 justified.

115. The advantage of such a partial removal of pews is that it lends flexibility to the layout but retains sufficient pews to retain the option of the current Nave layout. It allows the spirit of the architectural and historic character of the Preedy re-ordering to be read and maintained.

⁵² P 5, pp 18-28

⁵³ SF Document entitled "HM Government Fire Safety Risk Assessment - small and medium places of assembly", internal page 60

⁵⁴ In addition to the Churchwarden pews at the west end and pews in the chancel

116. I find that such a reduced proposal is all that is justified by the petition and that it would avoid serious harm to the comprehensive re-ordering by Preedy that informs the current architectural and historical character of the church. In my judgment it outweighs the moderate harm to the architectural and historical character of this Grade I building.
117. It is also consistent with the proposals currently being sought in those Suffolk churches that Mr Hawkins referred to and relied upon on behalf of the Petitioners.
118. The objectors have not put forward any alternative scheme but have indicated that they support a compromise such as has been suggested by English Heritage. Their objection was to the complete replacement of pews with chairs.

Q 5 *Will any resulting public benefit outweigh the harm?*

119. I find that the public benefit from the proposal to remove all the pews and to provide 360 chairs has not been established and would be insufficient to outweigh the significant degree of serious harm to this Grade I building in terms of both the architectural character and the historical interest of the church derived as it is from the comprehensive work of re-ordering carried out by the architect Frederick Preedy.
120. Notwithstanding that the proposals affect a Grade 1 listed building, I find that a reduced and justifiable scheme allowing the removal of 25 pews only would provide sufficient public benefit to outweigh the moderate harm to the architectural and historical interests of the Church and would retain part of that special interest. It would be justified on the proposals and their public benefit currently before the Court.

Is the Duffield, St Alkmund approach still appropriate?

121. In the light of the Chancellor's initial direction to the parties to address the Duffield, St Alkmund judgment, at the outset of the hearing I considered that a question could arise as to whether that judgment needed to be considered in the light of subsequent secular planning judgments of the Courts. For example, if a more restrictive approach was being applied to the secular statutory legislation in respect of heritage assets, whether the principle of equivalence identified in that judgment might need such changing secular legal interpretation to be updated and taken into account. I asked the Petitioners to consider that eventuality.
122. I am bound by the decision of the Court of Arches in Duffield, St Alkmund. It is not clear whether the principle of equivalence to secular statutory interpretation is capable of being considered by the Consistory Courts on a case by case basis or, because of the doctrine of precedent, it is more appropriately a matter for the Court of Arches. Arguably it is the principle of equivalence to which the Consistory Court is required to adhere rather than the precise words of the guidance. On the other hand,

a change to the wording of the *Duffield, St Alkmund* guidelines might be seen as challenging the authority of the Court of Arches.

123. Moreover, I am also aware that although the current law is as set out most recently by the Court of Appeal in *East Northamptonshire DC and Barnwell Manor Wind Energy Ltd. v Secretary of State for Communities and Local Government* [2014] 1 EWCA Civ 137; [2014] 1 P&CR 22; CA Sullivan LJ 18-2-14, that Court has given permission to appeal in two subsequent cases. Consequently, although the statutory interpretation forming the basis for equivalence may have changed since the decision in *Duffield, St Alkmund*, it may yet change back again in the future.

124. In the event, my findings already set out above, that there would be significantly serious and unjustified harm if all the pews were removed, would not change if a more restrictive legal approach were to be applied under the principle of equivalence. It would merely reinforce my conclusion. It is not, therefore, necessary for me to reach a judgment on this question as regards that part of the case.

125. In her Note, Miss Daly considered the relevant cases:⁵⁵

East Northamptonshire DC and Barnwell Manor Wind Energy Ltd. v Secretary of State for Communities and Local Government [2014] 1 EWCA Civ 137; [2014] 1 P&CR 22; CA Sullivan LJ, (18th February 2014)

Bapchild, St Laurence, Canterbury Commissary General Ellis QC (28th May 2014)

R (Forge Field Society) v Sevenoaks DC [2014] EWHC1895 (Admin) Lindblom J. (12th June 2014)

Ecotricity (Next Generation) Limited v Secretary of State for Communities and Local Government [2015] EWHC 801 (Admin) Charles George QC Dean of the Arches sitting as a Deputy Judge (27th February 2015)

R (oao Mordue) v Secretary of State for Communities and Local Government [2015] EWHC 539 (Admin) John Howell QC sitting as a Deputy Judge (9th March 2015)

126. Miss Daly drew attention to "The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England": Guidance from the Department for Culture, Media and Sport - July 2010, which said:

"30. ... The essential requirement of such procedures is equivalence with secular listed building consent in terms of due process, rigour, consultation, openness, transparency and accountability."

127. This was the basis for the approach in *Duffield, St Alkmund* :

"39 It is apparent from this guidance that the concept of "equivalence"

⁵⁵ To which may be added *R (oao Mrs Gillian Hughes) v South Lakeland DC and others* [2014] EWHC 3979 (Admin) HH Judge Waksman QC 28th November 2014 and *Obar Camden Ltd v Camden LBC* [2015] EWHC 2475 (Admin) Stewart J. 8th September 2015.

does not necessarily require that the same result will be achieved as if the proposal were being determined through the secular system, nor that listed building considerations should necessarily prevail. What is essential, however, is that these considerations should be specifically taken into account, and in as informed and fair a manner as reasonably possible. In particular, the guidance contains no reference to any test of necessity before works which would affect the special character of a listed church are carried out.”

128. I agree with Miss Daly that the faculty jurisdiction, in its consideration of works to listed buildings, does not have to adopt exactly the same approach as the secular system, so long as there is general compliance with the principle of equivalence. However, that equivalence is not to be fixed at a date in July 2010. If interpretation in respect of listed building law is clarified or changed by the secular Courts, it seems to me that equivalence would require a similar, updated interpretation being applied in ecclesiastical courts.

129. In my judgment it is necessary for equivalence to be reviewed in the light of any changes of interpretation of the secular law. In *Duffield, St Alkmund* the Arches Court began its evaluation by stating that:

"90. However, the context is one of a Grade I listed building, so that there is a strong burden of proof on the Petitioners as we perform the equivalent of the function which a secular planning authority would under section 16(2) of the [Listed Buildings Act], of having 'special regard to the desirability of preserving the building ... or any features of special architectural or historic interest which it possesses'."

130. In *Ecotricity*, Charles George QC, who as Dean of the Arches had presided in *Duffield, St Alkmund*, was sitting as a Deputy High Court Judge. He quoted from Sullivan LJ in *East Northamptonshire* that:

"28. It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE 9.4 and HE 10.1 should ignore the overarching statutory duty imposed by section 66(1), which properly understood (see *Bath, South Somerset and Hetherington*) requires considerable weight to be given by the decision makers to the desirability of preserving the setting of all listed buildings, including grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a grade I listed building, a designated heritage asset of the highest significance. **If the harm to the setting of a grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission** (so that a grant of permission would no longer have to be 'wholly exceptional'), **but it does not follow that the 'strong presumption' against the grant of planning permission has been entirely removed.**

29. For these reasons, I agree with Lang J's conclusion that parliament's intention in enacting section 66(1) was that decision makers should give "considerable importance and weight" to the desirability of preserving

the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. **The Inspector appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyvedon New Bield, as a less than substantial objection to the grant of planning permission.**" [emphasis added]

131. Section 66(1) and section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are in similar terms⁵⁶. The former related to applications for planning permission affecting listed buildings; the latter to applications for listed building consent.

132. The Deputy Judge in *Ecotricity* continued:

"95. Thus the rather surprising consequence is that **section 66(1) of the Listed Buildings Act has been held to require that decision makers give 'considerable importance and weight' to the desirability of preserving the setting of listed buildings regardless of whether the harm to such a heritage setting is less than substantial or presumably even if it is less than significant.** That this should be so is not immediately apparent from the wording of the statute, **but the statute now has glosses of such high judicial authority that at the level of this court the interpretation is binding,** however anomalous the consequences. As Lindblom J said in *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin) para 55 where the decision challenged was one of a local planning authority rather than on appeal:

'Once [the officer] had found that there would be some harm to the setting of the listing building and some harm to the conservation area, the officer was obliged to give that harm considerable importance and weight in the planning balance.' " [emphasis added]

133. A similar approach was adopted by the Deputy Judge in *Mordue*.

134. Permission to appeal to the Court of Appeal in *Ecotricity* and *Mordue* was granted on 20th May 2015. The judgment of Lindblom J (who has now been appointed to the Court of Appeal) in *Forge Field* was not appealed.

135. In terms of equivalence today, the position would appear to be that the statutory test for harm to a listed building is as described in para. 28 of *East Northamptonshire* and para. 55 of *Field Forge* as set out by the Dean of the Arches sitting as a Deputy Judge in *Ecotricity*. That amounts to a change of interpretation of the statutory test for granting listed building consent concerning Grade I buildings. The principle of equivalence would require a similar change to be incorporated into the *Duffield, St Alkmund* questions.

⁵⁶ Both say: "...shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses"

136. Lindblom J. in *Field Forge* (which was decided after *Bapchild, St Laurence*⁵⁷) has made it clear that the approach is not a matter of policy but is a statutory presumption:

48. As the Court of Appeal has made absolutely clear in its recent decision in *Barnwell*, the duties in sections 66 and 72 of the Listed Buildings Act do not allow a local planning authority to treat the desirability of preserving the settings of listed buildings and the character and appearance of conservation areas as mere material considerations to which it can simply attach such weight as it sees fit. If there was any doubt about this before the decision in *Barnwell* it has now been firmly dispelled. When an authority finds that a proposed development would harm the setting of a listed building or the character or appearance of a conservation area, it must give that harm considerable importance and weight.

49. This does not mean that an authority's assessment of likely harm to the setting of a listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in *Barnwell*, that **a finding of harm to the setting of a listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering.**

50. In paragraph 22 of his judgment in *Barnwell*⁵⁸ Sullivan L.J. said this:

⁵⁷ *In re Bapchild, St Laurence* the Commissary General considered *East Northamptonshire*:

"I should note the recent re-emphasis by the Court of Appeal in *Barnwell* ... that Parliament intended, through the enactment of s.66 Planning (Listed Buildings and Conservation Areas) Act 1990 to give "considerable importance and weight" to the desirability of preserving listed buildings and their settings. The *Barnwell Manor* case also concerned questions about the application of secular planning policy concerning significance and harm. Which amply demonstrate the good sense of suggesting a simpler framework for the decision making of chancellors. Nevertheless, it seems to me, with respect, that the treatment of harm to significance in the first *Duffield* question as the trigger for one of two different sets of questions is consistent with the Court of Appeal's general approach and therefore in tune with the principle of equivalence."

This comment is limited to the *Duffield* questions 1 and 2. It does not address the approach to *Duffield* questions 3 - 5. *Bapchild* now needs to be read in the light of subsequent observations made by Lord Justice Sullivan. He commented. in granting permission to appeal from the decision of the Dean of the Arches sitting as a Deputy High Court Judge in *Ecotricity (Next Generation) Limited v Secretary of State for Communities and Local Government* [2015] EWHC 801 (Admin), that

".... it does not follow that less than substantial harm to the setting of a Grade I listed building is a less than substantial objection to the grant of planning permission".

That is not the question raised by *Duffield* Q1 or Q2. It is the Question that would arise under Q 5 and would mean that Grade I (or II*) churches should proceed through Q 1 to (or straight to) Q 5.

⁵⁸ This is a reference to *East Northamptonshire*

“... I accept that ... the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell L.J.'s judgment [in Bath Society] is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give “considerable importance and weight”.” [emphasis added]

137. Lindblom J. distinguishes a case of changing planning policies from a change in the interpretation of the statutory provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990. The latter category relates to ss. 16(2) and 66(1) of the 1990 Act.

138. Sullivan LJ in East Northamptonshire had posed the question:

“17. Was it:

- Parliament's intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and
if the conclusion was that there would be some harm,
then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weight as the decision-maker thought appropriate;

or was it

- Parliament's intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal,
- the decision-maker should give particular weight to the desirability of avoiding such harm?”

139. He answered that the correct intention was the second one set out in para. 17:

“24 ...Parliament in enacting s.66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given ‘considerable importance and weight’ when the decision-maker carries out the balancing exercise.”

140. In my opinion, the Duffield, St Alkmund questions at para. 87 reflect the first and erroneous interpretation set out in paragraph 138 above and not the second and correct interpretation.

141. Accordingly, I consider that there is, currently, a change in secular listed building decisions to the statutory weight to be given to the desirability of preserving from harm a Grade I (or II*) listed building, from that which is reflected in Duffield, St Alkmund. That change currently alters the original equivalence considered in

Duffield, St Alkmund. No doubt this change could be reflected in a variety of ways. It seems to me, that in order to reflect the statutory test as set out in the second part of the quotation in para. 138 above, Question 1 in paragraph 87 of *Duffield, St Alkmund* needs to differentiate between Grades I and II* churches and other churches. I also consider that there is a case for incorporating material from Question 5 into Question 1 in order to reflect the statutory test at the outset. Questions 3 and 4 in para. 87 might need to be modified to reflect that it is a statutory requirement that particular weight should be given to the desirability of avoiding harm to the listed building.

142. Accordingly, I do not agree with the Petitioners' conclusion that *Mordue* and *Ecotricity* (and presumably *Forge Field*) present no issue for the continuing application of the *Duffield, St Alkmund* principle of equivalence. Until overruled, those judgments do set out an accurate interpretation of the Court of Appeal's legal interpretation of the secular duty in respect of alterations to listed buildings.

143. Although it may fall to other chancellors to address this matter in the future, in the event, even if it is necessary to change the questions in *Duffield, St Alkmund* it would not lead to any change in my decision. I do not have to decide this matter or re-write the questions, because:

- I have concluded that the removal of all the pews would seriously harm the listed building; and

- I am able to direct that a conditional faculty should issue, notwithstanding the moderate harm to this Grade I Church that would arise from a reduced proposal, since the particular weight to be given to the desirability of avoiding such harm is met and outweighed by the justification put forward for the removal of some pews and the provision of some chairs.

- Insofar as the conditions limit the extent of the matters permitted, they do so because there would otherwise be avoidable harm to the Grade I listed building the seriousness of which has not been justified.

Disposal

144. In *Penshurst* (unreported) the Court of Arches determined that:

"112. Two procedural issues deserve a mention, which might prevent some of what has arisen here being repeated.

113. The first concerns the practice long familiar in civil proceedings whereby copies of draft judgments are circulated, in confidence, in advance of delivery. As stated in *R (Edwards) v Environment Agency* [2008] 1 WLR 1587, HL, para 66:

"The purpose of the disclosure of the draft speeches to counsel is to obtain their help in correcting misprints,

**inadvertent errors of fact or ambiguities of expression.
It is not to enable them to reargue their case”.**

Such advance disclosure is now the practice of this court, and we commend this practice to chancellors. In the present case it might have eliminated certain errors in the judgment.

114. The second concerns the principle enunciated in *English v Emery Reimbold & Strick Ltd* [2002] 1 WLR 2409, CA, and re-stated in *In the matter of S (Children)* [2007] EWCA Civ 694 para 22:

“[I]f counsel at the end of a judgment by a judge takes the view that the judge has not dealt with a material part of the case or in the particular instance has failed to make findings of fact or has not dealt with the evidence of a particular witness, the responsibility of counsel at that point in my judgment is to point the alleged deficiency out to the judge and invite him to give a supplemental judgment dealing with the point raised. It is not, in my judgment, appropriate immediately to ask for permission to appeal on the ground that the judge has not dealt with the issues in question.”

145. A draft Judgment was circulated to the principal parties with a covering letter that the parties had 10 days to respond and that the contents were not to be disclosed by the recipient to any other person until the approved version has been delivered. The Objector raised a question of clarification about the conditions which is reflected in this Judgment. No other parties commented.
146. A faculty should issue for:
1. The removal and disposal by sale of 25 of the existing pews
 2. The replacement of those pews with 125 Howe 40/4 chairs, 72 of which should have arms

subject to conditions that:

1. No removal or disposal of pews hereby authorised shall be made before the Parish has paid the outstanding unpaid parish share from 2009 to the date of the proposed removal or until the written agreement of the Diocese has been given to waive those arrears in payment and, in either case, before written confirmation of payment or waiver has been given to the Registrar by the Diocese.
2. No removal or disposal of pews may be made before the fire regulations for the linking and fixing of moveable chairs has been ascertained and supplied to the Registrar.
3. No removal or disposal of pews or placing of chairs may be made in the Nave before details of the proposals for rendering heating grills safe have been submitted to and approved by the DAC.

4. In the disposal of any pews, those in the worst condition shall be disposed of first.
5. The Churchwardens' pews at the west end and the pews in the Chancel shall not be moved.
6. The permitted removal of pews from the nave is to facilitate its flexible use whilst retaining the historical associations and accordingly pews shall not be removed from the nave for more than 60% of any month.

In the event of any disagreement under these conditions, the matter is to be referred back to the Court.

147. The court fees payable under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2014 (S.I.2014/2072) are to be paid by the Petitioners in an amount to be set out in a further order.
148. The reasonable correspondence costs incurred by the Registrar are to be paid by the petitioners in an amount to be agreed or to be set out in a further order.
149. There is to be no order as to costs between the parties.
150. These orders as to costs are provisional orders under rule 18.1(3) of the Faculty Jurisdiction Rules 2013 and will come into effect after the expiry of the period of 21 days beginning on the day this judgment is handed down unless within that period a party makes written representations to the court as to why either order should not be made.

Robert Lawrence Fookes
Deputy Chancellor