



Faculty – Grade II listed medieval village church (restored by Paley & Austin in 1882-3) – Internal re-ordering – Installation of a toilet and servery at the west end of the church – Removal and relocation of some nave pews to create additional and more flexible open space with six rows on each side of the nave remaining unaltered – DAC recommending works for approval – Objections to extent of pew removal – Faculty granted*

Application Ref: 2021-064782

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Wednesday, 20 July 2022

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Mary the Virgin, Fawley

THE PETITION OF:

THE REVEREND SUE LEPP (Priest-in -charge)

DAVID ALEXANDER NAPIER (Churchwarden)

This is an unopposed petition determined on the papers and without a hearing.

Objections were received from the Victorian Society but they elected not to become a party opponent.

The following cases are referred to in the Judgment:

Re All Saints, Hooton Pagnell [2017] ECC She 1

Re St Alkmund, Duffield [2013] Fam 158

Re St Chad, Longsdon [2019] ECC Lic 5

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393

Re St Peter & St Paul, Aston Rowant [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265

Re St Peter, Shipton Bellinger [2016] Fam 193

JUDGMENT

Introduction and background

1. This is an unopposed online faculty petition, dated 6 April 2022, by the priest-in-charge and the churchwarden of this Grade II* listed medieval village church (with later alterations, additions and restorations) to re-order the interior of the church building so as to provide a kitchen servery and toilet facilities, a renewed heating system and more flexible space. The parish consider that significant changes are required to the church building in order to advance the church's worship and mission. They wish to reorder the west tower to accommodate a servery and a fully accessible wc, and this work will necessitate adapting the joinery of the existing gallery to accommodate the new facilities. The number of pews within the nave will need to be reduced to create additional, and more flexible, space, and the font will have to be relocated to the south transept. The parish acknowledge that by altering the arrangement of the church building's late 19th century fixtures and fittings, their proposals will compromise the coherence of the 1884 reordering by the celebrated Lancaster architectural practice of Paley & Austin. However, the parish assert that there will be no impact on the more significant historic fabric of the church; and the exterior will remain entirely unchanged.

2. The parish of Fawley, in the Archdeaconry of Buckingham, is in the south-west corner of Buckinghamshire, about two and a half miles from Henley-on-Thames. The parish is approximately three miles long, two miles wide and eleven miles in circumference. St Mary the Virgin has been continuously operating as a church for over 850 years. In this time, it has been altered on a number of occasions, and substantially rebuilt at least twice, always on the site where it now stands. The church is situated within the Fawley Green Conservation Area; and it forms part of the Hambleton Valley Group of churches. The parish acknowledge that the church's significance - aesthetic, spiritual, geographical, and social - is unquestionably **high**.

The church building

3. The parish church of St Mary the Virgin, Fawley, was first listed as a Grade II* building on 21 June 1955. The listing description reads as follows:

Parish church. Nave originally C12, altered; late C13 W. tower, raised C16; chancel rebuilt and dated 1748; 1883 transepts, N. vestry and restorations. Flint with stone dressings, tiled roofs. W. tower has moulded parapet with shallow gables to N. and S., original moulded corbel table, and C19 angle buttresses. C16 single lights with

chamfered semi-circular heads above and below corbel table; partly restored 2-light traceried window of clunch to W. over C19 moulded doorway; lancets to N. and S., the S. C19, Nave has 2 bays of C19 2-light traceried windows. Transepts have single lights to E. or W. and 2-light traceried windows to N. and S., the S. transept with cusped S. window, sill course and buttresses. Chancel has blocked S. doorway with bonded surround of narrow bricks, semi-circular arch, and brick imposts and keyblock. Large E. window with semi-circular arch and off-set brick surround. Above window is date plaque with numbers in tile ends. C19 vestry to N. of chancel. Interior: double chamfered tower arch on semi-octagonal piers with painted texts; C19 double chamfered arches to transepts; semi-circular chancel arch with narrow chamfer and billet moulding. Chancel has modillion cornice and E. bay articulated with Ionic pilasters. Early C18 panelling from chapel at Canons, made for the Duke of Chandos, the E. bay panels enriched with mouldings. 4 panels along E. wall have carved gilt drops of fruit and flowers. Similar spray of trefoil foliage above altar. Communion rail with turned balusters is also from Canons, as are pulpit and reading desk. Pulpit has moulded raised and fielded panels, richly carved base and cornice, and corner drops with winged cherub heads. Simpler reading desk with richly carved frieze. Chair of same date in chancel, mid C17 chair in nave. Front pews in nave and S. transept pews have ornamental scrolls of c.1700. Late C19 nave seating and stained glass. Armorial glass of 1635 from Phyllis Court, Henley, in tower lancets. Memorial window in vestry by John Piper 1976. Monument to Sir James Whitelock d.1620 and wife Elizabeth d. 1631, in S. transept, with recumbent white marble effigies in surround with open pediment on Tuscan columns. Small carved figures of Fame and Peace on pediment. Cartouche in nave to Philip and Elizabeth Hilfiar c.1719. Chancel rebuilt by John Freeman of Fawley Court, transepts added by William Mackenzie, also of Fawley Court, both families with a mausoleum in churchyard.

4. The entry in the 2nd (1994) edition of the volume of *Pevsner's Buildings of England for Buckinghamshire* (at pp 325-6) begins: "*The post-Reformation work is what counts here ...*". The editors note that: "*Many of the furnishings were brought from the chapel by James Gibbs (1716-19) at Canons, the Duke of Chandos's palace near Stanmore (NW London), after they had been auctioned off in 1747 ... They included the nave seats which were laid out college-wise but, sadly, these and most of the furnishing were removed in 1882-3 ... The architects of the drastic 1882-3 restoration were Paley & Austin, working far away from their Lancaster base ... Work included raising the nave walls, a new nave roof, windows, N transept vestry and a refacing of the Whitelock chapel, which was opened by an arch to the nave.*" Apart from a brief mention in the former to "*Late C19 nave seating*", there is no reference in either the listing description or the entry in *Pevsner* to any of the furnishings introduced into the church as part of Paley & Austin's restoration work; specifically there is no mention of the panelling of the nave walls, the new pews, or the tower screen and gallery. However, this is a relatively early listing description, compiled at a point much closer in time to the completion of those works.

5. There is a detailed report (with photographs) on the pews and the gallery, prepared in August 2021 by the Oxford Heritage Partnership, which concludes that the present oak pew seating in the nave dates back to the 1883 restoration. The seating presently consists of: 22 oak benches (of 1883) which provide the bulk of the congregational seating in the nave; two choir stalls of (1878) in the base of the tower, one against the north wall and one against the south; two square-ended, mid-19th century short benches, one up on the gallery, and one in the north

transept; one three sided built-in children's pew (of 1883) in the north transept; and one two-sided, early-mid 20th century built-in bench in the south transept, with 18th century decorative carving. At the west end, in the base of the tower, is a projecting, three-sided entrance lobby and gallery made of oak. This was inserted in 1883, replacing the 18th century manorial pew/gallery belonging to the Freeman family. The east front of the gallery is 10 feet wide; the north and south returns are 65 inches long. At ground floor level, the interior doors of the lobby are 66 inches from the west wall. The gallery floor is 106 inches above floor level, and serves as the ringing chamber, whilst also offering some additional seating. To the eastern edge it has a wooden balustrade with simple turned balusters and ball finials, echoing the design of the pew ends in the nave. The balustrade is 3 feet in height, excluding the ball finials. An iron ladder on the north side gives access to the belfry.

6. As a group, the 1883 nave seating, the children's seats, and the gallery are assessed as being of **moderate significance** for their aesthetic quality, coherence of design, and the rarity of Paley & Austin works in this area of England. The survival of the children's seats is also particularly rare, as these were often removed and destroyed in mid-20th century reordering works. The 1878 choir stalls are assessed as being of **low significance** with the exception of the reused 18th century carved work, which is of high significance for its artistic quality and its evidence of the lost 18th century interior of the Canons chapel. The stalls to which this carved work is affixed are of poor quality, showing none of the thoughtful design or robust manufacture that characterises the nave seating. The chief significance of these stalls, beyond serving as a host piece for the 18th century work, is in their evidential value: these provide the only remaining evidence of the Reverend Almack's chancel seating. The mid-19th century freestanding benches are assessed as being of **low significance**, with their significance resting in their evidential value rather than in any kind of aesthetic or constructional quality. They do provide evidence of the mid-19th century population boom in the village, and the Reverend Almack's efforts to reform worship in the village at that time; however they are by no means the only evidence for these events. The early-20th century south transept benches are assessed as being of **low-moderate significance** with the exception of the reused 18th century carved work, which is of **high significance** for its artistic quality and its evidence of the lost 18th century interior of the Canons chapel. These benches reuse the 18th century work more successfully than the mid-19th century choir stalls, integrating it more fully into the end design. They are also of higher quality than the mid-19th century stalls, comparable to the nave seating. Nonetheless, they are a late addition to the interior, and one that makes no substantial contribution to the building's character.

The proposals

7. Proposals for the internal re-ordering of the church have been the subject of extensive discussion with church buildings officers and the Diocesan Advisory Committee (the **DAC**) since at least February 2021. The proposals have undergone consequent modification since the petitioners first prepared their detailed statements of significance and of needs, and Acanthus Clews Architects first issued their illustrated reordering feasibility study, all in July 2021. Representatives of the DAC and the Church Buildings Council (the **CBC**) undertook a site visit on 31 August 2021. The DAC recognised the parish's need for kitchenette and toilet facilities, and considered these to be well justified throughout the project documentation. The DAC also understood the parish's desire for increased flexibility within the church interior. The Senior Church Building Officer's detailed note of the site visit recognise the potential of the church building as a hub for the local community given that there is no shop, public house, post office

or any hall available for easy use; and she expressed the DAC's wish to help the parish to maintain the momentum of their proposals. The church building was said to be well cared for by an energetic and dedicated parish team, who were commended for being up to date with repairs to, and the maintenance of, the fabric of the church building. It was clear to the DAC representatives who attended on site that the church team cared greatly for their building, and wanted to find solutions to their needs, whilst retaining the historic fabric and the character that makes their church building so special.

8. The petitioners have produced a document which sets out the impact of their proposals on the wider Hambleden Valley Group (the **HVG**) of churches (comprising five parishes and six churches) of which St Mary the Virgin, Fawley has been a part since 1965. The other HVG parishes are overwhelmingly supportive of the proposed re-ordering in Fawley. For many years, Fawley was said to have been a concern due to its low church attendance and steadily dwindling finances. Its survival was mainly down to its devoted churchwarden and PCC members, a small congregation, and their loyal clergy, who had kept Sunday services going. The reversal in the church's fortunes has been noted and applauded over the last 18 months through their Friday prayer service, which has led to a re-energization and new interest in the church. The lack of basic facilities and flexible space impacts upon the HGV in two major ways: First, local parishioners, who are entitled to have their life events celebrated in their local parish church, feel unable to do so when basic facilities and flexible space are lacking. They feel that it is "*an avoidable tragedy*" to have to decide whether or not to hold an event of great family significance in the church because of the lack of any kitchen or toilet facilities, and a welcoming meeting area. Unlike some of the other villages, which enjoy additional amenities, there is no easily accessible option for people in Fawley. The lack of flexible space, that can only be secured by removing or moving pews, also impacts upon the hospitality that can be offered. Receptions for funerals and baptisms could easily take place within the church building if there were suitable space. Instead, families may choose to hold events in other HVG churches. This they are welcome to do; but it does make additional work for the volunteers in those other churches. Fawley also misses out on the fees and potential donations from these events, which would help the parish's financial position.

9. Secondly, the HVG works hard to be a united group of churches, and to support each other as best they can. The first Sunday of every month has a group service, with the Eucharist, which all members of the wider congregation are encouraged to attend. Attendance at these services is generally very good; but when the service is held at a church which lacks basic facilities (toilets, access to running water, and flexible space) attendance does tend to fall. In the winter months, ancient heating, electrical systems and poor lighting are also factors. As the HGV's congregations are mainly older people, who may be more sensitive to the cold and at greater risk of loneliness and isolation, not being able to attend church comfortably or safely is damaging to their mental health and sense of value and well-being. The lack of flexible space also hinders the services, events, and meetings that can be held at Fawley, which is therefore currently at a disadvantage in its present condition. Not every church in the group has facilities or flexible space for hospitality; but the other churches have facilities nearer to them (such as public houses, village halls and the Frieth School), albeit in some cases these may not be particularly convenient. Thus the proposed re-ordering will not only benefit the village of Fawley itself but also the wider benefice as it will hopefully have the facilities, and the flexible, useful space, needed to host an increased number of HGV services, events and meetings in an environment that is physically comfortable and accessible to all people. This is also true for the wider Fawley community since

it will inspire the village and the groups that would benefit from a church that has facilities and flexible space to meet their spiritual and social needs. As congregations age, accessibility is said to become a matter of increasing concern. It would also allow parishioners to have their significant life events in the church that is of such importance to them, and not be deterred by the lack of basic facilities and hospitality space. The role of the present priest-in-charge is for a fixed term, and she hopes that a lay-led building project directed towards improving the facilities and the flexible space of this beautiful church will prove attractive to the next rector.

10. At their meeting in September 2021 the DAC resolved to support the principle of the installation of facilities at the west end of the church and associated alterations to the screen, the disposal of the organ and reordering of the north transept, and the relocation of the font to create a baptistry in the south transept. The DAC have undertaken three rounds of consultation with interested heritage bodies and amenity societies (in and around August and December 2021, and in February 2022). At their January 2022 meeting the DAC decided that they could not support the scheme which the parish were then proposing (with six rows of pews to be removed) and they were prepared to issue a 'not recommend' Notification of Advice should the parish wish to petition the court for permission for that scheme. Instead, the DAC resolved to support a revised scheme which would involve the removal of up to four rows of pews from the west end of the church, the retention of the readers desk and the children's pew (which would be adapted to run along the west wall of the north transept), and with the two foremost nave pews and frontals being adapted for optional use in the chancel. The parish were content with these more modest proposals. As described in the notification of advice and the petition, the proposals now comprise the following:

Interior alterations to include the installation of a toilet and servery at the west end of the church, adaptation of the existing screen in this area, relocation of the font. Creation of storage within the vestry, new interpretation of the Piper window located here. Installation of chairs and tables for occasional use. Creation of ramp to vestry. Upgrading of electrical supply and installation of new heating and lighting systems. Internal redecoration. Broadband installation and AV system.

Changes to pews as follows:

6 No. Nave pews removed

2 No. Frontmost Nave pews and frontals (currently floor fixed) made freestanding to allow optional use in Chancel

2 No. Fixed Nave pews relocated to gallery (Adapted to be freestanding by reusing pew ends taken from removed pews)

12 No. Nave pews unaltered

2 No. pews from tower retained and relocated to south transept

2 No. short benches on gallery and in north transept retained and relocated to Vestry

Alteration of the children's pews in the north transept.

All to be in accordance with Layout Option 8 by Acanthus Clews, Architects.

These revised reordering proposals received the full support of a resolution of the Parochial Church Council at a meeting held on Monday 4 April 2022.

11. The DAC are now content that all the elements of this revised reordering proposal are fully justified, and supported by the evidence; that that scheme is the least harmful way of achieving the aims of the parish; and that any harm to the significance of the church is likely to be outweighed by the public benefits to be generated as a result of the proposals. They have therefore recommended these revised proposals for approval by the court (subject to conditions). The DAC recognise, and they have advised, that these latest proposals are likely to affect the character of the church as a building of special architectural or historic interest. Notice of the proposals has therefore been published in accordance with rule 9.9 of the Faculty Jurisdiction Rules (the **FJR**). No objections have been received in response either to the rule 9.9 notice or to the display of the usual public notices (which all expired on 7 May 2022).

12. It is worth noting the reasons for the DAC's views, as recorded in the minutes of their January meeting, because of the depth of the consideration they have given to these reordering proposals. The DAC discussed the scheme at length, and they reiterated their support for the parish's vision and commended the energy with which they had developed the scheme over the previous year. The DAC noted that they had previously agreed to support a number of elements of the proposals, and had commented in detail on the other aspects, as well as making suggestions for phasing the project. The DAC noted that the parish had carried out further work to identify what activities might possibly take place in the reordered church and they had taken previous comments on board regarding the retention of pews in a fixed position. However, the DAC remained concerned about the lack of specific uses being proposed for the north transept and the vestry space, and were of the view that these could be better utilised, thereby reducing the number of west end pews that would need to be removed. The DAC did not agree with the parish's description of the north transept and the vestry as dark spaces given their light and open architecture, which could be further improved by the proposed new lighting system. Whilst it was certainly the case that a servery at the west end of the church would require circulation space in front of it, and the relocation of the font would help in that regard, the DAC did not feel that sufficient justification had been provided for the extent of pew loss proposed in that area. The proposals, as then presented suggested that the parish felt that all events requiring flexible space should take place close to, or sharing space with, the outside of the church; but not all events, in all seasons of the year, would spill out to the exterior of the church building; and, in any event, there was an external door in the vestry (although the DAC recognised that this was not the main entrance). The DAC felt that the area which was most appropriate for flexible use had been undervalued by the parish and that, as a result, a larger number of pews were being proposed for removal at the west end than would be necessary if the flexible space in the north transept and the vestry were to be better utilised. The pews were of moderate significance, and of good quality design and construction; and the DAC were of the view that the removal of six rows from the west end, as was then proposed, would be unduly harmful to the significance of the church, and that the aims of the parish could be met with a lower degree of loss of historic fabric. The DAC recognised and accepted that the parish did not share that view. The DAC considered that the retention of only five rows of pews in the nave would represent a loss of the majority of the fixed seating in the church's highly linear space and, when flexible seating and tables were introduced, would create a cluttered, and visually uncomfortable, hybrid solution in which the remaining benches would lose their meaning and presence. The scheme currently left the two front pews in place even though these were the ones which were not fixed to the panelling and

so would be the easiest to move elsewhere in the church or dispose of. Removing these two front pews, and retaining more of the pews which were fixed to the panelling at the west end, would help to lessen the hybrid appearance and minimise intervention into historic fabric. Relocation of these front pews to the chancel when space was needed at the front of the nave would also lessen the need to remove the readers desk as more space would be created in this area. During services, retained pews could be positioned at the front of the nave so as to bring the congregation forwards into the church. The DAC noted that the readers desk contains significant historic fabric, and was specifically mentioned in the listing description, and they considered that there was insufficient justification for its disposal. This desk was small and well positioned and should not impede the flexible use of the front of the church significantly. If this were found to be the case following the realisation of the proposed changes for the rest of the building, then this might provide further justification for the removal of the readers desk; but given the importance of the retention of any Chandos woodwork within the church (some of which is contained within the readers desk), further research into its provenance and significance, in the form of a specialist report, would be required to support any such application. Clergy members of the DAC expressed concern that should the readers desk be lost, there would no longer be any obvious place from which to lead a service since the pulpit was no longer in regular use. From an aesthetic view, the readers desk also offers some balance to the pulpit on the south side of the chancel arch. The south return of the children's pew was noted within the Oxford Heritage Partnership report as unusual, and as contributing to its significance. The DAC therefore believed that this pew should be altered to retain the return (and the bench end) along the west wall of the transept so that this historic fabric was preserved, whilst increasing the ease of use of the north transept. The DAC noted the parish's concerns about how much space would be left within the chancel if four pews were to be located there in addition to the pew frontals, and the DAC agreed that this space would become too narrow. The DAC therefore supported varying the scheme to include the relocation of two pews to the chancel together with the frontals (which it considered to be more important to retain than two further pews). The DAC were unconvinced that phasing the proposals were as problematic as the parish feared. It would not involve re-doing any works from phase 1, and would give time to see how the new space that would be created was being used, and how the changes would look in terms of character, appearance and impact on historic fabric; in particular, the changes to the heating and lighting, the changes to the west tower (giving a whole new base for the tower and the gallery space above), and the additional space in the west end of the nave, and the north transept and vestry. The DAC doubted that a phased approach would result in any lack of community support for the works as the proposed first phase would deliver new facilities and the flexible meeting space which were clearly much needed and desired. In fact, the only works the DAC would suggest for any later phase might be the removal of two further rows of pews from the west end.

The petition

13. When I first received the petition, I noted that final consultation responses were still outstanding from the local planning authority (the **LPA**) and the Victorian Society (the **VS**). I therefore directed that special notice of this faculty petition should be given to the LPA and the VS in accordance with FJR 9.3 and 9.5. No response has been received from the LPA. On behalf of the VS, Mr James Hughes, their senior conservation adviser, responded by email on 29 April 2022, thanking the Registry for the special citation and the opportunity to make further representations on this faculty application. The VS did not wish to become a party to the

proceedings, and were content to leave the court to take the VS's two previous emails of advice of 6 September 2021 and 20 January 2022 (cited below) into account. However, Mr Hughes welcomed this opportunity

... to stress the rarity and distinction of the church's C19 work, as a notable, indeed unique, example of the distinguished Paley & Austin's work in the county, for its incorporation of (and deference to) C18 fabric and for the form of the gallery in the tower, for which we can think of no real contemporary parallels. While the proposed scheme represents an improvement on previous iterations on which we have commented, it remains one that would cause a significant degree of harm to the special interest of the building, and the specific elements of it and the precise needs for them will require very careful scrutiny.

Mr Hughes concluded that the VS would wish to receive a copy of any judgment in due course. Following sight of the special notice, the Society for the Protection of Ancient Buildings (**SPAB**) contacted the Registry and asked the court to take the comments in their earlier letters into consideration when making my decision. This I have duly done.

14. Since this is an unopposed faculty petition, I am satisfied that it is expedient in the interests of justice, and in furtherance of the overriding objective of the FJR, for me to determine this petition without a hearing, and on the basis of the considerable volume of written and illustrative material that has been uploaded to the online faculty system (the **OFS**) and is before the court. In light of the helpful photographic images of the church interior contained within the material available on the OFS, and the level of detail shown on the plan Layout Option 8 by Acanthus Clews, Architects, I did not consider that it would be of assistance for me to view the interior of the church. In determining this faculty application, I have had regard to all of the consultation responses and, in particular, to the helpful observations of the VS and SPAB.

15. Before I proceed to summarise the consultation responses, it is convenient for me to set out the legal framework by reference to which this faculty petition falls to be determined.

The legal framework

16. I should preface this part of my judgment by explaining that the corollary of the ecclesiastical exemption from the requirement for listed building consent from the local planning authority before any works can lawfully be carried out to a listed church building is the need for the faculty system to apply equivalent levels of transparency, openness and rigour in maintaining appropriate levels of protection for that significant part of the national heritage that church buildings represent. As Chancellor Singleton QC (in the Diocese of Sheffield) explained at paragraph 20 of her judgment in *Re All Saints, Hooton Pagnell* [2017] ECC She 1:

... churches, particularly listed churches, constitute a tangible and spiritual history which touches everyone including the people of the past, the present and the future including those from within and from outside our church communities and from within and outside their geographical area. They connect us to each other and to those who went before us and to those yet to come by our mutual and continuing appreciation and enjoyment of their beauty and history. These buildings need and deserve to be preserved, renewed and improved, expertly, professionally and within a process open to public scrutiny. That is my understanding of the purpose of the strict law which applies to listed buildings generally and within the Faculty

Jurisdiction as applied to listed churches generally and Grade 1 and 2* listed in particular. Within the church the preservation and development of beauty and history is undertaken to the glory of God.

17. Since the church of St Mary the Virgin, Fawley is a Grade II* listed building, this faculty application falls to be determined by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court's later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These questions are:

- (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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted?
- (3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) In the light of the strong presumption against any 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?

18. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can 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. I recognise that these questions provide a structure and not a strait-jacket. To adopt a well-worn phrase, these are guidelines and not tramlines. Nevertheless, they provide a convenient formula for navigating the considerations which lie at the core of adjudicating upon alterations to listed places of worship, namely a heavy presumption against change, and a burden of proof which lies upon the petitioners, with its exacting evidential threshold. Since the judgment of Chancellor Eyre QC (in the Diocese of Lichfield) in *Re St Chad, Longsdon* [2019] ECC Lic 5 (at paragraph 11) and my own judgment in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265, a practice has also developed of inquiring whether the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of the particular church building concerned. At paragraph 7 of my judgment in the latter case I said the following (with reference to the fifth of the *Duffield* questions):

In considering the last question, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be needed before proposals can be permitted. It also has to bear in mind that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. In applying the *Duffield* guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special

significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works, then that is highly relevant. In such circumstances, it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit.

19. It is this consideration which gives rise to what I conceive to be the key question in the present case. It is not disputed that the parish have demonstrated that this church building needs suitable kitchen and WC facilities and additional and more flexible open space. The real issue is as to where this space should be created and the extent of the consequent pew removal.

Consultation responses

20. As part of the first consultation exercise, *The British Institute of Organ Studies* were consulted about the disposal of the existing Casson Positive organ in order to free up space within the north transept. Their response was that: “*Casson Positive organs were a novel and interesting way of trying to make small and versatile pipe organs that were a better alternative for country churches than a harmonium. They have a certain curiosity value but are not of an historic interest that BIOS would consider to be significant. We would therefore not oppose the parish's wish to dispose of the organ.*” The BIOS encouraged the parish to start advertising for a new home for the organ as soon as possible (subject to faculty). *The Georgian Group* were also consulted at this early stage but since, for the most part, the proposals impacted upon the Victorian fabric of the church building, they were content to agree with the DAC’s feedback on the scheme following their September 2021 delegation site visit.

Historic England

21. In their initial consultation response (dated 15 November 2021) Ms Rachel Fletcher of Historic England apologised that she had not been able to attend the DAC visit on 31 August but she indicated that she had since been able to make a very informative visit to the church when she had met members of the congregation. She comments as follows:

The application information provides a very useful assessment of the significance of its features and the statement of need shows a clear interest and desire within the church community to expand the use of the church building but a lack of facilities at the church limit this. Covid has created renewed interest in local venues for activities and community uses and Fawley village lacks these. There is a clear opportunity for the church to provide for more numerous community and other activities within the church too.

Historic England Advice: The church is significant for the remaining medieval nave which illustrates the simplicity of modest rural places of worship in medieval Britain. The 18th century refurbishments, following a period of decay, including rebuilding the chancel, brought in a formality in both seating and finish and are important illustrations of how wealthy families supported their local church, and the remaining panelling illustrates high quality craftsmanship. The 19th century Paley & Austin reordering sought to further formalise the experience in the church and their solid and high-quality pews and panelling are of significance also for their quality and craftsmanship. It is also important to mention the Piper stained glass, which is of artistic interest.

Pews: The current preferred proposals suggest quite a high degree of alteration to the church. We are concerned about the proposed loss of 12 pews together with detaching the remaining 10 from the panelled walls. This level of alteration to significant features seems too great when considering the relatively limited proposed use for the building. We encourage the parish to consider whether removal of fewer pews could achieve a suitable mix of spaces to accommodate the various uses and users from the church and wider community. Flexible new furniture will also help maximise uses, if there are to be quite a variety.

Tower and font: We are content that the tower is likely to be the best place for the kitchen and WCs which would provide a neat and discrete location for them. The alterations to the panelling and gallery to accommodate this, where done carefully, will not unduly harm the church. The relocation of the font to the south transept is also uncontroversial.

North Transept, Vestry and children's pews: The proposed flexible use of the north transept and vestry are also positive as they are the largest open spaces (with the exception of the area between nave pews and chancel). However, owing to the high loss of Victorian children's pews and their relative significance we encourage a creative solution to retain these and reuse them in a manner that conserves as much of the fabric and layout that exists.

Next steps: We understand that a space planning exercise is taking place for the future users and events of the building and recommend combining this with a planned timetable of uses over the week/month/year. Meaningful exploration of these activities by talking to prospective users about what needs they have (in terms of space, heating, furniture, lighting and other facilities) will help ensure that designs for reordering can take this information on board and be well-designed in response. We would welcome the opportunity to comment on further amendments to the designs, in particular once the timetable of uses is developed.

22. Historic England did not respond to the second round of consultation. In response to the third round, Ms Fletcher commented, by way of email dated 31 March 2022, as follows:

Having reviewed the latest information it is clear that some of the harm identified in the original plans has been reduced, including keeping 4 rows of pews in the nave attached to the panelling and retaining the children pews with some modifications. We welcome these changes.

I have also read through the updated statement of need (November 2021) which provides clear evidence of anticipated use of the church, which would be well-used, if the proposed changes are made. I can also see the logic that the space to accommodate tables and chairs at the rear is needed to enable both additional activities to take place and to provide good facilities for established events and uses. Because of the modest size of the building the proportion of pews to be removed is high and as a result clear harm to the significance of the interior of the listed building would occur. But it is apparent that to allow for the proposed more regular use of the building, and to enable tables and chairs to fit in the west end of the building, this kind of transformation could be considered justified.

It is positive that removed pews would be relocated within the building rather than disposed of.

We also welcome proposals to improve the celebration and understanding of the Piper window in the vestry.

If the DAC are minded to approve the Faculty we strongly encourage the best craftspeople are engaged to undertake sympathetic repairs to the wall panelling in the nave, together other modifications to the timber work and pews in the church.

The CBC

23. Following a second site visit on 22 January 2022, the CBC responded by email dated 9 March 2020. They applauded the parish for their hard work and excellent supporting documentation; and they acknowledged the thorough analysis of the church building they had undertaken when formulating the feasibility study and options appraisal. The CBC response continued as follows:

The church building is in the centre of the village and is its only community space. Prior to the March 2020 Covid 19 lockdown, the church had two services per month which were attended by around 8 congregants, with festival services being well attended. However, at the beginning of lockdown, a regular Friday morning prayer service was established in the churchyard. The first services started with around 8 attendees, but this increased to 50-100 attendees as lockdown continued. The success of these services has fostered a strong sense of community and has revived local interest in the church building. As a response to the success of the prayer services, it is proposed to reorder the church building to provide a welcoming, flexible, accessible space as a centre of worship, mission and community activities in the village. The main facets of the scheme are to provide WC and kitchen/servery facilities and the removal of six rows of pews at the west end of the nave. The west end gallery would be extended towards the tower arch with the additional space formed below being used to provide an accessible WC and a kitchen/servery. The Council has considered the revised proposals and is supportive of the scheme. It understands that any remaining fabric from the disused pews will be used to make good the wall panelling where scars will be present following the pew removal. It was pleased that the proposal would maintain the processional route into the church and would provide a discrete location for the WC at the rear of the nave. The Council is now content to defer further consideration to the DAC.

SPAB

24. Ms Rachel Broomfield provided SPAB's initial comments on the parish's early proposals in an email dated 15 September 2021. SPAB recognised that the church was clearly well cared for and highly regarded and had the potential to become a very useful hub for the community as well as for events. SPAB agreed that changes need to be made to allow the space to be used more effectively but they warned that this must not be to the detriment of damaging what makes this church so special. Ms Broomfield pointed out that the church is heavily pewed, with wooden panelling to the nave walls, and that both of these features are very significant and contribute to the character of the space. Although there might be scope for removing some of the pews at the west end, given that their removal would cause harm, robust justification was required so that

SPAB could understand exactly how much space was needed and why. The aim must be to retain as many of the fixed historic pews, frontals and panelling in-situ as possible. After addressing the then proposals in detail, Ms Broomfield summarised SPAB's views as follows:

Whilst we welcome the increased use of the church and we would be happy to see a servery and WCs installed, we have some reservations regarding the proposed removal of half the pews and the insertion of underfloor heating. We feel that there would be considerable merit in a phased approach with St Mary's. Consideration should be given to the works at the west end first – installing the servery and a WC, making careful alterations to the screen and doors, moving the font into the South Transept and relocating a small number of pews into the Chancel and South Transept to create some open space at the west end. A flexible space can also be created relatively easily in the North Transept and Vestry. New lighting and improved heating (under pew heaters) could be installed which should make the church a much more useable space. This should be reviewed after an agreed period and if the parish find that additional space in the Nave is genuinely needed, a more robust case can then be made. This is a sensible approach especially when a church is going from little/infrequent use to what the parish hope will be very regular and more intensive use.

25. Ms Broomfield responded to the second round of consultation by email dated 4 January 2022. Having considered the parish's spatial audit, and the research which this embodied, and also Acanthus Clews's careful consideration of the detailed points in SPAB's initial consultation response, SPAB had looked at the proposals afresh and had sought a second opinion from a colleague familiar with the church. The aim of this had been to find a way in which more of the pews could remain whilst providing the parish with the flexible space that they desired. During further discussions, it had been agreed that in this particular church, the west end might not be the best place to make space for activities, and that greater use should be made of the continuous spaces in the 'crossing' and transepts by clearing a maximum of four rows of pews from the front of the nave. SPAB remained unconvinced that there was no alternative to the proposed relocation of six nave pews and the loss from the church of another six, and they asked the parish to consider their suggestions. SPAB felt that the historic church, its contents, and its associations with one of the foremost British artists of the 20th century, and arguably the most important ecclesiastical artist of that century, warranted further consideration, with the aim of producing a final scheme which carried the support of the amenity societies and all the consultees. SPAB believed that such a scheme could be achieved and was committed to fulfilling that objective.

26. The parish's project architect wrote to Ms Broomfield by email dated 21 February 2022. He explained that the parish's revised layout sought to respond positively to the helpful comments and advice from SPAB and the other amenity groups, whilst retaining the viability of the project for the church. He was conscious that the proposals still depart from SPAB's most recent updated advice suggesting the use of the east end of the nave, the north transept and the vestry for flexible space; and he therefore wanted to explain the parish's reasoning for retaining some reordering at the west end of the nave:

(1) Areas of welcome were, from experience, best located at the west end of the church. The natural movement of people following a service or function was to the exit and the provision of a space at the west end would encourage more social engagement. A welcome area at the west

end would also create a more comfortable environment and visual cue for church visitors, especially those who were not so connected with the life of the church.

(2) For privacy and comfort, as SPAB acknowledged, the provision of a wheelchair accessible WC would be best located in the tower; but as a consequence of using the north transept for the servery and welcome area, SPAB had suggested that another WC should be created in the same location. With the additional storage, this would significantly reduce the already limited space for flexible seating. On a more practical level, providing drainage for the church would present a challenge; and to limit any disturbance to the churchyard the architect would wish to confine this to one location, ideally at the west end.

(3) The revised layout would allow for a small number of chairs and tables to be set up before any service or function and for them to be immediately usable afterwards. The use of the east end of the nave would mean that the tables and chairs could only be set up on completion of a service or function, which would be highly impractical. This arrangement would also rely on the tables and chairs being promptly put away after use, as they would have a greater visual impact if left out in the crossing.

(4) The 'children's pew' located in the north transept had been retained in response to the observations about its significance made by other amenity groups. This would prevent the use of the north transept for other facilities such as a servery.

Notwithstanding these observations, the architect considered that the updated layout would respond to SPAB's advice by reducing the number of fixed pews to be removed from the nave and increasing the amount of storage space. A mechanical and electrical consultant would be retained for the heating and lighting design. The architect noted Ms Broomfield's comment about lighting the Piper Window and he proposed to obtain more expert advice about that.

27. Ms Broomfield responded to the third round of consultations in an email dated 16 March 2022. SPAB were pleased to see that more pews were now to be retained, especially the children's pew, which would move to the north transept. Placing the front two pews and their frontals in the chancel was also a good idea. Ms Broomfield inquired about what was intended for the pews that were to be removed from the church, and she expressed the hope that a new home could be found for them within the Diocese. SPAB considered that the additional storage would also be highly beneficial. Ms Broomfield commented that whilst many churches did have their welcome areas at the west end of the church, close to the door, and that this worked well after a service, that was by no means exclusive. SPAB had visited many churches where the welcome area and flexible space was positioned elsewhere, or was spilt so as to make the best use of the space available. In this church, there seemed to be a strong desire to have everything taking place at the west end of the nave, but some activities might actually work better in other, quieter areas. Having separate spaces could be very helpful if there was more than one activity happening in the church at the same time, or when people were arriving whilst some event was still going on; it would create less disturbance, would provide a place to wait, and there would be more privacy away from the main doors.

28. SPAB still did not feel that the best use would be made of the north transept and the adjacent vestry, both of which were generous spaces; and they drew attention to the external door within the vestry which they felt could also be utilised. SPAB considered it to be essential to find ways in which these spaces could be used to their best effect; and they felt that several of the activities in the parish's proposed list could work very well in these areas, such as the

meditation and Pilates classes, the children's Christmas crafts, the woodworking, and the 'Dying to Talk' sessions. SPAB appreciated that the lighting levels were presently lower in these areas, but this could easily be rectified by improving the lighting, as was proposed. Justifying the removal of historically significant pews was said to be harder if there were other spaces available that were not being used to their full advantage.

29. SPAB were content with the accessible WC in the base of the tower as this was a very good place for it to be. Their suggestion of putting a second WC in the area of the north transept and vestry was simply because SPAB felt that, given the proposed uses for the building going forward, two toilets might be useful and would allow different activities to take place in different areas simultaneously. However, SPAB appreciated that this would mean more disturbance for drainage and service connections, so this might be something to reconsider in the future. SPAB would wish to see the readers desk retained within the church if at all possible. As noted in an email from the Senior Church Buildings officer to Ms Broomfield dated 31 March 2022, however, the most recent revisions to the proposals (in February 2022) include not only the retention of more pews but also the retention of the readers desk so this is no longer an issue.

30. Ms Broomfield concludes:

We are pleased that the church have high aspirations to build up their new users and the levels of activities, however, given that Covid has not gone away, realistically this is going to take some time. We would feel more comfortable if the parish would reconsider a two-phased approach to the works, which we do not believe would be as awkward and disruptive as they believe. It has been done successfully many times before, and by undertaking part of the works and seeing how the new spaces and facilities are used, this can really help to make a case for the rest of the works to be undertaken if they are found to be needed.

Overall, we do not object to the proposals as they stand, but we feel that by taking these comments into account, the scheme could be improved further.

The VS

31. The initial views of the VS were contained within an email dated 6 September 2021 from Mr Connor McNeill, their interim churches conservation adviser. Unfortunately, due to their very limited resources the VS had been unable to send any representative to visit the church; but they made the following comments after they had reviewed the documentation that had been provided to them:

St Mary's is clearly a building of multi-layered architectural and historical significance. There is the Medieval fabric, alterations made in the 18th century incorporating fittings from the chapel at Canons, which links St Mary's to other architecturally significant churches such as Great Witley and Little Stanmore.

The alterations made by Paley and Austin in the late 19th century are also significant, representing work by one of the major ecclesiastical architectural partnerships of the period. Their work displays its usual high quality of design and detail, and is distinguished not only by its Oxfordshire location (Paley and Austin worked primarily in the north), but also by its sensitivity to the strong 18th century character of the church.

The Statement of Need also shows there is significant community support for the church being able to accommodate wider uses, especially after the closure of the pub, post office and the lack of availability of the village hall. This certainly suggests the need for some alterations and the provision of facilities. However, more detail should be included to inform the preferred proposal. We welcome the proposed business plan which should assist this. We would also recommend that a spatial audit is included which will assess proposed uses of the church, what type of space they need, how much space, how frequently they will take place and how many people may attend.

Treating the preferred proposals: in principle the Society can support the introduction of WCs and kitchen, as well as some alteration to the nave to accommodate flexibility. However, it is important that as much historic fabric is retained as possible, especially the fine work by Paley and Austin.

While locating the WC and kitchen in the west end of the church may appear the most sensible in terms of planning it would result in significant alteration to Paley and Austin's screen. This is a fine item and contributes positively to the space. There is also added interest due to its three-sided form and gallery. We would recommend that renewed thought is given to locating the WCs and Kitchen in the north transept/vestry area. If this is judged impossible then the current form of the screen and gallery should be retained as far as possible, especially the ground floor panelling. We note the proposal to install a glazed door: while we recognise the benefits of a line of sight from the entrance to the altar, the existing door is of interest and integral to the screen, it should be preserved, perhaps with some slight modification. The proposed alterations to the north transept and vestry are not as concerning. We defer to the DAC organ advisor and British Institute of Organ Studies on the disposal of the current organ. As the pew report states the children's benches are of some significance and ought to be retained. The proposed alteration of them in Option 4 of the feasibility study would appear to be a suitable compromise that would ensure the preservation of these rare survivals.

The relocation of the font is in principle acceptable. However, the DAC may have concerns about its new, relatively hidden position. We would also maintain that if it is relocated its base plinth should be relocated with it.

In principle we can accept the alterations to the floor. However, we would remind the parish that under floor heating is only economical in churches which are in constant use. If this proposal is pursued the existing floor finishes should be reused or replicated. It is important with the removal of the pew platforms that the traditional articulation of seated areas and aisle reflected in the floor is preserved. Finishes that matched the existing stone flags and quarry tiles would likely be acceptable.

The removal of half the benches and alteration of the remaining is more concerning. These are fine items by Paley and Austin, unusually sensitive to the 18th century character of the interior and positively contribute to the interior of the space, especially in the context of the contemporary screen and wall panelling, as well as the older furnishings relocated from Canons. While half the number of benches retained

and altered may continue to evoke to some degree the historic character of the interior these proposals would cause significant physical harm. The wall panelling would need alteration to disguise where seats have been removed, the frontals incorporating 18th century woodwork would be lost, by being moveable the benches would run the risk of damage and decay, such items are not designed to be moveable and free standing. We would urge those options are explored which would see a significant number of benches fixed in place and the preservation of the frontals. If the parish wish to pursue the preferred option, greater justification should be provided detailing what events and uses will require an entirely flexible nave. Details should also be included how the benches would be altered, as well as any new loose chairs. In line with guidance these should be timber and unupholstered. We would recommend they are stained to match the existing woodwork.

The disposal of the other seating is less concerning but should still be preserved if possible. While we defer to the Georgian Group regarding the 18th century woodwork, this should be preserved and sensitively repurposed.

Finally, I would wish to add our appreciation for the high standard of documentation which supports these proposals, especially so early on in the application.

32. Mr James Hughes, the VS's senior conservation adviser, responded to the second round of consultation on the revised proposals for the reordering of St Mary's by email dated 20 January 2022. Whilst the VS remained supportive of the general aims and desires of the parish, they did not consider that the changes to the original proposals adequately addressed the Society's previously expressed concerns or, indeed, that they adequately addressed the needs of the parish, as far as it had proved possible to articulate them. What was proposed remained a quite intensive and harmful scheme, to an extent that, in the view of the VS, remained unjustified. Their comments were intended to address each of the main elements of the scheme as they are described in the Design Amendments Summary; but before doing so, the VS wished to provide a brief note on *Paley and Austin*:

The rarity of their southern work has been mentioned, but it is worth bearing in mind that their restoration of Fawley St Mary in fact represents their only ecclesiastical work in the county. The reasons for this are of course personal, *Edmund Sharpe* (Paley's former partner) having had dealings with Edward Mackenzie (father of William Mackenzie, who funded the work on the church and the Court) through their mutual dealings with railway projects in the north of England. It may be easy from a southern perspective to regard *Paley & Austin* merely as provincial architects of some repute, but to do so would be to do them a great disservice. The fact is that they were powerhouses of nineteenth-century architecture, and the rarity – indeed, the uniqueness – of their work at Fawley, as well as its coherence, quality and intactness, is to be celebrated.

Mr Hughes proceeds to address the following elements of the proposed scheme, as follows:

(1) Benches and frontals

This is clearly one of the key issues, and rightly so, given the contribution the benches make to the character, appearance and significance of this building. As did

the Victorian Society, all consultees have emphasised the interest and quality of these pieces, and raised major concern at the prospect of such extensive loss of them. While what is now proposed represents a slight improvement on the previous scheme, it nonetheless remains intent on clearing a substantial portion of the nave seating, leaving a small block of benches that would achieve little beyond providing a mere reference to the church's former seating scheme. The effect of so drastic a reduction on the character of the interior would be serious, and we would strongly oppose it. A very minimum of seven rows of fixed benches will likely be required in order to be acceptable.

(2) Tower screen

What is referred to as a tower screen is much more than this: it is a three-dimensional construction that forms screen, lobby, staircase and gallery, and it seems a very unusual structure in the context of C19 church restorations. No doubt *Paley & Austin* felt it an appropriate response to the interior of this church and certainly it seems consistent with the church's extensive C18 work, and the Canons joinery, and replacing as it did a manorial pew. We consider it a significant piece. What is proposed to it would adapt and expand it such that its scale, appearance and basic form would be lost. Instead of chopping it up and altering its form, could its three-sided frontage be simply moved wholesale eastwards, in the process creating a much larger enclosed space beneath an enlarged gallery (surely sufficient to house a WC and servery), whilst also in the process preserving the appearance and, critically, the form of the gallery? Otherwise, the retention of the original timber doors is welcomed.

(3) Reading desk

I don't believe that the disposal of the reading desk was suggested previously, and the summary nature of the design amendments sheet in respect of this aspect of the scheme is concerning. We reject the notion, firstly, that its removal would in any way benefit views of the chancel, as is claimed. Furthermore, the idea that the desk itself impedes access to the transept is not evidenced in the documents, and, in any case, until it is clear what would happen in the north aisle and vestry, and therefore what the final proposal for those spaces is, any need for enhancing access to them remains difficult to demonstrate. Above all, though, we are concerned by the lack of proper assessment of it, and its effective dismissal in the update sheet is disappointing. It repeats the suggestion of the Statement of Significance that the desk may have been constructed from the pulpit sounding board, but where this theory comes from is unclear. Both the Buildings of England and the list description refer explicitly to the reading desk as one of the church pieces that came from Canons, and the list description describes its "*richly carved frieze*". On this basis alone, and in the absence of any proper assessment and detailed images of it, we must assume that it is a piece of considerable interest and we would, at least at this stage, strongly oppose its removal.

(4) Heating

We are pleased that proposals for underfloor heating have been dropped. This seemed a needlessly intrusive and expensive undertaking.

(5) Transepts and vestry

The update sheet doesn't address the north and south transepts in any great detail. However, we continue to recommend that these are the focus of efforts to provide adequate spaces for a variety of flexible, community uses. Indeed, particularly now having seen the Update to Statement of Needs, we consider this the only acceptable approach. We have no wish to dampen the parish's ambition and enthusiasm for what is, in principle, a laudable and positive project. However, we are concerned, firstly, that many of the proposed events are infrequent (many are annual, for instance) and also that they are largely aspirational, the need for them not having been established; and, secondly, that in fact many of the proposed uses could very well be hosted in reordered north and south transepts (and present vestry). Not only would many of these uses seem better suited to the largely self-contained spaces offered by the north and south transepts (as we have pointed out before, the north transept and connected vestry together offer significant scope for intervention and flexible independent use), but it seems possible that the use of the rear half of the nave for them would in fact inhibit the use of the main body of the church, and probably deter visitors to the building. I suspect that many visitors encountering (for example) Pilates or meditation classes at the west end of the church, would be likely to leave instead of intruding.

The Update to the Statement of Needs refers to the north transept as a dark space. It is difficult to appreciate this from the photographs provided, but difficult also to really believe. Even if the transept is darker than might be considered ideal, surely that can be addressed by adequate lighting, which it is in any case the parish's intention to introduce.

Our recommendation, therefore, is that the north transept and vestry should be the principal focus. We do not consider the parish's preoccupation with the nave to be justified, either practically, or in light of the intrusive interventions to it that are envisaged. And we could only concede to the adaptation of the children's benches in the north transept if a majority of the nave benches are preserved in situ.

33. The church's architect responded to Mr Hughes's observations in an email dated 22 February 2022. This attached the drawing Layout Option 8, which incorporates the revisions suggested by the DAC at their January meeting. This revised layout was said to respond positively to the considered comments and advice from the VS and other amenity groups, whilst retaining the viability of the project for the church. The architect responded to the latest comments from the VS as follows, using the same headings:

(1) Benches and frontals

The number of pews retained in the nave has been increased to six rows of fixed benches and the row of frontmost benches and frontals (floor fixed), which will be made freestanding so there is the option of being able to use them in the Chancel.

(2) Tower screen

I have explored the possibility of just bringing the screen forward in its current angled form. Unfortunately, this means there isn't enough space to accommodate

the wheelchair accessible WC and leaves awkward, redundant spaces between the screen and piers.

(3) Reading desk

This is being kept in situ.

(4) Heating

It is acknowledged the updated proposals do not lend themselves to underfloor heating and a mechanical consultant will be asked to investigate suitable alternatives for the heating system design.

(5) Transepts and vestry

We have explored the potential of these spaces in the feasibility study. Due to their limited size, location and differing floor levels our conclusion is that they will not, on their own, meet the varied uses required.

1. Option 1 in the feasibility study ... shows the limitations of the spaces and also presumes the removal of the 'children's pew' which we have been asked to retain.

2. Areas of welcome are, from experience, best located at the west end of the Church. The natural movement of people following a service or event is to the exit and the provision of a space at the west end encourages more social engagement. A welcome area at the west end also creates a more comfortable environment/visual cue for church visitors, especially those not so connected with the life of the Church.

3. For privacy and discreet access during services or events, the optimum location for the wheelchair accessible WC is in the tower. If the servery remains in the transept, then two drainage routes need to be excavated generating more disruption to the churchyard.

34. As I have already indicated, when responding to the special citation, Mr Hughes reiterated the view of the VS that *“while the proposed scheme represents an improvement on previous iterations ... , it remains one that would cause a significant degree of harm to the special interest of the building, and the specific elements of it and the precise needs for them will require very careful scrutiny.”*

Analysis and conclusions

35. On the undisputed evidence, it is clear that the present (and revised) proposals will cause harm to the significance of the church as a Grade II* listed building of special architectural and historical interest. This is because they will result in a significant loss of pews and alterations to the existing angled tower screen and wooden nave panelling. The proposals will adversely affect the coherence, the quality and the integrity of the fine work, unique for this county, undertaken, in and about 1883, by the distinguished Lancashire architectural practice of Paley & Austin, whom the VS correctly describe as “powerhouses” of C 19th church architecture, and whose work at Fawley is rightly to be celebrated. I therefore pass over the second of the Duffield questions: It is not enough for the parish simply to show a sufficiently good reason for change to overcome the ordinary presumption, in faculty applications, that change should only be permitted for some good reason. The parish must pass the remaining Duffield tests.

36. I must first assess how serious the resulting harm to the significance of the church as a building of special architectural or historic interest would be if the present proposals were to be implemented. This is not simply a matter of counting the number of pews to be removed, and the number that will be retained. The court must attempt to evaluate, and to weigh, the effect that the proposals, if implemented, will have upon the coherence, the quality and the integrity of the existing ordering of the church. For present purposes, the significance of the church building lies in the way that the Paley & Austin re-ordering adapted the medieval fabric of the church for worship in the late C 19th. On this footing, I am satisfied that the revised proposals will cause moderate harm to the significance of the church as a building of special architectural and historic interest. I consider that the harm will be moderate, rather than significant, because a substantial number of the Victorian pews will remain, thereby partially retaining the appearance, and the coherence, of the Victorian reordering. The tower screen will remain, albeit in altered form. The damage to the panelling caused by the limited pew removal will be rectified using original fabric from the removed pews.

37. Next, I must consider how clear and convincing is the justification the parish have put forward for carrying out the present proposals. In my judgment, the parish have demonstrated, with clarity and conviction, that these proposals need to be implemented if the parish are to be able to promote their worship, and advance their mission, within the local village community, and to play an appropriate part as a member of the wider HVG of churches.

38. Finally, and bearing firmly in mind both the strong presumption against any proposals which will adversely affect the special character of a listed building, and that serious harm to a church listed as Grade II* should only be permitted in exceptional cases, I must consider whether the resulting public benefit (in terms of pastoral well-being, opportunities for mission, and putting the church to the proposed additional community uses) will outweigh the resulting harm to the significance of the church. In doing so, I must consider whether the same, or substantially the same, benefits could be obtained by other works which would cause less harm to the character and the special significance of this church.

39. It is clear that a great deal of consideration has been given to mitigating the impact of any harm to the church building, and that the parish believe that they have arrived at a suitable compromise that will still fulfil their future needs and aspirations. The proposed reordering will have no impact on the existing footprint of the church building, and it will involve no visible external changes to it. It will not affect any of the existing fittings or features except for the removal of some pews, the rearrangement of some others, and the realignment of, and modifications to, the tower screen and gallery. Historic England have acknowledged that the revisions made to the parish's original proposals have reduced the degree of harm that will be caused to the church building; and both they, and the CBC, are content to leave matters to the DAC. With some reservations, and some reluctance, SPAB no longer object to the present proposals. The VS recognise that the scheme which is now proposed represents an improvement on previous iterations although they are still concerned that it remains one that would, in their view, cause a "*significant*" degree of harm to the special interest of the building; and it warns that "*the specific elements of it and the precise needs for them will require very careful scrutiny*".

40. The DAC are a specialist body required by s. 37 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 to advise the Chancellor on matters relating to the grant of faculties. They must review and assess the degree of risk to materials, or of loss to archaeological or historic remains, arising from proposals (amongst others) relating to the alteration of places of

worship or their contents. In this case, the DAC recognise, and they have advised, that the present proposals are likely to affect the character of this church as a building of special architectural or historic interest. Despite this, they are now content that all the elements of the revised reordering proposal are fully justified, and supported by appropriate evidence; that the present reordering scheme is the least harmful way of achieving the aims of the parish; and that any harm to the significance of this church is likely to be outweighed by the public benefits to be generated as a result of the proposals. They have therefore recommended these revised proposals for approval by the court (subject to conditions). They have provided cogent reasons for their views (which I have summarised at paragraph 12 of this judgment). Whilst I should not simply ‘rubber-stamp’ the considered and reasoned views of the DAC, I should not disregard them without good reason. In light of all the evidence, and affording due deference to the advice and views of the DAC, I am satisfied that the parish have demonstrated that the public benefits (in terms of pastoral well-being, opportunities for mission, and enabling the church to be used for the proposed additional community purposes) will outweigh the resulting harm to the significance of the church that will follow from the implementation of the present reordering proposals. I am also satisfied that the same, or substantially the same, benefits cannot be obtained by any alternative proposals which would cause less harm to the historic character and special significance of this church building. I have anxiously considered whether it might be possible to proceed with the removal of fewer pews from the west end of the nave, so as to achieve the retention of seven rows of fixed pews which the VS would regard as the “*very minimum*” likely to be required in order to be acceptable. With great regret over the loss of some very fine, mid to late Victorian, Lancastrian-designed pews, I have concluded that such a lesser degree of pew removal would not provide the flexible space required at the west end of the church to satisfy the parish’s genuine needs and aspirations. I am satisfied that the revised proposals promoted by the DAC provide the only appropriate mix of flexible space and facilities at both the west end and in the transepts of the church building.

Disposal

41. For these reasons, the court will grant a faculty for the proposed works as sought. The faculty will be subject to the following conditions:

(1) Detailed design drawings and full specifications for all the works (including drainage and service routes, the interpretation for the Piper window, heating, audio-visual and lighting systems, the treatment of the wall panelling, the pews and other timber within the church, and the choice of tables and chairs) are to be submitted to, and approved by, the DAC prior to any works commencing. In the event of any disagreement, the petitioners may apply to the court.

(2) Before commencing any works, the parish are:

(a) to satisfy the Archdeacon that they have secured sufficient funding to complete the works; and

(b) to notify the church’s insurers; and they are to comply with any recommendations or requirements they may make or impose.

(3) Before any alterations are made, photographic records and plans of the current seating arrangements, together with photographic records and a plan and elevations of the gallery, should be deposited in the church records, the DAC’s records, and the local Historic Environment Record for future reference by scholars and the local community. In order to

comply with this condition, reference should be made to Historic England's Understanding Historic Buildings: A Guide to Good Recording Practice (May 2016).).

(4) The parish are to advertise the existing pipe organ for disposal as soon as reasonably practicable and they are to make reasonable efforts to dispose of the same to a suitable recipient.

(5) No spoil is to leave the churchyard and any charnel must be reburied with due reverence.

(6) The petitioners are to follow the DAC's April 2018 guidelines on electrical installations.

(7) Should the terms of any grant funding require the parish to display a plaque recognising their contribution, the parish is to seek the approval of a DAC officer to the proposed location and fixing method of the plaque.

I give the petitioners permission to apply to the Court, by letter to the Registry for further directions as to the carrying-out of this faculty, or for the variation of this faculty in the event of any difficulties presenting themselves.

42. In the first instance, the period allowed for the proposals to be implemented will be three (3) years from the date of the grant of the faculty to allow further time for any further necessary fund-raising and grant applications.

43. In the usual way I will charge no fee for this written judgment. The petitioners must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with this application.

44. In conclusion, I must thank the parish, the VS, SPAB, the other consultees and the DAC for the evident care and attention that they have devoted to this faculty application. Their work has certainly contributed to a fully informed analysis and decision. I must also apologise to the parish for the length of time it has taken me to produce this judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

The Feast of St Margaret of Antioch

20 July 2022