

Neutral Citation Number: [2025] ECC Lon 2

IN THE CONSISTORY COURT

DIOCESE OF LONDON

In the matter of

St Mary-le-Strand, Faculty 4733

-and-

In the matter of

The Petition of Peter Gervase Babington (Priest-in-Charge) Peter Maplestone (Churchwarden) and Janet Crabtree (Churchwarden)

-and-

In the matter of

- (1) The proposed redevelopment of St Mary-le-Strand involving the undercroft to provide a community room with supporting facilities; insertion of a lift and stairs between levels, the introduction of additional facilities, reordering of the nave to return to the original eighteenth century design, reinstatement of the chancel and ceiling returning to the original paint scheme and shortening of the pews to facilitate usage of the area with insertion of a tea point at the west end adjacent to the proposed stairs *and***
- (2) The provision of step-free access to the church at nave and undercroft level through widening of the churchyard to include two new ramps and a terrace on the north side.**

Judgment of the Chancellor

May 27, 2025

JUDGMENT

Etherington Ch:

1. This petition sets out ambitious proposals to develop the undercroft, reorder the nave and provide step-free access to this well-known church situated in the section of the Strand that has recently been pedestrianised, which has given an opportunity to improve and re-imagine access. The overall aim in the crypt is to develop facilities which are needed to support community use and the reordering in the nave and chancel aims to restore the eighteenth-century design. There is a modest proposal to shorten the pews to allow for more flexible use of the nave and other associated works.
2. I propose to confine the detail of this judgment to the parts of the proposal that have generated some concern or dissent. The documents submitted to the court run to some 959 pages and the church has also been engaged in seeking planning permission which has recently been granted in draft.
3. St Mary-le-Strand (SMLS) is, as the Victorian Society (VS) rightly describes it in its response of January 17 2025, “a landmark building of the highest architectural significance, unique in its townscape setting”. The work of James Gibbs, this church is an outstanding example of an early eighteenth-century church. SMLS was built between 1714 and 1717 at the end of the Stuart period and the beginning of the Hanoverian. Unsurprisingly, the church has undergone renovation, alteration and reordering, particularly of its interior by Robert Jewell Withers between 1869-71. I will be considering these works in the light of the leading case of *In Re St Alkmund, Duffield* [2013] Fam 158 in which I am enjoined to consider the following issues:
 - (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest? *If the answer to (1) is “no”, then the presumption is to be in favour of the status quo but it can be rebutted more or less easily depending upon the nature of the proposals. If the answer to the first question is in the affirmative, it is necessary to ask:*
 - (2) How serious the harm would be.
 - (3) Then, it is necessary to assess how clear and convincing is the justification for the proposals. *Generally, the greater the harm, the greater the benefit which will need to be demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II*, if serious harm would result then the justification would need to be exceptional.*
4. SMLS is Grade I listed.
5. These proposals are, in respect of the reordering, seeking to restore and reflect the early eighteenth-century design of the church in the nave and chancel.
6. They have been subject to a good deal of consultation and are not the subject of any formal objection. Engagement with the local planning authority and

statutory consultees goes back as far as July 2021. All consultees have been extremely helpful in assisting the court with important detail about the church and with advice and suggestions for the Petitioners to consider.

The Crypt/Undercroft/Vaults Works

7. These works will provide a new community space, contemporary in character, with walls permitting mechanical air exchange and heating and waterproofing to combat water ingress and damp. This area will be a place where people may visit the church for social activities and it has been designed to be as flexible as possible for multiple purposes. The Petitioners contend that this will allow for SMLS to develop funding opportunities and steadier sources of income. There are associated works to maintain and power the area as well as works concerned with access.
8. I have read the very detailed, careful and authoritative Heritage Assessment by Jeremy Musson and Helen Bradbury who both have very wide experience and considerable expertise in both the historical and conservation aspects of architecture and conservation management.
9. The Petitioners say that the crypt is of clear historic interest as an integral structural element of an important building of its period. It appears not to have had a use beyond its obvious role in elevating the ground floor and protecting the church from damp. It had no significant or obvious entrance until the late nineteenth century. It has been the subject of alterations that have been aesthetically deleterious relating to heating equipment and fuel storage. It is submitted that it has some significance but is at “the functional end of the scale.”
10. There are concerns about potential archaeological issues including the possibility of the disturbance of significant Saxon remains.
11. The principal consultees, in general, were not opposed to the works in the crypt/undercroft/vaults area. I should note that the project has involved very wide consultation with the parish and community.
12. Historic England (HE) considers (with the potential archaeological exceptions referred to in its report) that with respect to the proposals as a whole, the harm associated with this proposed scheme is mid-low on the scale of less than substantial. The VS does not comment on this aspect of the proposals. The Church Buildings Council (CBC) say that “the loss of historic material needed to make the space usable is proportionate.” The Georgian Group (GG) in its final observations comments primarily on the issue of step-free access to the crypt and nave level. The GG maintains its concerns in respect of the level of demolition to the nave floor, crypt vaults and wall in order to create the community space and maintains it will cause harm to the significance of the church.
13. In general terms the GG states that “there would be less than substantial harm caused to the significance of the building. When determining this application,

great weight should be given to this harm, as well as the public and heritage benefits arising from the scheme.”

Decision on the Crypt/Undercroft/Vaults Proposals.

14. I agree with all those consulted that, whilst there will be some harm caused to the archaeological and historical significance of the church in these works, I find that the harm will not be serious considering the crypt in itself and its present state and usage. The benefits will be very considerable and give the church an opportunity to increase its income and attract visitors. The redevelopment of this part of Strand generally is likely to increase visitors to the church as it is becoming part of an area that will attract them in its own right rather than it being largely a place crossed whilst passing through. As with the proposals as a whole, faculty permission will be subject to Conditions.

The Reordering

15. At the east end the changes will pull back the step and altar rail allowing greater space in front of the altar rail. The sanctuary steps will be reinstated to be more consistent with Gibbs’s original design. Behind the altar, spaces will be reinstated with like-for-like reredos pediments visible on earlier drawings of the interior. Updated audio-visual and lighting will be introduced to this space and augmented to include the pulpit and the lectern. There will be improvements to the chandelier lighting to increase brightness, supplemented by architectural lighting throughout the space.
16. The heating system will be upgraded to air source heat pumps connecting to an under-floor heating system. There will be trench heating concealed below floor grates in order to maintain a comfortable level of heating.
17. It is intended to decorate the church to be consistent with the other changes. The floor contains a mixture of stone and red/black tiles, timber and lino. Although this reflects different periods in the church’s history it also looks rather odd to the eye. The aim of the Petitioners is to reinstate the spirit of the eighteenth-century design and integrate the remnant of the Venetian dot tiles visible along the north and south walls. The floor grates are to act as a dividing element between the historic and reinstated Portland stone flags which are intended to match the dimensions of the originals. At the chancel rail contrast flooring will pick out features such as the rail itself and the font. The intention is to change the materials to black and white marble maintaining the Venetian dot design. Finally, the sanctuary and altar will be marked by another change but retaining the black and white marble.
18. There will also be renovation of painted and plastered surfaces, including the correction of a paint failure on the plaster moulded ceiling caused by incompatible paint layers and some failure of the painted surface of the stone walls. This has allowed the Petitioners to investigate decorative and gilded solutions more in keeping with the church’s history than those dating from the mid-twentieth century onwards have been.

19. There is also a proposal to retain the pews in a shortened form and move the font from its traditional position at the entrance to the church to the east end because of space constraints.
20. There is no doubt in anybody's mind that, taking SMLS as a whole, it has a very high order of architectural and historical significance, and in examining the individual proposals it is necessary both to consider them in their own right and any effect their removal or alteration will likely have on the significance of the building as a whole.
21. The consultees generally do not raise objections to the internal reordering with one exception. The VS questions whether the removal of the 'Withers floor' is necessary. The VS says this: "...it remains that the proposed alterations to the interior would harm the significance of the building, principally through the loss of the Withers floor. Although aspects of the design of the Gibbs floor can be established, it remains [the case] that the proposals would not be a scholarly recreation of a historic design, but a speculative scheme inspired by surviving examples of Gibbs's work elsewhere...we question whether there can be any public benefit in a proposed speculative floor design when this would result in clear harm to a significant, surviving part of the building's historic fabric." The VS makes clear that it does not wish to object (I take that to mean 'formally object') to this aspect of the proposals.
22. The VS also offers me a view on Withers's work which I accept as being a fair and reasonable assessment, coming as it does from the VS's Buildings Committee which includes architects, historians and heritage professionals and which always commands respect – particularly on matters pertaining to the architectural and historical heritage of the Victorian era.
23. In a very balanced assessment, the VS says this: "Withers is now a little-known architect, but he was a prolific builder and restorer of churches. His best buildings show a talent for enriching simple forms with fine detail and are good examples of High Victorian ecclesiastical design. Unfortunately, Withers's reordering at (SMLS) has seen some erosion especially in terms of floor levels and chancel furnishings. However, some aspects such as nave floor and benches (re-using significant amounts of C 18 fabric) are reasonably intact. These parts have significance as the work of an underappreciated Victorian church architect and as indicators of Victorian approaches to major C 18 churches. We would note that many such reorderings have been lost, with the Victorian work at St Martin in the Fields and Christ Church Spitalfields no longer discernible, to name some examples."

Decision on the Reordering

24. Again, I concur with HE that the reordering as a whole in the context of a church which has had various alterations major and minor in its history either affects areas that have already been altered or where the effect will be minimised by appropriate screening. HE supports the removal of what it describes as "the reversal of the Tractarian changes to the chancel and removal of the encaustic tiles from the nave."

25. I have given thought to the nave floor and carefully considered what is said by the VS. I agree that losing the Withers floor would cause some harm to the architectural and historical significance of the church. That floor is in a reasonable state and I have considered the submissions of the VS in paragraphs 21-23 of this judgment as to what would be lost. Every decision in reordering cases is fact-specific and I have taken into account the harm caused by losing the Victorian floor and the importance of this particular architect's work although the VS does not opine on whether the floor is an example of his best work. I have also taken into account the point that the Withers floor is there now, whereas the proposed floor is necessarily speculative as to the original Gibbs design, although research was carried out into his other work and, therefore, the speculation is not uninformed.
26. My conclusion is that the floor itself cannot be said to be more than of moderate significance, even allowing for the indications that it may provide as to Victorian approaches to eighteenth-century churches. Its loss would not cause serious harm, and the desire of the Petitioners to provide a unity in reflecting the character of this church does on this occasion (in conjunction with 'The Jewel in the Strand' project as a whole) justify the degree of harm that will be caused. I have been impressed throughout the proposal by a desire not simply to change for change's sake itself and to make the proposals proportionate. An example of this is retaining the pews but reducing their length. As the VS points out, Withers himself used fabric from the original construction in these pews which he created.

The External Ramp to the Northern Elevation

27. The final area of contention relates to a proposed ramp to the northern elevation.
28. As part of the proposals, it is said to be necessary to provide step-free access to the nave and lower ground floor and to provide a step-free exit in the case of an emergency.
29. The Petitioners submit that the current dimensions and area of the churchyard impose substantial limitations on what can and cannot be achieved and that provision of ramped access is dependent upon the expansion of the churchyard beyond its existing boundary.
30. It is accepted that the north ramp will be more visible than the one to the south and that there will therefore be some degree of harm. It is true that the setting of the church makes a significant contribution to the church's exceptional architectural interest.
31. The ramp to the northern elevation and the terrace will affect the view to a degree. I would assess that the harm caused will be no greater than low to moderate. The view of the consultees is as follows: HE very helpfully in its final report summarises the impressive views from various positions and, of course, I have been personally familiar with them for over 40 years. HE says: "The ramp additions would be a distinct change from the existing appearance of the church

in scale and massing, particularly as they extend beyond the west front. These changes will be visible in views of the west front along (the) Strand although would be screened by the magnolia trees. This aspect of the proposals would also require an area of the original steps at the west end to be modified to accommodate level access and railings, although the columns would be unaltered. As the existing appearance of the church is not as originally designed, the reinstatement of the churchyard is an opportunity to recreate something of its eighteenth-century character. We are, therefore, content in principle with the proposed ramp strategy.”

32. The CBC accepts that the location for the northern structure and ramp is appropriate but thinks that a solid structure with a solid face could be less visible and have a lower impact on a key view of the west end. It observes: “the ramp proposed to reach nave level starts well to the west of the building in an enlarged churchyard space, set back from key views, to terminate north of the church before the landing/bridge links back to the portico. On balance the Council is content with these proposals as they provide a solution to access needs with a minimal loss of historic fabric. The proposed new structure to the north will keep to a minimum the impact of necessary new facilities on volume of the nave or the newly excavated crypt.”
33. The GG, having stressed the importance of views towards the church, says: “The proposed ramp to the northern elevation will cause harm [to SMLS]. The harm arises from the impact the terrace would have on views towards the church as well as the architectural composition of the northern elevation and the church as a whole.”

Decision on the Ramps

34. I have seen the amount of effort that the Petitioners have, with their professional advisers, put into investigating the question of step-free access and how it could be achieved. I support their rejection of a lift for this purpose. Not only is the rationale behind this part of the petition to allow access for all to the new facilities that are to exist in the crypt but also to permit the exiting of the building in emergencies. Apart from limitation of numbers, lifts are not suitable for exiting in emergencies and, in the case of some emergencies (such as fire) positively forbidden. They are also prone to break down.
35. I understand the GG’s concerns, but I am satisfied that the degree of harm to the architectural significance of the church (which I consider to be low to moderate) is amply justified by the need for this access at the chosen location. I am also satisfied that it was selected after very careful consideration of all possible alternatives. Although not urged on me by the GG, I have considered the question of the southern ramp where any harm (and there is a degree) is lower and I also find that justified.

Other Proposals

36. There are a number of other elements to the petition both in the churchyard and inside the church. I have considered these and am satisfied that they should be included in the grant of the faculty.
37. The petition is recommended to me by the Diocesan Advisory Committee (DAC) subject to a number of provisos. These are the basis of Conditions which I impose, including some additional Conditions imposed by the court.
38. Accordingly, I grant the faculty as prayed subject to the following Conditions. I make no order as to costs for this judgment.

CONDITIONS:

FIRST Following the development of RIBA stage 4, details of the design and materials, set out in the Schedule to the First Condition (below) are to be submitted to the DAC prior to entering into the construction contract. All new works must include a full specification for material and finishes, in both schedules of works and on the drawings. The submission of these documents must be made by uploading them to the online portal for review and formal approval by the DAC. *It should be carefully noted that the volume of information required means that external reviewers will require an extended period of time to review and agree before signing off. This must be allowed for in the programming of the schedule for the project.*

SCHEDULE TO THE FIRST CONDITION

New Works

(a) Entire Site

Detail of all new metalwork and gates at 1:20 with specific details (finials etc.) at 1:5; new grilles for trench heaters at 1:10. For any other work to be commissioned, the process of review must be agreed with the DAC officer and committee member.

(b) Exterior

Details of the junctions and drainage between the church plinth and the new surface levels.

(c) North extension and Undercroft

Drawings of the design detail of the proposed works at 1:20, detail of the new bridge at 1:10 with the drawings to note all materials. Structural solutions for the alteration of the new bridge to follow the investigative works, with drawings at 1:20 and 1:10 and other details to be added as the proposal develops and as agreed by the DAC Structural Engineering Advisor.

Historic Church

(a) Entire Building

Following a RIBA Stage 4 building condition survey, a phasing plan for the project to ensure that sufficient investment is made in the long-term conservation repair. The plan to be implemented as agreed with the DAC.

(b) Entire Site

Details of the proposed internal decoration must be provided to the DAC, including the specification for all materials and supporting information such as material analysis and paint analysis by microscopy. Colours must be agreed by painted samples and cleaning trials for any polished joinery must also be agreed.

(c) Nave and new stone flooring

Specification for the materials, stone selection must be set out, with drawings at 1:20. A supporting statement for the selection of materials must be included.

(d) New Pediments in the Chancel

A drawn design for new joinery must be submitted at 1:5.

(e) Nave Layout

Submission of indicative layout drawings at 1:50 for events and showing the 'at rest' setting facing eastward; this being the default setting other than during events.

(f) Nave Furniture

Proposed modification to the pews must be reviewed by and under the supervision of a furniture specialist.

Mechanical and Electrical

(a) Lighting

Details of the lighting scheme must be supplied, including calculations, fitting and all wiring routes.

(b) Heating

- a. Details of the Air Source Heat Pumps must be provided with wiring routes, service trenches and other M&E throughout the site and the drawn detail must be agreed.
- b. Consideration must be given as to whether separate controls are needed for different heating systems and areas.
- c. Details of the trench heaters, their grille design and technical makeup must be provided with drawings at 1:10.

(c) Solar Array

The proposed works must make provision to facilitate the addition of a solar array in the future, to minimise the cost of future integration.

(d) Fabric First

Consideration must be given to using 'Fabric First' improvements following an energy audit and, any proposals for draught proofing or insulation in the undercroft can be submitted to the DAC for approval,

subject to the court granting an amendment to the faculty if required.

(e) Sustainable Drainage System

Details of the SUDS or Attenuation Tanks and floodgates to be provided.

Archaeology

- (a) A programme of archaeological work must be implemented and completed in accordance with Westminster Council Planning Conditions and a copy of this report must be deposited at the Diocesan Record Office (The London Archives) and the Greater London Historic Environment Record. This is to ensure that the archaeological significance of the site is recorded and safeguarded.
- (b) For the internal works, a Written Scheme of Investigation (WSI) must be submitted to the DAC for approval before commencement of the works. A copy of this report is to be deposited with the same two bodies as the programme of archaeological works at (a) above.
- (c) The remarks by HE (at page 3, section d – Archaeology in its report of December 18, 2024) must be carefully observed and the DAC and the Greater London Archaeology Advisory Service (GLAAS) informed if remains equivalent to Scheduled Monument status are discovered and, in that eventuality, the remains must not be disturbed until further directions are given.
- (d) Any exhumation of remains will require the faculty to be amended for that purpose.
- (e) Level 4 recording of the entire building (see HE's *Understanding Historic Buildings, A Guide to Good Recording Practice*) must be commissioned and the brief for this work is to be agreed by HE and the DAC prior to commissioning. A copy of the findings must be deposited with the two bodies at (a) above.

Miscellaneous

- (a) A business plan must be submitted to the DAC as part of the faculty process to demonstrate that the financial viability and sustainability have been considered. The Petitioners will note that this requirement was suggested by the CBC.
- (b) The Petitioners must ensure that the ramps, lift and WC provision can normally be used at all times when the church is open.
- (c) The Petitioners must carefully consider the DAC's advice in respect of achieving Net Carbon Zero.

SECOND Where Planning Permission is required, the Petitioners must ensure that final consent has been given before works requiring that permission commence and also that any conditions imposed by the planning authority are observed.