

IN THE COMMISSARY COURT OF CANTERBURY

MAIDSTONE, ALL SAINTS

JUDGMENT

1. INTRODUCTION

1.1. The Applicants are Messrs Christopher Cooper, Ben Rist and Josh Bennett. They have applied for a Restoration Order to be made in respect of the following items:

- (1) Three pews removed in January/February 2015 and their associated wooden platforms, also removed in January/February 2015.
- (2) One pew removed between 1 and 2 years ago.
- (3) Removal and replacement of floorboards approximately 4 years ago.

1.2. The Order was initially sought against the Archdeacon of Maidstone, the Ven Stephen Taylor and the PCC of Maidstone, All Saints. I held a directions hearing, viewed the church and considered the matters in issue on 23 February 2015. Two of the Applicants, the two churchwardens and the Archdeacon attended on that date and, all having consented at that hearing, I ordered on 24 February that two of the churchwardens, Mrs Neaves and Mr Marchant should be substituted for the PCC. It was also agreed by the churchwardens and the Archdeacon that the Applicants, all of whom are members of the church choir, have a sufficient interest in the matter to apply for the Order sought. Further directions made provision for the final hearing of the Application and I am very grateful to the Parties for their co-operation with directions for the preparation of written evidence and an agreed chronology and Statement of Issues. In addition, on the application of the Archdeacon at the final hearing, I admitted in evidence the Quinquennial Report.

2. BACKGROUND

2.1. All Saints church is a large and important building, boasting an expansive nave which is reputedly the widest in any parish church in England. The building is listed at Grade I, the listing description including the following:

"Begun in 1395 by Archbishop Courtenay as a collegiate church and continued by Archbishop Arundel in 1396 – 1398, perpendicular. Built of Kentish ragstone ashlar. Stone buttress and crenelated parapet. South west tower. The spire was struck by

lightning in 1730 and never rebuilt. Six bay nave with clerestory and north and south aisles. Wooden roofs by Pearson 1886. The south chapel was originally the chapel of the Fraternity of Corpus Christi. Credence and Sedilia of four seats incorporating the monument of the first master of the college. Stalls with mediaeval misericords. Early 17th century font Monuments to Archbishop Courtenay D. 1396, John Woolton D. 1417 with a mediaeval wall painting at the back of the tower, Sir John Asley D. 1639 and John Davie D. 1631. This is considered to be the grandest perpendicular church in Kent.”

- 2.2. The church is located at the edge of the town centre and forms part of a group of buildings associated with the former college for Secular Cannons as well as the former palace of the Archbishop of Canterbury.

- 2.3. Whilst the significance of the building makes it important and interesting, its size and location outside the town centre clearly present challenges in terms of its upkeep and in respect of the church's mission. The building has been placed on the English Heritage¹ 'Heritage at Risk' register and the congregation has been unable to pay the Parish share for several years, resulting in indebtedness to the diocese to the tune of £177,894. A Mission Grant enabled the appointment of a full time Priest in Charge, the Reverend

¹ Now Historic England

Ian Parrish, who took up his post in October 2014. As a condition of the grant, the church is expected to improve its financial stability. Partly as a result of this responsibility and partly through a desire to widen the church's interaction with the community, consideration was given to ways of facilitating the use of the nave for non-liturgical activities, including concerts.

2.4. A meeting took place at the church in May 2014 between Mr Marchant, the DAC Secretary, the Director, Communities and Partnerships in the Diocese and the Archdeacon. At this meeting there was discussion about the removal of some pews on an experimental basis and the required process. The DAC Secretary explained the procedure for obtaining and the scope of an Archdeacon's Licence for temporary minor re-ordering. It was agreed in principle that for an experimental period of up to fifteen months three north front pews could be removed and kept in the building. In the event, this project was not taken forward until after Christmas.

2.5. On 6 January 2015, Mr Marchant emailed the Archdeacon attaching an estimate for inspection and fitting of new floor timbers, the removal of the pews and flooring repairs. The Archdeacon read the email on his return to work on 12 January. He replied that day, saying that the Licence would be on its way, copying the email to the DAC Secretary and asking him to issue the Licence for temporary removal of the pews. The Archdeacon explained in his witness statement that he assumed that floor repairs would be a minor matter rather than authorised by his Licence.

2.6. The Licence was not issued until 1 February 2015, and sent to the parish the next day, apparently because the estimate had inadvertently not been attached to the email when it was forwarded to the DAC Secretary. The scheme of temporary minor re-ordering was specified as – *“the temporary removal of three pews in the north east corner of the nave and their relocation elsewhere in the building”*. The following condition was imposed:

“the pews must be kept in good condition to allow for the complete reinstatement of the area should a faculty not eventually be granted to make permanent the alterations.”

2.7. In the meantime, work had started on 19 January. Mr Cooper emailed the DAC Secretary and the Registrar on 24 January to inform them of the works, which he believed to be unauthorised. He attached photographs of the works in progress. Following a flurry of emails, the Registrar emailed Mr Marchant, enclosing my holding directions to the effect that all works not authorised by Faculty should cease forthwith and seeking an undertaking to do no further works until such time as they were properly authorised. Mr Marchant replied immediately saying that the Archdeacon had been involved but agreeing to comply with the holding direction. In the next few days, the Archdeacon met both the Registry staff and the Reverend Ian Parrish and Mr Marchant in order to discuss the situation. On 30 January, the Archdeacon telephoned me and explained that he had satisfied himself that the works to the pews were those which he had indicated he was authorising and that floorboard removal

constituted repair work for health and safety reasons. I therefore withdrew my directions. Work resumed after receipt by the parish of the Licence on 2 February.

- 2.8. The Applicants were not satisfied with the state of affairs and made their application for a Restoration Order on 6 February. The Application and various emails from Mr Cooper make reference to work undertaken at the church as long ago as the 1970s. At the directions hearing on 23 February, however, I explained that s.13(8) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 ("The Measure") provides that a Restoration Order can only be made in respect of works carried out within the last six years. Accordingly, I made it clear that the Court would limit its consideration to the three matters set out at paragraph 1.1 of this Judgment. My advice to the Parties was to concentrate on these matters in their evidence preparation and in their joint identification of issues, common ground and chronology. This advice was followed. In the event, there was very little evidential dispute. Because there was so little factual dispute and because none of the Parties was legally represented, I adopted, with their agreement, a relatively informal, issues-based approach to the hearing, supplementing the material in the formal witness statements with my own questions of clarification. I am satisfied, as a result of the hearing on 25 March, that I fully understand the sequence of events and the positions of the Parties and I am grateful to all

involved for the dignified and helpful way in which they participated on that occasion.

3. THE LEGAL FRAMEWORK

3.1. I made it clear at both hearings that firstly I must establish the facts and apply the law to those facts. In the event that I find that any unauthorised works have been undertaken, I may, as an exercise of my discretion, make a Restoration Order. The power to do so is contained in s.13(5) of the Measure. My jurisdiction to make such an order is limited to the restoration of the status quo before the works were done and I cannot require improvements to be made: Re Welford Road Cemetery Leicester [2007] 1 AER 426.

3.2. Restoration Orders sit within the Faculty Jurisdiction and, whilst I am sure that the principles of that jurisdiction are generally well known to the Parties, it is, perhaps, worth giving an overview here. Authorisation is required for making physical alterations to churches (as well as for introduction or removal of moveable items). In many instances, the necessary authorisation is achieved by way of a Faculty but in certain instances, other legal mechanisms are available to enable relatively minor or experimental work to be authorised with less formality. There is a tradition of the Faculty Jurisdiction being exercised with some flexibility². In the case of churches which are listed buildings, like Maidstone All Saints, there are, in addition, wider considerations in play. The Court of Arches rehearsed these considerations in the case of In re St

² As noted in Halsbury's Laws of England 5th edn para 1072.

Alkmund, Duffield [2013] Fam 158. The Court accepted submissions to the effect that the Church of England does not have the faculty jurisdiction in order to benefit from the ecclesiastical exemption; it only has the ecclesiastical exemption because the Government's understanding is that the Faculty Jurisdiction does, and will continue to, provide a system of control that meets the criteria set out in guidance issued by the relevant Department of State.³ It then noted that the current guidance⁴ includes the following: "...*The essential requirement..... is equivalence with secular listed buildings consent in terms of due process, rigour, consultations, openness, transparency and accountability.*"

3.3 The Court of Arches set out guidelines for chancellors exercising the Faculty Jurisdiction in relation to listed churches by means of five questions to be considered, as follows:

- "1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's White Waltham (No2)** [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is 'yes', how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?

³ Paragraph 37.

⁴ 'The Operation of the Ecclesiastical Exemption and related Planning Matters for Places of Worship in England'

5. *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see **St Luke, Maidstone** at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed."*

Since restoration orders are part of the statutory machinery for implementing the Faculty Jurisdiction, I consider that the Duffield guidelines are relevant.

- 3.3. S.14 of the Measure (as recently amended) provides that every Archdeacon shall have power to grant a Licence authorising, without Faculty, the minor re-ordering of a church in his archdeaconry for a temporary period to such extent and in such manner as may be prescribed. Part 7 of the Faculty Jurisdiction Rules 2013 ("The Rules") prescribes the details. Rule 7.14 provides as follows:

- "(1) *On the application of the minister and a majority of the parochial church council an archdeacon may give a licence in Form 8 authorising a scheme of temporary minor re-ordering for a specified period not exceeding 15 months.*
- (2) *A licence may not be given by the archdeacon under this rule where a parish has no minister.*
- (3) *Before giving a licence the archdeacon must be satisfied that—*
 - (a) *the scheme does not involve any interference with the fabric of the church or the carrying out of electrical works;*

- (b) *it does not involve the fixing of any item to the fabric of the church or the disposal of any fixture or other article; and*
- (c) *if the scheme involves moving any item—*
 - (i) *it will be moved by suitably competent or qualified persons;*
 - (ii) *it will be safeguarded and stored in a place approved by the archdeacon; and*
 - (iii) *it can easily be reinstated.*
- (4) *The archdeacon may give a licence subject to any conditions that appear to the archdeacon to be necessary.*
- (5) *If the archdeacon refuses to give a licence, the archdeacon must inform the applicants that they may, if they wish, petition the court for a faculty authorising the proposed scheme.*
- (6) *A copy of every licence given by the archdeacon must be sent to the registrar and the secretary of the Diocesan Advisory Committee.*
- (7) *The period specified in the licence may not be extended by the archdeacon.*
- (8) *If a petition for a faculty in respect of the scheme authorised by the licence is submitted to the registry not less than 2 months before the expiry of the period specified in the licence, the scheme is deemed to continue to be authorised by the licence until the petition is determined by the court."*

The temporary nature of such authorisation is emphasised by rule 7.15, which provides as follows:

- "(1) *On the expiry of the period specified in a licence given under rule 7.14(1)—*
 - (a) *the archdeacon must send the minister a copy of Form 9 (which asks the minister to state whether a faculty has been applied for in respect of the scheme of temporary minor reordering and, if not, whether the position has been restored to that which existed before the scheme was implemented); and*
 - (b) *the minister must complete Form 9 and return it to the archdeacon within 14 days of receiving it.*

- (2) *If on the expiry of the period specified in the licence the parish does not have a minister, paragraph (1) is to apply as if the references to the minister were references to the churchwardens of the parish.*
- (3) *Save to the extent that it has been authorised by faculty, when a scheme of temporary minor re-ordering ceases to be authorised under rule 7.14 the archdeacon must take steps to ensure that the position is restored to that which existed before the scheme was implemented."*

3.4. In accordance with s.15 of the Measure and rule 6.2(1)(c) of the Rules, I sought the advice of the DAC in relation to this application. The Committee's minute noted, amongst other things, that the use of Archdeacon's Licences was *"an essential tool in allowing PCCs to explore how best our church buildings can be adapted to better suit the needs of worshippers and the wider community. In this diocese the Archdeacons only issue licences for relatively minor projects and occasionally an Archdeacon has first consulted the DAC if it is felt that a licence is being sought by a PCC for a temporary reordering which is unlikely to receive a subsequent Notification of Advice recommending the work for approval."*

3.5. The Archdeacon made similar points in his oral submissions at the final hearing. It is not part of my task in this Judgment to review the use of Archdeacons' Licences as a generality, but it is worth observing that the more detailed discussion about proposals that can occur in advance of a Licence being issued, the better it is likely to be for all concerned. In particular, careful

attention should be paid to the manner in which pews are fixed to platforms and any concerns about the condition of platforms articulated at the same time. Doubtless it would be prudent in most cases to involve the church's Inspecting Architect and the joiner whom it is proposed to employ for the work. In the light of the issues thrown up by this case, I intend to work with the Archdeacons and the DAC to produce guidance to assist in the process.

- 3.6. Lastly, I must set out the relevant parts of the Schedule of Matters requiring only PCC Approval issued by my authority pursuant to the Measure (known colloquially as "Minor Matters"). The Schedule includes *'Minor fabric repairs in identical materials and to the same appearance at a cost not exceeding £1000, exclusive of VAT and the cost of scaffolding'* and, specifically, *'Minor repairs to stone floors or pew platforms not involving the replacement or disposal of stone or brick components'*. There are several exclusions, the relevant one, upon which the Applicants relied, being, *'Matters concerning items which, in their own right, are of historic, architectural or archaeological importance. These will require a faculty.'*

4. INSPECTION

- 4.1. I inspected the works fully on the 23 February and refreshed my memory of matters at and after the final hearing on 25 March.
- 4.2. The four pews at issue are in the church and it is clear to see where they were situated until recently as the relevant area is almost entirely covered in new, unstained floorboards. The pews are numbered, forming part of a sequence

with the many pews which remain. Numbers 6 and 7, which were evidently located furthest east, are now stored at the west end of the nave. Numbers 8 and 9 are resting in the north aisle. It was clear from examining the removed pews, the ones that remain in position and the floor in the cleared area that the pews originally rested by means of "feet" or "tongues" in narrow grooves hollowed out from the pew platforms. Some of the feet were missing from the removed pews. Number 6 lacked its middle feet, Number 7 was footless, the feet at both ends of Number 8 were damaged, one appearing to have been cut, and Number 9 was footless. Pew Number 8 had evidently been installed round the heating pipe or adapted at some stage to facilitate the introduction of such a pipe. It was clear from my observations, however, that this pew had recently been cut to get it out over the heating pipe.

4.3. The recently replaced floor is, as I have said, incomplete as a result of the work being halted while this Application has been considered. There are a few uncovered areas where the underlying base is visible. It is possible to see that a cable - which proved to be the means by which one of the speakers for the sound system is connected to the amplifier – has been rerouted from its former position, tacked to a pew base, to a new trunked arrangement under the boards. In addition, a small adaptation to the heating pipe has been carried out under the boards.

4.4. At the easternmost end of the nave there is an area of floorboards containing no pews, which has clearly been established for longer than the recent works.

These boards are stained in a dark reddish-brown colour. This area is the subject of the items numbered (3) as set out at Paragraph 1.1 of this Judgment.

- 4.5. More generally, I took note of the great size of the church, its impressive width and spaciousness, its imposing stone carved reredos and medieval choir stalls. The pews and floorboards are described in the Quinquennial Report as follows:

*"The pews are formed of oak and are mounted on softwood pew platforms recessed to fit flush with the floor levels of the circulation areas. At the east end, the first four rows of pews have been removed to provide additional space at the east end of the nave. The boarding of the floor in the exposed areas has been repaired and has been covered with a dark wood stain. The floor in this area is smooth and even. In the remaining areas of pews in the nave, the softwood flooring is of a natural finish. The surface is a little uneven but remains serviceable. The boarding of the pew platforms remains serviceable but individual boards have suffered decay. It is known that some of the supporting structure is decayed, particularly in the north rank of pews, the floor should be opened up to investigate the condition and any repairs carried out. Priority B: Inspect and repair pew platforms as necessary – cost not determined."*⁵.

I would add that it was not disputed that the pews date from 1844-49, when they were installed by one Richard Cromwell Carpenter, a renowned architect of the Cambridge Movement, which was part of the Tractarian wing of the nineteenth century Church of England. As well as a large set of substantial,

⁵ Paragraphs 5.1.8-9

numbered congregational pews, the church also contains an elaborate arrangement of "Corporation Pews". The latter collection has been unaffected by the works in question. The precise age of the pew platforms is unknown, but Mr Cooper reasoned that they would have been contemporary with the pews. Mr Marchant's Witness Statement explained that the Inspecting Architect, Mr Simon Marks RIBA, AABC, whilst uncertain of the date of the floor, believes that it was installed between 1886 and 1906. These two hypotheses are not, in fact, inconsistent and, in any event, for reasons which I shall explain, I do not consider it necessary to decide the precise date of the floorboards which have been removed.

- 4.6. The floorboards which were removed during the recent works are stored in the building. It was evident that they were badly affected by worm and rot and the areas of floor which remained open to my inspection contained both old and new sawdust, which was consistent with both pre-existing decay and the recent works.

5. ISSUES

- 5.1. The agreed Statement of Issues was used as the framework for discussion at the final hearing and it is convenient to adopt the same approach now, though I have altered the order of items.

Issue 1

The removal of a pew in 2012/13 without authority. Pew was moved back and forth several times over the years without authority and was permanently relocated to the Kent Corner (tbc) in 2012

5.1.1. It was confirmed at the final hearing that the pew in question was Number 6 and that it now rests at the west end of the nave (not the Kent Corner, which forms part of the north aisle). Mr Marchant, on behalf of himself and Mrs Neaves, accepted at the hearing that due procedures were not followed with regard to this pew. The Parties agreed that it was, apparently, lifted in and out of its grooves from around 2010/12 until it became, in the opinion of Mr Marchant, too unstable. Mr Marchant suggested in his Witness Statement that it could doubtless be “*reconstructed*” but said that this was not the preference of the wardens.

Issues 2-5

Whether or not the pews in 2015 were fixtures and therefore, as part of the fabric of the building, outside the remit of an Archdeacon’s Licence and/or were knowingly and intentionally permanently removed. Associated issues were whether damage to pew Number 8 was unnecessary and disproportionate and the legal significance of removing pew feet and filling in grooves

5.1.2. There was no direct evidence before the Court from the joiner who carried out the recent work, though Mr Marchant said that he had over 20 years’ experience of working in this church. I shall therefore have to make findings about the physical nature and practical significance of the works on the basis of my own observations. A critical issue is whether the removal involved any “*interference with the fabric of the church*” within the meaning

of rule 7.14 of the Rules. In considering this question, I bear in mind the statutory intention of limiting the scope of a Licence to temporary arrangements which allow for subsequent restoration of the position *"to that which existed before the scheme was implemented"*.

5.1.3. The system of installing pews by means of *"tongues"* or *"feet"* and grooves was a simple but effective one. Clearly, however, pews installed in this fashion were not fully portable, nor were they intended so to be. It is inevitable that if such pews are repeatedly lifted out of their grooves, they will become wobbly. Once pews are removed, their small *"feet"* or *"tongues"* are also vulnerable to damage or loss, as seems to have happened here⁶. In any event, pew Number 6, which was the first to be moved, was never the subject of an Archdeacon's Licence or a Faculty. The removal of this pew from its original position was therefore unauthorised.

5.1.4. In the case of pew Number 8, it is apparent that a foot was cut off in order to remove it. In addition, one of its legs was cut in order to free it from the heating pipe. Mr Cooper points out that the heating system could have been drained down and the pipes unscrewed so as to avoid cutting the pew; the logic of that

⁶ Mr Marchant said that he had been told by a deputy churchwarden that one of the feet had already been "tampered with", but he was unable to give further details.

position is obvious and was accepted by Mr Marchant. Other pews have also lost their feet during the processes of removal and/or storage. In my judgement, the removal of pews undertaken here has involved interference with the fabric of the church. It will doubtless not always be the case that removal of pews will have this effect, but the pews in this church are particularly large, owing to the width of the nave. Their dimensions and the fact that they are made of solid oak doubtless also mean that they are heavy. Together with many other numbered pews of identical design, they form part of a set. Until they were disturbed, their tongue and groove fittings clearly held them firmly in place, connecting them physically to the pew platforms which formed part of the floor of the church. The remaining pews, which I examined carefully, are very securely fixed in place. In the absence of evidence to the contrary, I infer that the fact that some of the feet have been cut off or otherwise come off during the process demonstrates the difficulty of prising the pews out of their positions. This conclusion lends weight to my finding that these pews should be regarded as part of *"the fabric of the church"* and that the works of removal undertaken here constituted interference with the fabric. Moreover, whilst I am sure that some means of reinstatement could be devised, the damage done as a result of removal of these pews means that

they “cannot easily be reinstated”, as required by the Rule. I reach this conclusion due to the removal and/or loss of feet from several pews and the cutting of a hole in Number 8, rather than the infilling of the grooves. The latter, as demonstrated during the inspection, can easily be reopened with the aid of a penknife, but the feet were originally integral to the pew legs and cannot therefore be exactly or, in my judgement, easily replicated.

- 5.1.5. I am satisfied from Mr Marchant’s and the Archdeacon’s evidence of the meeting in May 2014 that all those involved in the Archdeacon’s Licence process understood and accepted that such a Licence could only be temporary. Mr Cooper and the other Applicants were not present on that occasion. Whilst the Applicants see the temporary reordering as the thin end of a much larger wedge, there is no evidence to support a finding that there has been a deliberate plan to subvert the jurisdiction of the Court or evade the statutory protection afforded to this important listed building. The fact that the PCC wishes to explore options for a wider role which the church might play, not only as a sacred place dedicated to the worship of God, but also as an asset for use in mission and service to the wider community and cherished and funded as a listed building, is perfectly understandable and

lawful. As emphasised in Duffield St. Alkmund, however, it is important that due process is followed.

Issue 10

The fact that works began before the Licence was issued

5.1.6. It was accepted that work began after the Archdeacon had indicated that the Licence would be issued but before it was, in fact issued. This fact means that the 2015 works cannot, in law, be regarded as having been authorised by the Licence, notwithstanding my findings that in any event, as executed, they fell outside the scope of the relevant legislation. The conditions on the Licence are important safeguards, reflecting the statutory limitations on the power. If due process had been followed, the Archdeacon's conditions should have alerted the workman as well as the wardens to the need to avoid cutting or otherwise damaging the pews.

Issues 6 & 7

Whether or not the floorboards were of significant merit, mostly in a condition not necessitating replacement and therefore outside the scope of Minor Matters. Whether they should have been repaired rather than replaced

5.1.7. As I explained above, I saw the floorboards which were taken up during the recent works and I conclude that many of them were in

a poor and damaged condition. These findings are consistent with the observations in the Quinquennial report about the pew platform in this area. Mr Marchant explained that the floorboards in the easternmost end of the nave, which were replaced four years ago, were also in an unreliable condition in places, with several areas having been patched after holes developed, whether from the weight of the piano or organ console or as a result of somebody putting their foot through them. He said that, when taken up, they looked very much like the recently removed boards which I saw.

- 5.1.8. The estimate for the recent removal of three pews and the removal and replacement of the relevant floor area was for a composite sum of £1,868. There is no mention of VAT. Since the pew removal would have been a quicker job, not involving the provision of materials, I conclude that the floor works would have cost well over half this amount. Moreover, it was clear from Mr Marchant's replies to my questions that the PCC did not approve either the pew removal or the recent floorboard works. Apparently, the All Saints Restoration Trust considers proposed projects for funding, since the PCC has no capital funds. If a Faculty is required, the PCC votes, otherwise, matters not requiring a Faculty are simply reported. No PCC resolutions

have been produced in respect of the recent works or those which were undertaken four years ago. This omission, together with exceedance of the £1000 limit for the recent flooring works, prevents them from qualifying as Minor Matters requiring only PCC approval, as claimed. With regard to the earlier works, Mr Cooper confirmed that he had been aware of them and not been pleased about them, but had not considered it appropriate to draw them to the Court's attention, as the previous parish priest was nearing the end of a long tenure at All Saints. I have concluded that none of the flooring works properly fell within the Minor Matters authorisation for the reasons set out above. However, I do not accept the Applicants' contention that the flooring works could not qualify by virtue of their intrinsic historical or architectural importance. There is no firm evidence to support such a contention, even if the pew platforms were contemporary with the pews. The Applicants' view is not supported by the DAC, whose members include several experts in historic church buildings. Mr Cooper accepted that none of the Applicants is such an expert. Nevertheless, this point is not decisive in view of my finding that, for separate reasons, the flooring works cannot be justified as Minor Matters. Nor is it necessary for me to embark on the pretty well impossible task of reviewing whether the pew

floorboards were in a state to justify renewal rather than patching as a means of repair.

Issues 8 & 9

No permission sought for relocating of cables inside a conduit or for removal and rerouting of a heating pipe

5.1.9. Mr Marchant said that these works were done solely "*on his authority*". They were undertaken by the deputy churchwarden, who holds no relevant qualifications. Mr Marchant did not seek to rely on the Archdeacon's Licence or Minor Matters approval to authorise these works. They were not included in the Licence which was issued on 2 February and were in any event, done before that date. Nor was there any PCC resolution in relation to them. It is therefore not necessary for me to decide whether or not rerouting of the speaker cable amounted to "*the carrying out of electrical works*" which would have been incapable of authorisation by Licence.

5.1.10. As a result of my findings, I have to conclude that none of the works in question were properly authorised.

6. RELIEF

- 6.1. In view of my findings, I must decide whether or not to make a Restoration Order and, if so, upon what terms.
- 6.2. The DAC's advice is apparently predicated on the assumption that the pews were lawfully removed pursuant to the Archdeacon's Licence and that the only defects in process with regard to the flooring were the facts that it cost more than £1000 and that the floorboard works should have preceded the pew removal. I have concluded that there were further defects in process which rendered all the works unlawful. Nevertheless, the DAC's conclusion that the floorboard removal did not otherwise give it any cause for concern is advice to which I attach considerable weight.
- 6.3. The treatment of the pews is more troubling. Although the damage occasioned by their removal is not extensive, nevertheless the loss of their feet and cutting of the wood are regrettable, especially as they are pews of quality and a degree of historic interest, forming elements of a well-executed numbered set, produced by a craftsman of some renown. The fact that they formed part of the fabric of a Grade 1 listed building adds to their significance. Considering the Duffield questions, I conclude that there has been some loss of heritage significance as a result of the pew removal which I have found to be unauthorised. The damage is limited and I am satisfied that it is less than substantial. Nevertheless, I cannot find that it is justified or outweighed by considerations of public benefit. This inability is not because I am

unsympathetic to the notion of conducting an experimental temporary reordering to test the usefulness and implications of such a project. Rather, it is because there was no need for matters to have been conducted as they have been in this case. Had the Licence been duly awaited and its conditions observed, the damage to the pews and consequential harm to significance could have been avoided.

6.4. More generally, I am concerned about the absence of consideration by the PCC of the project. Minor Matters authorisation and the application for an Archdeacon's Licence are processes which require the involvement of the PCC. This is important because it helps to ensure that mistakes do not occur and it gives the opportunity for proper discussion and an element of *"democratic accountability"*. It also helps to spread the burden of responsibility placed upon churchwardens.

6.5. I have noted the co-operation of the churchwardens with this Court process and their repeated expressions of willingness to abide by any Order which I make. These are welcome indications. Unlawful works have occurred, however, and it is necessary for the Court to deal with them. I propose to make a Restoration Order in relation to the four pews which have been unlawfully removed, and in relation to the rerouted cable and modified heating pipe, but to suspend the operation of the Order for an initial period of four months to permit the making of a confirmatory Faculty Petition in respect of these works, and thereafter until such time as the Faculty Petition has been

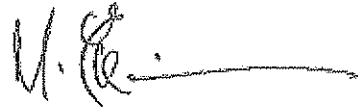
determined. The four month period is intended to allow discussion to take place with Historic England and the Victorian Society and for matters to be properly discussed by the PCC. As I have found that the works to the pews did not fall within the scope of the Archdeacon's Licence, the question of whether to seek a Faculty for a reordering on either a temporary or permanent basis is one that can be decided by the PCC after full discussions with these external bodies and the DAC. Of course, I am in no way prejudging the outcome of a Petition, not least because I shall be very interested in the advice of the specialist secular partner bodies and the DAC.

- 6.6. I make no Restoration Order in relation to the floorboards. Strictly speaking, I cannot make such an Order because it is quite clear to me that it would not be practicable to put back the boards which have been recently removed and those which were removed four years ago have long since gone. Instead, I direct that the open parts of the floor shall be temporarily made good until such time as the DAC representative and/or expert need to examine the cable and heating pipe in connection with the Faculty Petition. I also direct that the confirmatory Faculty Petition referred to in the last paragraph include both sets of works to the floor.

7. COSTS

- 7.1. In view of my findings, I am minded to order that the Registry's expenses be paid by the churchwardens, on the understanding that they would not, in practice, pay this sum personally. As I have heard no submissions on costs,

however, I allow seven days from the date of issue of this Judgment for the churchwardens to make such submissions as they might wish to in relation to this aspect of the matter.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line.

MORAG ELLIS QC

10 April 2015

