

Neutral Citation Number: [2017] ECC Swk 7

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF ST MARY MAGDALENE, RICHMOND

AND IN THE MATTER OF A PETITION BY THE REVD WILMA ROEST, MRS JACKIE HARRISON AND MR PAUL VICKERS

JUDGMENT

Introduction

1. This is the petition of the Revd Wilma Roest, Mrs Jackie Harrison and Mr Paul Vickers, the Rector and Churchwardens in the Richmond Team Ministry. The petition was received in the Registry on 25 January 2017 and seeks permission for the following works:

Removal of pews (but with adaptation/relocation of some pews, including mayoral pew) and pew platforms; removal of existing altar dais, and removal and storage of altar and other dais fittings; removal of existing flooring; excavation and re-building of floor sub-base (including new service ducts); installation of new underfloor heating and new perimeter radiators (and associated electrical works); laying of new Purbeck limestone floor including reinstatement of ledger stones; adaptation of the pulpit to make it moveable; construction of new ramp (with handrail) in north aisle (east end); relocation of font from south aisle to nave (west end); alterations to organ console access from chancel; new bench pews and chairs in nave and north/south aisles.

2. At a meeting on 9 December 2015, the PCC resolved unanimously to seek a faculty in respect of the works.
3. Public notice of the petition was given by notices which were displayed in accordance with the rules between 2 and 28 January 2017 and notice was given on the Diocesan website between the same dates. No objections were received as a result.
4. By a Notification of Advice dated 19 December 2016, the Diocesan Advisory Committee recommended the works to the court, subject to the following provisos:

-) the work should be undertaken to the reasonable satisfaction of the Church's Inspecting Architect;
-) the ledger stones should be re-instated where they are now subject to the DAC approving a revised proposal if it appears in due course that such a revision be necessary;
-) the Victorian tiles should, if possible, be re-used in the building, subject to the DAC approving a revised scheme in respect of the tiles if it appear in due course that such a revision be necessary;
-) a written archaeological scheme of investigation be forwarded to the DAC for comment;
-) details of the new seating and other furnishings of the aisle are to be agreed with the DAC¹.

5. In the light of the fourth proviso, the Petitioners commissioned a written scheme of investigation from MOLA (Museum of London Archaeology). This provides detailed provisions for MOLA to oversee the works.
6. The Church Buildings Council has been consulted in respect of the proposals, as well as Historic England, the local planning authority², the Society for the Protection of Ancient Buildings, the Georgian Group and the Victorian Society. The Georgian Group did not respond to the consultation.

¹ I have recast the wording of some of the provisos for greater clarity.

7. I visited the church on 28 March 2017.

The Church in Richmond

8. The town of Richmond is served by a team ministry. The church of St Mary Magdalene is one of three churches within the team ministry. Situated in the town centre, it is the oldest and has the biggest congregation. There are 204 on its electoral roll. The pattern of Sunday services is: 8 am Holy Communion; 9 30 am Parish Eucharist with Junior Church; 6 30 pm Choral Evensong. On the 1st and 3rd Sundays of the month, there is Sung Matins. The church is open daily from 8 am to 4 pm (and until after Evensong on Sunday). There is a monthly concert organised by the Director of Music and the church is occasionally used by the Richmond Society and the Richmond Concert Society as a venue for meetings and concerts.

The Church Building³

9. The church of St Mary Magdalene, Richmond is listed Grade II*. It can trace its origins back to the beginning of the twelfth century, when Richmond was known as Shene. There was a royal residence here from an early period and following the destruction of that building by fire at the end of the fifteenth century, Henry VII built a new palace which he called Richmond Palace, after the manor of that name which he owned in Yorkshire⁴. A town grew up around the palace, which was also called Richmond. Henry VII contributed to the building of a new church at this time and the oldest work – in the tower – dates from this time⁵. The building is now a good example of an attractive town church, which has grown and been altered incrementally since the sixteenth century. There was a major reconstruction in 1750, which produced an elegant Georgian church, retaining a Tudor chancel. Important elements of this work survive today. In 1865, work was carried out to increase the seating capacity of the church. This was to designs by (Sir) Arthur Blomfield⁶. This work comprised the eastward extension of the north aisle and its demolition, reconstruction and re-roofing above cill level and the construction of two storey external porches at the western ends of the north and south aisles serving enlarged galleries. The nave and aisles were filled with bench pews made of pitch pine. In 1904 the Tudor chancel was demolished and replaced by a new chancel, vestry, and two chapels designed by George Frederick Bodley. As the Statement of Significance records:

... [Bodley's design] made no concession at all to the character of the classically-detailed, Georgian nave and south aisle of the main body of the church. Instead, Bodley's design reflects his distinctive and highly refined reinterpretation of English Gothic architecture of the 14th and 15th centuries that he adapted for much of his work from the 1870s onwards, enriched with the distinctive and extraordinarily fine, stained and painted glass of the firm of Burlison and Grylls.

10. The galleries over the north and south aisles were removed as part of the 1904 works and the western gallery was removed in works carried out in 1935 – 1936. Some of the pews were removed at this time.

11. The font is Georgian. Removed from the church in 1867, it was installed in the Richmond Union Workhouse before eventually being returned to a position at the eastern end of the south aisle in 1961. An area of bench pew seating was removed at this time.

² The London Borough of Richmond.

³ What I say below about the church is informed by an excellent *Statement of Significance* prepared by Paul Velluet MLitt RIBA IHBC Chartered Architect.

⁴ As readers of Shakespeare will appreciate, before his accession Henry VII was Earl of Richmond.

⁵ I have recently granted a faculty for repairs to the Tudor arch of the tower, visible from inside the church.

⁶ Arthur Blomfield was choirmaster of St Matthias, Richmond, now part of the Richmond Team Ministry. He was later to design the nave of Southwark Cathedral.

12. The hexagonal oak pulpit dates from 1699 and has stood in its current position on the north east side of the nave since 1904. Some of the pews that then immediately surrounded it have been removed to enable it to be better seen.
13. A pew for the Mayor was designed by Sir Charles Nicholson and installed in 1924.
14. In 1973, the area at the eastern end of the nave was reordered to provide an oak faced platform, on which stands a Holy Table. Provision is made for demountable communion rails.
15. Although still a pewed church, a comparison of the present position with a plan dating from 1865 showing the church filled with five serried rows of pews demonstrates the cumulative loss of pews since 1865, which has been extensive. The floor reflects these changes and is best seen on Drawing 26.1B/A502 prepared by the Church's Inspecting Architect, Peter R Bowyer, which is attached as **Annex 1** to this judgment. The precise nature of the floor beneath the pew platforms is not known. The central nave aisle is formed of red and black machine made quarry tiles. These are described as being of low significance in the Statement of Significance. In a letter to the DAC dated 25 October 2017, Mr Bowyer said:
- ... these are unexceptional, and of no historic importance whatsoever; they are out of keeping with the Georgian interior and their retention would be profoundly unhelpful – a strident and dominating feature in the church.*
16. The aisles separating the central nave pew platforms from the pew platforms in the north and south aisles are made up of ledger stones; that is, they are memorial stones, originally placed over graves within the church, which were re-laid end to end in 1865. There are other ledger stones which were relaid in 1935. There are 34 ledger stones in total, dating from the 17th, 18th and 19th centuries. All are of historic interest and some are rather fine, incorporating heraldic shields. Some are quite worn.

The proposed changes and their justification

17. The heating system is old, inefficient and expensive to re-run. The best replacement will be underfloor heating. This requires replacing the existing floor and removing the pew platform. The new floor will be of Purbeck limestone (with suitable colour variation suitably designed to give definition to the re-floored areas, particularly the nave). This presents the opportunity of re-providing the seating in the church. The existing pews, which sought to maximise seating capacity, are too close for comfort and are inflexible. It is proposed to replace the seating in the body of the nave with high quality, moveable benches made of oak. The north and south aisles will be generally kept clear of seating but, when required (eg for larger services) stackable chairs will be laid out⁷. The font will be moved to a central position at the west end. The pulpit will be moved from its current position on the north side of the church to a comparable position on the south side and will be put on a wheeled platform so that it does not get in the way at concerts and similar events. A permanent ramp will be installed that will bridge the different levels of the chancel and chapels, assisting access for those whose mobility is impaired. Although a Holy Table will be retained in front of the chancel screen, the dais will not be replaced for the time being; following the works there will be a period of liturgical experimentation⁸.

⁷ It is envisaged that the benches will be made by Luke Hughes and Company and the stackable chairs be the Howe 40/4.

⁸ The use of the Holy Table in the nave will be facilitated by the use of moveable communion rails.

18. As regards the ledger stones the proposal is that they should be relaid in two groups – in two lines at approximately the mid points of the north and south aisles. The proposed arrangement is shown in Drawing 1B/ABO1, which is attached at **Annex 2**.

19. The cost of the work is of the order of £300,000. Happily, the Church is the principal beneficiary of the Richmond Church Charity Estates which will bear a substantial part of the cost. Accordingly the funding for the proposals is either in place or is available.

Comments on the proposals

20. In a letter dated 17 August 2016, Historic England made detailed comments⁹. The letter helpfully contained a summary, as follows:

The proposed works would cause some harm to the listed building. However, we recognise the need for improved services, facilities and accessibility, as well as flexibility in the building's use. We therefore would not object to the broad scheme of works for underfloor heating and replacement seating, subject to certain conditions regarding replacement floor finish and retention of example pews.

21. As to the detail, in respect of the floor, Historic England said:

The loss of the York stone and quarry tile floor to the nave and aisles would mean the removal of the 1860s flooring scheme. This loss will cause minor harm. Given the benefits to the church of a new heating system, and the simple nature of the tiled aisle and considerable replacement of much of the stone floor in the twentieth century, we would not object to the replacement of the floor surface in principle, assuming the ledger stones are retained and re-laid.

It must also be considered how the floor will juxtapose with the retained ledger stones, and where these will be positioned.

We recommend that any major project to the floor of this building includes provision for archaeological supervision and recording given the potential for remains of earlier phases of the building, vaults and burials to be uncovered.

22. In respect of the removal of the pews, Historic England said

Given their low significance and the benefits of a flexible, on-going church use, we would not object to the majority of the pews being removed. However, to mitigate against the harm caused and provide an example for future reference, it would be beneficial to keep a small number of pews, perhaps situated in the aisles. It will also be important that the replacement seating is appropriate and high quality timber furniture.

23. The Victorian Society made detailed comments by a letter dated 24 August 2015. In respect of the floor, it said:

The red and black tiles in the nave should be retained in situ. On my visit to the church it was made clear that you did not wish to retain the tiles because it was felt that they were not in keeping with the Georgian look of the church. They do represent how the church has been altered and changed through its various restorations and they are an element of the Blomfield restoration of the church, along with the gothic timber ceiling. They are also in a handsome arrangement and help to define the interior spaces of the church. We object to their removal. The use of Purbeck stone to replace the sandstone flooring is acceptable.

24. In respect of the pews, it said:

⁹ The letter is by Kathy Clark, an Inspector of Historic Buildings and Areas.

The pews are also a large part of the Blomfield restoration of the church. While we will not be objecting to their removal, we would still like to see some of the pews retained in the church. On my visit it was suggested that some of the pews could be retained in the north aisle of the church and fitted against the wall and this could be an acceptable solution. We are satisfied with the suggested furniture as it is of high quality and design.

25. By a letter dated 30 July 2015, the Church Buildings Council indicated its general support for the proposals. The CBC have since made more detailed comments to which I refer below.

26. The local planning authority, the London Borough of Richmond, had no objection in principle to the proposals and did not wish to comment on the detail. It specifically drew my attention to the CBC/SPAB Guidance referred to at paragraph 36 below.

Matters arising

27. When I read the papers it became apparent that the Petitioners wanted to relay the ledger stones as set out at paragraph 17 above and not to re-instate them in their present positions. Although the second proviso suggested by the DAC would not absolutely have prevented this happening, it did make it clear that the DAC hoped that the ledger stones would be re-instated in their existing positions. Accordingly it was necessary for me to decide this issue between the Petitioners and the DAC, namely whether the Petitioners should be permitted to re-lay the ledger stones in different positions to those which they currently occupy¹⁰. On this issue I sought the further views of the CBC and DAC, giving the Petitioners the opportunity to comment on those views.

28. The CBC support the position of the DAC:

... the Council considered that there was merit in retaining the 1865/1935 arrangement as a tangible record of the historical evolution of the church and one that plays a significant role in providing the background to its character. In this context, the argument advanced by the parish – that the stones are not in their original positions and therefore relocation would cause minimal harm to the significance of the interior – fails to take account of the significance of the current arrangement in its own right.

29. However the CBC did recognise that in due course there could emerge practical or other good reasons why the existing arrangements of the ledger stones might need to be altered. It proposed that I should condition the faculty to permit of this.

30. The DAC has not altered its view which it explains by reference to the revered and still pertinent Manifesto (1877) of William Morris¹¹. In essence, in Morris's view, the conservator conserves and does not restore or improve¹². The DAC considered that:

¹⁰ The position is further complicated by the fact that it is accepted that there are some stones which it will be necessary to move for practical reasons. I can ignore this complication for present purposes.

¹¹ This forms the basis of the approach of SPAB to conservation issues.

¹² ... [we] call upon those who have to deal with them to put Protection in the place of Restoration, to stave off decay by daily care, to prop a perilous wall or mend a leaky roof by such means as are obviously meant for support or covering, and show no pretence of other art, and otherwise to resist all tampering with either the fabric or ornament of the building as it stands; if it has become inconvenient for its present use, to raise another building rather than alter or enlarge the old one; in fine to treat our ancient buildings as monuments of a bygone art, created by bygone manners, that modern art cannot meddle with without destroying.

... the ledger stones should go back where they are now. This would give an indication of continuity to what had been there previously. Advisers have also mentioned how the fabric of a church building will often retain a “residual memory” of earlier phases of the building’s history, even if the feature (eg a doorway part way up a wall to a now removed rood loft) can appear puzzling or haphazard to the casual observer, and that a change of viewpoint on the parish’s part would allow for accepting these imperfections rather than striving for a more pristine perfectionism.

31. Like the CBC however the DAC did recognise that practical or other good reasons could emerge why the existing arrangements of the ledger stones might need to be altered.

32. The Petitioners’ response is two-fold. A note prepared by Mr Velluet takes issue with the approach of the CBC and DAC. If I fairly summarise his argument, it is to the effect that it is unrealistic to consider that, if the ledger stones be put back in their existing positions, the viewer might derive any perception of value as to the history of building. He points out that in 1865 Blomfield re-laid the ledger stones in a way that disregarded William Morris’s principles.

33. Second a letter dated 3 May 2017 from Ms Roest refines the Petitioners’ position. As I understand it, the Petitioners are now content that, as regards the ledger stones in the nave, these will be re-laid in their present positions¹³. They accept the possibility of some adjustment to what they propose in respect of the ledger stones in the north and south aisles but would prefer their original proposals to be approved. In practical terms, they are everything to be resolved now, subject to the possibility of revisiting the position if a matter emerging from the execution of the works suggests that this is necessary.

The issues

34. It will have been noted from the response of Historic England that the works will cause some harm by virtue of the loss of the Victorian pews and the historic floor (albeit the ledger stones will be preserved). By virtue of the insertion of underfloor heating it may also cause some harm by virtue of the loss of any archaeological record of the building or earlier buildings on the site. I need to consider whether this identified harm is outweighed by the public benefit of the proposals.

35. It is appropriate to note here, however, that it is not suggested by anyone that the installation of underfloor heating and the removal of the pews cannot go ahead. Rather the argument is about the detail of the proposals. There are two outstanding issues where there is disagreement, both relating to the floor of the church:

-) first, the Victorian Society objects to the removal of the red and black tiles in the nave. The Society does not wish to become a party opponent in the proceedings but wants me to take its objection into account in my determination of the petition and I shall, of course, do this;
-) second, there is the issue between the Petitioners and the DAC and CBC as to the ledger stones.

Guidance on floors

36. The petition before me is topical, since in February 2017, SPAB together with the Church Buildings Council issued an *Historic Floors Guidance Note*. Although issued jointly with SPAB, this is nonetheless statutory guidance issued by the CBC under section 55 (1) (d) of the Dioceses, Pastoral and Mission Measure 2007 for the benefit of those involved with the conservation of churches.

¹³ Save as regard one stone which has to be moved in order to accommodate the relocation the font and one stone that is appropriately moved to reduce wear.

37. The guidance emphasises the importance of the floors of historic buildings:

The floor of a building plays an important role in providing the background to its character. It contributes to the overall appearance of the building and can complement the building's architecture. Some mediaeval churches may still have their original floor, but later floors may also be interesting and attractive additions that are worthy of retention; the collection of surfaces accumulated over time all contribute to the character and significance of a church.

38. Accordingly the guidance advocates a conservative approach to the treatment of floors in historic buildings. Thus it advocates an hierarchical approach. Thus three options may be identified: "Conservative Repair", "Minimal Intervention" and "Replacement". Under the heading "Replacement" the guidance states:

Where defects in the original construction of the existing floors are causing damage or are a danger, or where such defects are in conflict with the needs of the building or congregation, the existing floor could be replaced. This approach requires strong justification and evidence of need/arguments as to why conservative repair and minimal intervention are not the appropriate solution.

39. I shall take this Guidance into account in my consideration of this matter.

Approach

40. The Court of Arches has given guidance in *In re St Alkmund, Duffield*¹⁴ as to the approach that it suggests Chancellors should take in considering proposals for the alteration of a church. The Court suggests that the following questions should be addressed:

- 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, 26–28, and the review of the case law by Bursell QC, Ch in In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146, paragraph 11. Questions 3, 4 and 5 do not arise.*
- 3) *If the answer to question (1) is "yes", how serious would the harm be?*
- 4) *How clear and convincing is the justification for carrying out the proposals?*
- 5) *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see In re St Luke the Evangelist, Maidstone [1995] Fam 1, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.*

41. It will be seen that implicit in the first of the *Duffield* questions are two prior questions, namely,

What is the special architectural interest of the church, and especially the character of that special interest?

¹⁴ [2013] Fam 158.

*What is the special historical interest of the church, and especially the character of that historic interest?*¹⁵

42. Before turning to the questions I think that it will be helpful to consider the matter at large. As I said in directions which I gave in this matter in 29 March 2017, I am very sympathetic to the Petitioners' argument that, if, as it is, the floor is to be re-laid incorporating the ledger stones, the appropriate course is to start with a "clean sheet" and seek to devise the most appropriate arrangement from the aesthetic and practical point of view, disregarding the previous layout of the stones as a matter of no consequence. The DAC and CBC however feel strongly that the previous layout of the stones does have significant historical value and I do also see their point; the difficulty is knowing what weight to put upon this, recognising that, on any harm view, the harm flowing from a re-arrangement would not be great. The application of conservation principles – conservation not alteration or improvement – supports the DAC and CBC's approach. In the event, in the circumstances of this case, I prefer that approach. It may however be that in the event there are practical reasons that emerge which dictate re-laying the ledger stones in different positions. If this be this proves to be the case, the conditions that I shall impose on the faculty to be granted will facilitate this happening.
43. The same approach that the DAC and CBC commend to me in respect of the ledger stones is commended to me in respect of the red and black tiles by the Victorian Society. With some hesitation, I do not accept this argument in respect of those tiles. I am not bound rigidly to apply conservation principles in all cases. Here I consider that there will be clear aesthetic benefit offsetting the historic harm.
44. Against this background, I address the matter in the context of the *Duffield* questions.
45. In the particular circumstances of this case I shall not spend time seeking to define in further detail the special architectural and historic interest of the church. The reader of paragraphs 8 - 15 above will appreciate that St Mary's is a church of great architectural and historic interest. For present purposes, I consider that it is sufficient to observe that it is obvious that the principal interest of the building does not lie in the pews or the floor and that neither the pews nor the floor (except some of the ledger stones) are of particular significance. Although the pews date from 1865 and are, I would judge, of better than average quality for pitch pine pews of that date, they are not remarkable. They must nonetheless have some historical significance which contributes to the historical significance of the building as a whole. The floor, much of which is modern, is not special when considered as a whole. The ledger stones are of some significance, that significance being primarily historical. In their current layout, that significance is added to by the fact that the layout reflects the arrangements of the pews in 1865. The stones thus contribute to the special historic and architectural character of the church. The red and black tiles are of some historic significance in themselves and as reflecting the arrangements of the pews in 1865 but they are of limited architectural significance being machine made and not making an aesthetic contribution to the church. The tiles do contribute to the special historic and architectural interest of the church but not to the same extent as the ledger stones.
46. Turning to the question of whether there would be harm to the significance of the building as a listed building as a result of the proposals, the answer must be that there will be such harm because there will be a loss of features of some significance, albeit that their significance is in no case great.

¹⁵ That these questions are so implicit was confirmed by the Court of Arches in *In re St John the Baptist, Peshurst* (9 March 2015) (see paragraph 22).

47. Because those features are not of great significance, the harm arising from their loss will not be great. Moreover that harm will be offset by the installation of a new stone floor of high quality together with new benches of high quality.
48. In relation to question 4 of the *Duffield* questions, there is, as a generality, a clear and convincing justification for the proposals. The need for an improved heating system in the church is well made. There is a potential loss of archaeologically significant material but this loss would be offset by the improvement in understanding that an archaeological investigation of significant remains would provide¹⁶. The removal of the pews and their replacement by high quality benches to achieve greater flexibility and comfort, both for the existing congregation and to facilitate the wider use of the church is readily justified. The proposals in respect of the pews and the provision of underfloor heating are, after all, ones which have been scrutinised by the relevant bodies concerned with consideration of the appropriate conservation of historic buildings and to which no objection has been taken.
49. As regards the floor, the justification for moving the ledger stones is, as it stands, primarily an aesthetic one. I do not think that this does provide a strong justification for their relocation.
50. As regards the replacement of red and black tiles, the justification is the same, namely an aesthetic one. However it does seem to me to be much stronger: the replacement of a Victorian floor, not of intrinsically high quality and which, if retained, will look aesthetically incongruous, with a high quality stone floor.
51. Turning to question 5 of the *Duffield* questions, in the light of the clear and convincing justification for the installation of the new heating system, the removal of the pews and their replacement by high quality benches, I consider that the presumption against harm identified in question 5 is readily outweighed. There is a clear public benefit and the harm is modest. This is so even though there is a strong presumption against such harm. As I sought to articulate in *In re St Anne's Church, Wandsworth*¹⁷, it seems to me that although there is the **same** proportionate presumption against harm, namely a presumption whether that harm is great or modest, the fact that the absolute **quantum** of harm that needs to be outweighed is much less makes a Petitioner's task in a case of modest harm much easier.
52. Against what I have said about the ledger stones in my answer to question 4, I think that I cannot properly hold that their relocation is justified on aesthetic grounds. However since the harm caused by relocating them is not great, it may be that in due course their relocation could be justified.
53. The position as regards the red and black tiles is more difficult. If it were simply a question of balancing benefit against harm, in my judgment the case for change would be made out on the basis of the answer to the fourth *Duffield* question set out at paragraph 48 above. However by virtue of the strong presumption against adverse change, I am not carrying out a simple balancing exercise. To permit change would be to depart from the conservation principles articulated by William Morris and espoused by SPAB and, it would seem, articulated in the recent CBC/SPAB Guidance Note. I can see that a rigid application of those principles would lead to me requiring the conservation of this tiling. I can also see that one reason why one might apply those principles is because it may not in any particular case be possible to be absolutely confident that what is done is an improvement. However unless William Morris's principles are applied as a more or less inflexible rule it must be possible for an aesthetic benefit to outweigh harm to historic fabric. It seems to me that recognition

¹⁶ See paragraph 57 below.

¹⁷ 2 November 2015 (see paragraph 45).

of the general force of those principles does not preclude a reasoned decision to depart from them in an appropriate case. It will be recalled that in the *Duffield* case the Court of Arches held that there was aesthetic benefit¹⁸ to the church but historic harm¹⁹ (which was not serious or substantial)²⁰; in the event however it did not feel it necessary to weigh one against the other (there were other factors in the case). The present is another case where the harm arising is not serious or substantial. No-one has suggested that the harm is serious or substantial and, in my view, it is modest. The difficulty I have is knowing how to weigh the strong presumption (supported by conservation principle) against the aesthetic benefit of replacing the tiles.

54. Unassisted by any expert guidance, my view would be that the strong presumption is outweighed. Moreover I do have some expert guidance. The DAC positively consider that the relaying of the tiles in their present and the CBC have no objection to their removal. Against this are the views of the Victorian Society in their letter dated 24 August 2015. In the light of my particular concerns after the petition had been submitted to me, I gave the Victorian Society the opportunity further to comment. It has said:

The Victorian Society would always regret the loss of a decent Victorian floor. However, taking into account the predominantly Georgian character of the nave, the removal of the nave pews, the decision to install underfloor heating, and the good quality of the Purbeck stone floor that is proposed, it might assist the Chancellor to know that this is not an issue about which the Society has strong feelings.

55. I am very grateful for this indication. It seems to me that this does help to put the Society's objection in context. Finally, I gave the Society for the Protection of Ancient Buildings the opportunity to comment on the position. This body has limited resources for casework and its approach in respect of buildings or fabric postdating 1720 generally defers to the relevant amenity society: in this case, the Georgian Group (or perhaps, more pertinently in respect of these works, the Victorian Society). SPAB evidently does not seek to argue that conservation principle should override aesthetic benefit without having made an assessment of the facts of the case by inspection.

56. Taking all this material into account, it seems to me that the appropriate conclusion is that, in the circumstances of this case, the strong presumption against adverse change is outweighed by the benefit accruing from change. Although it does not form the basis for my decision, I note that it is hoped to mitigate the harm by relaying the tiles within the north and south porches²¹.

Archaeological matters

57. The preparation of a Scheme of Investigation has moved matters on in regard to the archaeology. As is usual when there are potentially matters of archaeological interest which will be uncovered during the works, the Scheme envisages that someone will have a watching brief during the execution of the works. Moreover it envisages that as a result of that watching brief, it could become apparent that an archaeological excavation (upon a greater or lesser scale) could become necessary; and that a post-excavation report should be prepared. I shall impose a condition to ensure that the archaeology is appropriately protected.

Formal disposal

¹⁸ Ie benefit to the church in its character as building of special architectural interest.

¹⁹ Ie harm to the church in its character as a building of special historic interest.

²⁰ See paragraphs 59 and 94.

²¹ It is not suggested that this will cause any harm to the existing flooring. There is however some doubt as to whether the tiles can be successfully lifted and re-laid.

58. I direct that a faculty should issue. The works are to be subject to an archaeological watching brief as set out in the MOLA Report dated 19 April 2017. If identified by MOLA as necessary, the works shall be so organised as to permit any necessary archaeological excavation. The excavation and the consequent report are to be funded by the Petitioners.
59. The ledger stones are to be re-laid in their existing positions save, as regards the nave, as indicated in accordance with the letter dated 3 May 2017 from Ms Roest; and (generally) save as may be otherwise agreed with the DAC (in the event of disagreement, the matter to be determined by the Court).
60. The red and white tiles are to be re-laid in the north and south porches or used or disposed of in accordance with a scheme agreed with the DAC (in the event of disagreement, the matter to be determined by the Court).
61. Details of the new nave seating are to be agreed with the DAC (in the event of disagreement, the matter to be determined by the Court).
62. A scheme providing for the retention of an appropriate number of the existing pews is to be agreed with the DAC (in the event of disagreement, the matter to be determined by the Court).
63. The works are to be completed to the reasonable satisfaction of the Church's Inspecting Architect.

Conclusion

64. I know that the Petitioners are very concerned that, once the works are put in hand, there should be no unnecessary delays to their completion; always recognising the possibility that archaeological issues could arise which might lead to some delay. However I do not think that resolution of any issues as to the re-laying of the ledger stones ought to lead to such delay against the background that the starting point is that they are to be re-laid in their existing position and any change will require justification. I can see that one possibility is of course that the DAC is unpersuaded of the need for a variation to the faculty which is argued for by the Petitioners. However if this were to be the case there is no reason why this Court should not act with expedition to resolve the disagreement if alerted to the need for expedition. The DAC has accepted the possibility that some changes may be necessary; and I am confident that it will act in so far as lies in its power to facilitate the resolution of any matters arising.
65. This is a case where a comparatively small matter has given rise to an issue difficult to resolve. This should not obscure the important fact that, when complete, the works will mark the start of a new chapter in the life of this historic and beautiful church and in the mission of its lively congregation. I wish the project well.

PHILIP PETCHEY
Chancellor

21 June 2017