

**Neutral Citation Number: [2023] ECC Chd 2**

**IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD**

**IN THE MATTER OF STEBBING, ST. MARY THE VIRGIN: PETITION NO. 3341**

**JUDGMENT**

1. The Petition for Faculty in this matter first came before me in February 2022. The Petitioners are the Rev. Sue Hurley, Priest-in-Charge of the church of St. Mary the Virgin, Stebbing ("St. Mary's"), and Mr. Chris Beaven and Mrs. Vicky Skilton, churchwardens at St. Mary's. The Petition, as originally advanced, sought permission for a major reordering of the interior of St. Mary's, and the replacement of its heating system.
2. As I explain below, the Petition has evolved significantly over time, and the approval that is now sought is rather more limited than that which was originally requested, for the reasons discussed in this judgment.
3. Although my decision in this matter pertains to the Petition, I am handing down a public judgment because the Petition raises three matters of wider application, which may be of interest to others involved in the Faculty process in this Diocese:
  - (i) The proper approach to Faculty applications where the Petitioners seek approval for a number of works in the context of a major project;
  - (ii) The proper approach to statutory consultation; and
  - (iii) The choice of chairs to replace pews, where the removal of pews is sought and granted, in a church of historic significance (St. Mary's is a Grade I listed building).

**St. Mary's: an overview**

4. As explained in the Petitioners' Statement of Need dated November 2020 (to which I refer further below), the parish of Stebbing covers the village of Stebbing, including Stebbing Green and a few farms in the surrounding countryside. The population is around 1,500. Stebbing is one of the parishes which forms the benefice of Stebbing and Lindsell with Great and Little (Bardfield) Saling. It is associated with another benefice and together they are referred to locally and informally as "The Pilgrim Parishes".

5. The historical and architectural significance of St. Mary's is set out in a Conservation Statement, most recently updated in October 2020, and which includes a Statement of Significance. The Conservation Statement was prepared by Mr. Michael Garber of HMDW Architects Ltd. (now Hanslip & Co. Ltd. ("Hanslip")). As appears further below, Mr. Garber has been, and continues to be, very closely involved with this Petition.
6. There has been a church building of some sort in Stebbing since at least the thirteenth century and possibly earlier. The present St. Mary's originates from sometime in the fourteenth century: possibly around 1360, but conceivably as early as 1324. The majority of the church is fourteenth century, though there were additions and alterations in the fifteenth, sixteenth and seventeenth centuries – notably the addition of a clerestory in the sixteenth century; there are also painted texts on the north aisle wall that date from this period. In 1884 the church was re-ordered by Henry Woodyer; the original box pews were removed and replaced with bench pews; the font was also moved from the chancel to the south aisle and various ledger slabs were also moved from their original positions.
7. As noted above, St. Mary's is Grade I listed. Historic England's listing describes it as:

*"An unusually well preserved C14 church, with some later work including the three-bay stone rood screen, built in imitation of the C14 original by Woodyer in 1884."*
8. In 2019, Historic England placed St. Mary's on its Heritage 'At Risk' Register. Its current status is priority B: *"Immediate risk of further rapid deterioration or loss of fabric; solution agreed but not yet implemented"*. The reasons given by Historic England for the "at risk" designation are:

*"Settlement in many areas of the nave and aisle flooring, due to continuing leaks of a post WWII under floor heating system. In some areas this is a health and safety issue. It's also primarily responsible for the salt migration and decay of medieval fabric. C16 series of painted texts in the north aisle in urgent need of consolidation."*
9. The Statement of Need sets out in some detail the way in which St. Mary's is presently being used – or, more accurately, was being used prior to the restrictions imposed as a result of the pandemic in 2020. However, a glance at the church's website (<https://www.stebbingchurch.org/>) demonstrates that the current usage is broadly consistent with what is set out in the Statement of Need. There are weekly Sunday services, generally informal in style (St. Mary's is part of the New Wine Network). There are separate monthly services for children, as well as "Kids Connect" Sunday School activities during some of the Sunday services. Various courses are run in the church building, including Alpha courses, marriage preparation and parenting courses, and

there is a monthly men's breakfast. The church is also used as a community space, for concerts, celebrations and displays. St. Mary's has no church hall, meaning that the church building is used for a very wide range of activities. It is clear that the building is an important hub for the community and not simply for the existing congregation.

### The impetus for the Petition

10. In 2010, and as explained in the Statement of Need, St. Mary's PCC set up what was termed the "Way Forward Project" (or "WFP"). This is described as *"a whole church community endeavour to reflect on the role and usage of our beautiful Grade I listed church building and how these might need to develop in the foreseeable future. The emergence of a shared dream or vision for the building, and therefore the features and facilities it requires to be a valued enabling asset for the ongoing mission and ministry of the parish, was established by 2014"*.
11. The WFP's work led to the identification of 20 specific needs. These are set out in the Statement of Need. I do not set them all out in this judgment, not least because some have been overtaken by subsequent developments, but they covered matters ranging from the preservation and repair of the historic fabric, and in particular addressing Historic England's concerns once the church was placed on the 'At-Risk' Register, to the re-ordering of the nave and chancel to facilitate flexible use and different types of worship.
12. One of the needs identified was for the church to have a heating system that was reliable, economic and maintainable. As at the date of the Statement of Needs, St. Mary's was operating an oil-fired heating system; the WFP had identified its replacement as a priority. In the autumn of 2021, the boiler failed, leaving the church with no heating at all. The Petitioners therefore sought an interim Faculty for the installation of a temporary heating system, in the form of electrically powered infra-red heaters, to see them through the next few winters. I granted an interim Faculty for that work, which was issued on 15 November 2021. The work was carried out shortly thereafter; the Petitioners then applied for a confirmatory Faculty, which was granted by me and issued on 28 March 2022.

### The Petition, as originally formulated

13. As I have said already, this Petition first came before me in February 2022. It was in hard copy form, rather than coming through the Online Faculty System. The short description of the works sought was, "Internal re-ordering and heating replacement". A pack of documents was supplied with the Petition. They comprised the following:

- (i) The various statutory forms (Forms 3A, 4A and 1A);

- (ii) An extract from the PCC's minutes, dated 11 January 2021, recording the PCC's resolution to apply for a Faculty;
  - (iii) The parish's application to the Diocesan Advisory Committee ("the DAC") seeking Formal Advice;
  - (iv) The DAC Notification of Advice (Form 2) – I return to this below;
  - (v) A schedule of the documents attached to the DAC Notification of Advice;
  - (vi) The Conservation Statement, including the Statement of Significance, to which I have referred above;
  - (vii) The Statement of Need, to which I have referred above;
  - (viii) A Specification, Drawings and a Cost Plan, all prepared by Hanslip;
  - (ix) Photographs of the existing church building;
  - (x) Correspondence with the DAC, with the Church Buildings Council, and with various statutory consultees – Historic England, the Church Buildings Council ("the CBC"), the Society for the Protection of Ancient Buildings ("SPAB"), the Victorian Society and the Ancient Monuments Society. Most of that correspondence was carried out on behalf of the Petitioners by Mr. Garber of Hanslip. That correspondence nearly all dated from 2020, and culminated (in most cases) with letters from the consultees, to which no response appeared to have been given on the part of the Petitioners;
  - (xi) An environmental report prepared by the Tobeit Curtis Partnership, which made, in particular, a number of recommendations directed at rendering the building properly watertight.
14. The correspondence deserves further mention at this stage. Each of the heritage bodies had raised queries or concerns about aspects of the proposals as originally formulated. More particularly:
- (i) Historic England, in a letter dated 18 June 2020, expressed some concerns over the proposed raising of the nave floor. They also had questions relating to the planned underfloor heating system. They were, however, "*broadly content*" with the

proposals, subject to the issues identified in their letter being addressed before statutory approval was sought.

- (ii) SPAB set out their concerns in an e-mail from Christina Emerson dated 7 February 2020, which followed a site visit made on 21 January 2020. They were worried that the proposed new heating system had not been properly thought through, and that the issues of damp ingress identified in the environmental report had not been sufficiently addressed. Whilst they were broadly content with the removal of the pews, they were unhappy about the choice of replacement chairs as proposed by the parish. They were concerned about a permanent ramp from the chancel to the nave that was then proposed. They wanted to see the proposals around replacement doors, and the reuse of the original, eighteenth century, door developed further. In conclusion, they said that they regarded elements of the proposals as controversial, but would be pleased to work with the parish and its architect as the project progressed.
  - (iii) The Victorian Society, in an e-mail from James Hughes dated 25 March 2020, said that they wished to “*register some major concerns*” over the proposed scheme. Their particular objections related to the replacement of the pew benches; the proposal that the old floor be removed and replaced; the reordering of the chancel, in particular the proposed ramp; and the relocation of ledger stones in the nave. They also considered that the parish had given insufficient consideration to rendering the building properly watertight.
  - (iv) The Ancient Monuments Society, by an e-mail from Matthew Saunders dated 27 November 2019, expressed misgivings over the proposals to replace the nave floor and to remove the pews. They were also unhappy about the choice of seating and the proposed reordering of the chancel.
  - (v) The Church Buildings Council, by a letter dated 23 January 2020 from David Knight, was content with the majority of the proposals, but expressed unhappiness with the parish’s choice of chairs, and wished further consideration to be given to aspects of the proposals relating to heating and the new floor.
15. The DAC had, in its Notification of Advice, recommended the works for approval by the Court, but:

*“Subject to changes to chancel and its furnishings be [sic] omitted from the scheme until a later date. The parish could seek an ‘Archdeacons [sic] Temporary Licence’ to experiment with different layouts within the chancel before any formal application to re-order the chancel area is submitted to the DAC.”*

16. Form 2 requires the DAC to state which, if any, bodies have been consulted in relation to the proposed works. As appears above, a number of bodies had indeed been consulted. The Notification of Advice stated that *"No objections have been raised by any of them"*. As also appears above, that was not accurate. There had been objections.
17. It was clear to me from the papers provided that some revisions to the architect's drawings had been made in the light of the various points made by those consulted. These were outlined in a letter from Mr. Garber to the DAC dated 27 November 2020. It is thus possible that the DAC considered that any objections had in fact been taken on board. However, I could see no evidence that there had been any further engagement with the various consultees.
18. In this regard, it will be noted that the Faculty Jurisdiction Rules 2015 (in their current form and as amended) provide, *inter alia*:
  - (i) by Rule 4.9(1), that: *"The Diocesan Advisory Committee must not give its final advice unless it is satisfied— (a) that the preceding provisions of this part, so far as applicable, have been complied with; and (b) it has all the information it needs in order to give its final advice, including any responses from bodies consulted under rule 4.5, 4.6 or 4.8 that have been received within the time allowed"*; those bodies include Historic England, the amenity societies and the CBC; and
  - (ii) by Rule 4.9(9), that: *"If the notification of advice recommends the works or proposals for approval by the court, or does not object to their being approved, in circumstances where a body consulted under rule 4.5 or 4.6 has raised objections to the works or proposals and has not withdrawn them, the notification of advice must include the Committee's principal reasons for recommending the works or proposals for approval, or for not objecting to their being approved, despite those objections"*.
19. It was also not clear to me, from the papers before me, what was actually being sought by the Petitioners by way of Faculty. For example, I was unclear as to whether the Petitioners were still pursuing an application to be permitted to reorder the chancel, notwithstanding the views expressed by the DAC.

My directions dated 6 April 2022, and the Petitioners' response

20. In the light of the above, the Registry wrote, at my direction and in terms drafted by me, to the Petitioners on 6 April 2022. I summarised my concerns as follows:

*"I have now had the chance to review this Petition for Faculty. The parish has carried out a lot of work in relation to a project which has obviously been given careful consideration over a period of many years. However, I do have some concerns, as described below.*

*I come late to the process, inevitably, and I am conscious that the DAC has been involved for some time. What I am finding difficult, however, is seeing how the proposals have responded (if at all) to the concerns raised by the various amenity societies. I'm also not altogether clear what is now being asked for by the parish, and what they have accepted should be left to a later date."*

21. In that letter I asked a number of questions in relation to specific aspects of the proposals, as well as for clarification on the following two more general questions:

*"[1] What is the precise scope of the proposals for which a faculty is being sought now? There are good Statements of Need and Statements of Significance, and an architects' spec – but these all go back to 2020, and therefore predate the consultations, and the discussions with the DAC. I need to know exactly what it is that the parish wants to do, now, in the light of the various discussions. I have tried to go through the various documents and work it out, but that is, frankly, not satisfactory. I need to understand exactly what the proposals are from the petitioners.*

...

*[2] Amenity societies, Historic England and The Church Buildings Council: more generally – In general, whilst I can see that the parish indicates that "correspondence" with these bodies has been enclosed, most of that correspondence appears to be one-way, i.e. these bodies have raised objections and I can't see any response. I should be grateful if the petitioners would compile a full set of the complete correspondence, in chronological order for each body and submit it with their response to the other points raised in these directions..."*

22. On 25 May 2022, the Petitioners responded to the Registrar's letter. Their answers to many of the detailed questions asked were helpful, and provided important clarification as to the scope of the scheme. In particular:

- (i) I had asked whether, in the light of the DAC's concerns, the parish still wished to re-order the chancel. The Petitioners' response was that they did not intend any longer to introduce new furnishings into the chancel; the works envisaged were limited to the floor and the services embedded within it. They acknowledged that the architects' drawing needed to be revised so as to reflect this.
- (ii) I had asked whether the Tobeit Curtis Partnership recommendations had been taken into consideration. The Petitioners' response was that these had in part already been addressed by works to improve the rainwater goods, which had been the subject of a previous Faculty; and that other recommendations had now

been taken on board in an amendment to the design of the proposed heating system.

- (iii) I had asked whether the original brick flooring for the nave could be retained so far as possible, the amenity societies, Historic England and the CBC all having expressed the view that it was valuable and a significant feature of the church. The Petitioners confirmed that the bricks were to be retained, and additional bricks acquired so as to enable the entire nave floor to be re-tiled in the original style.
  - (iv) I had asked whether the ramp into the chancel was now not pursued, in the light of the various objections. The Petitioners confirmed that approval for a ramp was no longer sought, and instead proposed a grading of the nave floor.
  - (v) I had asked for further detail about the history of the pews, and for details of what the parish proposed to do with the pews, if removed. The answer given was that the pews were thought to be mass-produced, "catalogue" pine pews but that this could not be conclusively proved. The Petitioners indicated that the parish intends to sell the pews, perhaps to a local crematorium, and possibly to reuse some of the pews in the new furnishings.
  - (vi) I had asked whether the Petitioners planned to move the ledger stones, this being controversial. The response was that two were proposed to be moved and that this was indicated on the architects' drawings.
  - (vii) I had asked whether the parish continued to seek approval for "Theo M" replacement chairs, in the light of the various concerns expressed by the bodies consultant. The Petitioners confirmed that they did.
  - (viii) I had asked whether the Petitioners sought approval for a new sound desk and speakers (as the Petition suggested) and, if so, what the details were of the system sought. The Petitioners indicated that they did not seek Faculty approval for a new sound system at this stage.
23. Those clarifications were all very helpful. However, in response to my two more general questions, as set out above, the Petitioners responded as follows:

*"The correspondence with the various amenity societies was predominantly via email with the architect, Mr Michael Garber of Hanslip & Co. There have been considerable adjustments to the original proposals to accommodate the concerns of the amenity societies..."*



*The scope of work being proposed by the petitioners is defined by the architect's drawings and specifications. These were prepared in parallel with the consultations, both the DAC and the various amenity societies, and the final revisions submitted with the petition were issued once the matters of concern being worked through with the DAC and others had been resolved...*

*Our priorities for the works are*

- *To get the floor of the church restored into good condition, with step free access from the porch to the altar rail;*
- *To execute all infrastructure works associated with the floor (underfloor heating and cable ducting), including removal of the pews and replacement with flexible seating. Replacement of the pews with chairs is an integral part of the floor works owing to the introduction of underfloor heating, plus being a key component of our reimagining how the space will be used in the future;*
- *To install a new power source for the heating system, following the failure of the oil-fired boiler in 2021;*
- *To create a draughtproof and more accessible entrance from the South Porch.*

*All other works described in the design package (e.g. new furniture, lighting and AV equipment) are of lower priority.*

*That said, in addition to the above there has also been the passing of time since the raft of documents for the submission were prepared. Not only has there been the general slow-down in progress caused by the pandemic, but also the unexpected early demise of our oil-fired heating plant, the rapid changes in the energy market, the increasing imperative towards reducing carbon footprint, and price escalation of building materials. All of these conspire to necessitate some adjustment to our system at a later point.*

*We have recently been advised that our First Round Bid to the National Heritage Lottery Fund has been successful and we will shortly be in possession of funding for the Development Phase; the next step towards securing funding for the works to be executed. This will enable us to resume work with our architect and modify the design package to adjust to the changed situation. Inevitably this will mean reviewing the changes with the DAC and other notifiable bodies, but the plans are expected to remain substantially the same as have been submitted."*

24. Furthermore, the Petitioners had not responded to my direction concerning the status of the consultations with Historic England, the CBC and the amenity societies. That information was supplied by the Petitioners on 12 July 2022. It transpired that on 28 October 2020, Mr. Garber had sent an e-mail to the consultees who had responded with their initial views on the proposals, giving them notice of material changes made in response to the initial consultation, pursuant to rule 4.8 of the Faculty Jurisdiction

(Amendment) Rules 2019. The consultees had responded as follows (I summarise below the position taken by them):

- (i) Historic England said that they were content with the revised proposals.
- (ii) The CBC indicated, in a letter from Mr Knight dated 4 November 2020, that they were broadly content with the proposals, though they wondered whether the parish had sufficiently considered whether their Statement of Need had sufficiently taken on board changes caused by the Covid-19 pandemic. They remained unhappy with the choice of chairs.
- (iii) SPAB, by an e-mail from Ms Emerson dated 12 November 2020, indicated that they regarded the proposals as much improved, but that there were a number of issues remaining. They identified three specific matters: what they saw as a continued failure properly to address the Tobit Curteis recommendations relating to the watertightness of the fabric; the chancel ramp (which appears still to have been on the revised plans as made available to SPAB); and the choice of seating.
- (iv) The Ancient Monuments Society indicated on 19 November 2020 that they welcomed the revisions to the plans, but agreed with SPAB's observations.
- (v) The Victorian Society, by an e-mail from Mr Hughes dated 11 November 2020, expressed continued concerns over the removal of the pews, the choice of replacement chairs and the chancel ramp.

My directions dated 3 October 2022

- 25. The matter came before me again on 5 August 2022. On review of the further materials submitted by the Petitioners and as described above, it appeared to me that, whilst useful clarifications had been provided, the Petition in its then current form was not ready for approval. In particular, I was concerned that the extent of the Faculty sought remained unclear, and that the consultees' views had not, or not sufficiently, been taken into account.
- 26. At my direction, the Registrar wrote again to the Petitioners on 3 October 2022, in the following terms:

*"The Chancellor has read with interest and formed a positive view of the proposals in principle. She is happy to hear that your first-round bid to the National Heritage Lottery Fund has been successful and that you will have the funds for the development phase.*

*The Chancellor has considered the papers carefully, but given the response in the document prepared by Mr Warren on behalf of the petitioners "...All of these conspire to necessitate some adjustment to our system at a later point", the Chancellor is unclear as to the nature and extent of the adjustments envisaged and the amendments which will be necessary. The PCC needs to consider and be clear about what these are. Furthermore, these need to be put to the DAC and the statutory consultees. Only then will the Chancellor be in a position to determine the petition.*

*When the petitioners are in a position to submit the information needed, the Chancellor has requested that a document be submitted which:*

- (a) summarises the proposals and clearly identifies all the amendments and adjustments which will be required;*
- (b) contains the responses from the DAC and statutory consultees to each aspect of the proposals and amendments and*
- (c) sets out how the responses from the DAC and statutory consultees will be/have been taken on board by the PCC.*

*This may be something which the PCC wishes to instruct its architect or project manager to carry out. The Chancellor invites the petitioners to indicate if there is anything which is particularly pressing or if there are any key dates which are relevant e.g. obtaining funding, planning permission, though this is not an exhaustive list."*

#### The revised proposals: May 2023

27. On 2 June 2023, this matter was put before me once again. In response to my directions of October 2022, Mr. Garber had written on 16 May 2023 to the Registrar, setting out the information which I had sought, in the form in which I had asked for it.
28. It will be apparent from the earlier sections of this judgment that I had not been happy with the information which had previously been supplied to me, nor with the way in which it had been presented. I should make clear that the Petitioners were not especially at fault in this regard. Unhelpfully, it has not been uncommon, at least in this Diocese, for Petitions for major works to church buildings to take the form of a "data dump" on the Registry and for the initial consultations to be inadequate. I revert to these points below. However, I should also make clear that, in contrast, Mr Garber's letter and its attachments were a model of clarity, and have proved extremely helpful to me in being able – finally – to determine this Petition.
29. Mr Garber's letter acknowledged that the Petitioners' proposals had evolved over the preceding years and that, "as the PCC's requirements have grown new aspects have crept into the proposals and have increased confusion". I agree that there had indeed been confusion. He went on to identify a number of "packages", stating clearly which matters were now within the Petition as presented and which were without. More particularly, he made clear that:

- (i) A proposed re-fit of the kitchen and revised furnishings for the west end of the church are *not* now within the Petition. It is anticipated that an amendment to any Faculty that I grant will be sought in due course. (Whether that is appropriate is not a matter on which I express a view at this stage; it may be better to issue a separate Petition.)
  - (ii) No approval is presently sought in relation to lighting, redecoration, a new audio-visual system or the works required for conservation of the wall texts. These are all works that need to be done, but it is proposed that these will form the subject of a separate, future Petition.
  - (iii) No approval is sought for a proposed LPG tank and boiler, and associated landscaping works; these too will be the subject of a future Petition.
30. As noted above, the Petitioners had already clarified previously that no Faculty is presently sought in relation to the re-ordering of the chancel. That position was again reiterated in Mr Garber's letter.
31. Mr. Garber's letter went on to set out the various matters which *do* still form the subject of the present Petition, and for which approval is sought. He also explained that, in the light of my earlier directions, there had been a further consultation with the CBC and the heritage bodies. He enclosed copies of the responses received, and in his letter summarised the position of the consultees on the various aspects of the revised Petition.
32. Before turning to the individual matters in respect of which approval is now sought, I summarise, for completeness, the latest views of the consultees:
- (i) By an e-mail from Ms Emerson dated 5 April 2023, SPAB indicated that they were now content to defer to the advice of the DAC in relation to the revised proposals;
  - (ii) The CBC, by an e-mail from Tracy Manning dated 12 April 2023, indicated that they were content with the majority of the proposals. They are still unhappy with the choice of chairs – this is a matter which I discuss in detail below;
  - (iii) The Ancient Monuments Society are also happy to defer to the advice of the DAC, as Mr. Saunders stated in an e-mail dated 31 March 2023;
  - (iv) Historic England and the Victorian Society did not respond.

33. I was also supplied with a complete set of correspondence with the DAC, and with a reissued Notification of Advice. Although the reissued Notification of Advice does not say so, I am confident, in the light of the correspondence, that the DAC has seen and given proper consideration to the proposals as they are now advanced. I also note that the revised Notification states that there has been proper statutory consultation, that objections were raised, and that they have been withdrawn. With the possible exception of the CBC's continued concerns relating to the chairs, I regard that statement as accurate.
34. Lastly, Mr Garber's letter provides me (and the consultees) with reassurances that the issues concerning the watertightness of the building are now being addressed, by the provision of downpipes and new drains under List A and/or B, and by the new heating system which is proposed.

#### The Faculty that is now sought

35. Against that somewhat lengthy background, I turn now to the Faculty that is now sought, in the light of the various revisions that the Petitioners have made to their proposals, and in view of the further information now supplied.
36. Before considering the individual elements of the proposals, it is appropriate to remind myself of the approach that I should take when considering them. St. Mary's is, as I have said, a Grade I listed building. It follows that the proper approach is to ask myself the "Duffield questions", that is to say, the guidelines set out by the Court of the Arches in Re St. Alkmund, Duffield [2013] Fam. 158, at [87]. I set out that important paragraph in full:

*"(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, 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?*

*(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."*

37. I consider the various elements of the Petition as it is now formulated in the light of those criteria. I should say that I have also been greatly influenced by the views of the various consultees, and the fact that although – as I have stated – a number of them raised objections, those objections have almost all now been resolved.

(a) *The revised proposals relating to the nave and aisle floors*

38. I have mentioned earlier in this judgment that the Petitioners originally proposed to eliminate the chancel step by forming a ramp into the chancel for level access. As I have said, this was objected to by a number of the consultees.

39. The reason for the original proposal is the existence of a 6-inch step, which makes wheelchair access to the communion rail difficult. It is that need which the original proposal sought to meet. But the installation of a ramp would have altered the character of the nave significantly.

40. The parish explored a number of alternatives with the DAC and with the consultees. The option now put forward is described by Mr. Garber as follows:

*"Following consultation, the DAC working group suggested that the ramp be omitted in favour of grading the Nave and Aisle floors from east-to-west to a gentle fall to eliminate the Chancel step. This proposal was adopted and put out to consultation... but all responses received deferred the decision to the DAC."*

41. I should add that it has at all times been clear that work to the floor of the nave and chancel is, on any view, necessary. There are presently local areas of subsidence (caused by water ingress) and undulation. Thus it is not as though the proposals involve major changes to a floor that is otherwise in pristine condition.

42. I consider that the grading, taken alone, is likely to result in harm, but only minor harm, to the significance of St. Mary's as a church of historical and architectural importance. The rake will be barely noticeable. There will be a modest impact on the base of the pulpit but that is all. At the same time, there is a clear and convincing justification for the proposal, namely, the desire to make the chancel accessible to all. The balance, to my mind, is clearly in favour of the work being carried out. It is no doubt for this reason that the consultees make no objection to this aspect of the proposal.

(b) Provision of new limecrete slab, floor finish and underfloor heating

43. The Petitioners' original proposal was to replace the leaking hot water pipe and radiator heating system with underfloor heating in a new limecrete slab, to replace the existing brick floor pavers with clay tiles, and to relocate ledger slabs to the chancel.
44. This aspect of the proposal has been the subject of significant change. As I have noted above, many of the consultees objected to the replacement of the original brick pavers, which they regarded as being of historical significance and contributing greatly to the special character of St. Mary's. They pointed out that, if the pews were to be removed as suggested, the floor would be much more visible than it is presently. There were also objections to the relocation of the ledgers.
45. In response to the objections raised, the Petitioners revised their proposals so as to retain the brick pavers and to obtain additional matching bricks to replace those originals that are damaged. A revised plan has been put forward for the relocation of the ledger slabs; the Victorian Society, which was the body that raised the most vociferous concerns in relation to the moving of those slabs, welcomed the new proposals in this regard.
46. In general, the consultees welcomed the proposals relating to underfloor heating which, it is felt, will stabilise the temperature and the building environment.
47. In my view, the replacement of the brick pavers would have caused significant harm to the significance of St. Mary's as a church of historical and architectural importance. However, the revised proposals will cause little, if any, harm to that significance. The new heating system will be invisible. The relaying of the floor, with the original bricks being retained, will, if anything, enhance that significance. I regard the revised proposals relating to the floor as entirely acceptable.

(c) The removal of the pews

48. The pews are part of the reordering by Woodyer in the nineteenth century. Historic England's view is that they are a standard catalogue design and not of great merit, though they recognise that they contribute to the character of the building's interior.
49. Although the Victorian Society expressed unhappiness as to their removal, there is no clear evidence that the pews are bespoke or in any way of great distinction.
50. I have concluded with little difficulty that whilst the removal of the pews will cause moderate harm to the historic significance of St. Mary's, clear and convincing

justification for the removal has been made out by the Petitioners, namely, the need to use the space in the nave flexibly, both for worship and for other events. I also bear in mind that the Victorian Society did not respond to the third round of consultation, and that none of the other consultees has pursued an objection to the pew removal.

51. I therefore permit the removal of the pews. This is, of course, subject to the installation of good quality replacement seating so as to mitigate the harm caused by the removal of the pews – and it is to this matter that I now turn.

(d) The replacement of the pews with stacking chairs

52. This is the matter that remains controversial. The chair originally selected by the parish was the “Theo M” chair, manufactured by Trinity Church Furniture. The chair for which approval is now sought is the “Abbey” chair, by the same manufacturer. It is a steel-framed chair with a wooden back and seat. It is available with no upholstery, fully upholstered or part-upholstered. The parish seek approval of the part-upholstered option.
53. The CBC have consistently opposed the parish’s choice of chair. They still do so. SPAB originally opposed the choice of chair with some vigour, but their objections in the second round of consultation were more muted, and they have more recently indicated that they are content to defer to the DAC.
54. The CBC’s stance is perhaps unsurprising. This is because in their Guidance Note on Seating (the version currently in force dates from 2018 and can be found here: [https://www.churchofengland.org/sites/default/files/2019-01/ccb\\_seating\\_guidance\\_2018.pdf](https://www.churchofengland.org/sites/default/files/2019-01/ccb_seating_guidance_2018.pdf)) (“the CBC Guidance”), the CBC have stated that they “generally” consider only unupholstered wooden seating to be appropriate in historic churches.
55. When SPAB were voicing objections, they referred to the CBC Guidance and to two recent judgments in which other Courts have refused permission for upholstered chairs.
56. In Re Holy Trinity Sittingbourne [2018] ECC Can 1, Steven Gastowicz QC, Deputy Commissary General in the Diocese of Canterbury, refused a Faculty sought for a reordering of a Victorian church which would have entailed the removal of the Victorian pews and their replacement with upholstered seating. Permission for the removal of the pews was refused, and at [50]-[52] of his judgment the Deputy Commissary General said this:



*“I would add as a further matter, that I do not consider the replacement steel framed upholstered chairs would be likely to be an appropriate replacement for the pews in this particular church were they to be removed. I have taken into account in considering this aspect of the matter not only the Church Buildings Council guidance on seating (which of course I accept is only guidance, and which I treat as such, though it is statutory guidance which is entirely up to date and which the Court is required to take into account) but also everything said by the petitioners and others, and come to this conclusion having also viewed the church.*

*If any further petition is presented involving the retention of some pews, this aspect of the proposal will fall to be judged afresh on its merits in the light of that particular proposal, at that time, however, including where and how the seating is to be placed and where any remaining pews are to be, all of which will need to be viewed as a whole.*

*Finally in relation to this, I should mention that though there has been subtle reference by the petitioners to the removal of pews in the Cathedral and the type of chairs introduced there and elsewhere, it is to be pointed out that each church has to be considered on an individual basis having regard to its own particular character, and in this case in relation to the pews it must be borne in mind that the proposal is not for Victorian fittings to, for example, a mediaeval church, to be removed, but for original Victorian pews of the sort described in the Statement of Significance to be removed from a Victorian church where they are its original fittings contributing significantly to its historical interest.”*

57. It appears to me that the findings made about replacement chairs – which were in any event strictly *obiter* – were, as one would expect, particular to the character of the church in question. They do not amount to a finding that upholstered chairs will never be appropriate in a historic church, notwithstanding the CBC Guidance.
58. In Re St. Chad’s, Longsdon [2019] ECC Lic 5, the Chancellor of the Diocese of Lichfield, HHJ Eyre QC, refused a Faculty that was sought for the placement of a set of upholstered chairs and matching tables in a space at the rear of the Grade II\* listed church. Both Historic England and the DAC had objected to the chairs and tables which the parish had selected. Once again, however, a reading of the judgment does not disclose a blanket objection to upholstered chairs. The DAC had suggested an alternative (but more expensive) upholstered chair with which it would have been content. Further, the Chancellor appears to have been especially influenced by the fact that the chairs and tables were to be set out permanently and never (for example) stacked or moved to one side. He held specifically that, *“The position would have been different if it had been practicable for the tables and chairs to be removed from sight when not in use. In those circumstances the impact on the appearance of the church and the harm to its special significance would have been markedly reduced”*.

59. It is also right to note that whilst there are other cases where upholstered chairs have not been permitted, there are yet others – each, of course, turning on its own facts – where a Faculty for the replacement of pews with upholstered chairs has been allowed, even in an historic church building. I refer, for example, to Re All Saints, Barrowby [2018] ECC Lin 3, Re Holy Trinity, Hastings [2019] ECC Chi 1, and Re All Saints, Garsdon [2021] ECC Bri 1.
60. Of the many judgments which have been handed down by Chancellors in relation to chairs in recent years – and there are legion – that which I have found the most helpful is the judgment of Chancellor Bullimore in Re West Burnley, All Saints with St. John’s [2017] ECC Bla 6. I say this because Chancellor Bullimore engages in that judgment at length with the status and effect of the CBC Guidance. He concludes – and I agree – that it cannot be justified to treat the CBC Guidance as *prohibiting* the use of upholstered chairs in historic buildings. Not only is that overly prescriptive, but it elevates the status of the CBC Guidance over and above that which it deserves. That Guidance is important and valuable, but it is guidance, not legislation. As Chancellor Bullimore says, “*context is all*”. In some contexts, a Faculty for upholstered chairs will be granted, particularly where petitioners can show that they have considered the CBC Guidance carefully and have given cogent reasons for coming to a different conclusion.
61. Here, having given the matter careful consideration, I am satisfied that the chairs chosen by the parish, namely, the part-upholstered “Abbey” chairs, are acceptable and constitute a high quality replacement for the pew benches to be removed, which will sufficiently mitigate the harm caused by that removal. I consider that the choice of chair is justified in the present context for the following reasons:
- (i) Replacement benches would not meet the needs of the parish. A strong case has been made out for flexible seating, particularly given that St. Mary’s has no church hall, so that its nave is often used for meetings, concerts and the like. Flexible seating will also enable community use of the church to be increased. So it must be chairs, not benches.
  - (ii) The chairs proposed appear to me to be of high quality. Similar chairs have been used in other historic churches.
  - (iii) The intention is for the chairs to be stored away and only laid out in the nave when needed (c.f. the position in Longsdon).
  - (iv) For that reason, it is important that the chairs should be lightweight and capable of being stacked away easily. Wooden chairs would not be so easy to stack and would be more obtrusive when stacked.

- (v) So far as upholstery is concerned, I am satisfied that the parish have considered the CBC Guidance, and the consultees' objections, with care, but nonetheless maintain that some upholstery is desirable for reasons of comfort. Their compromise is to ask for a partly, rather than a fully, upholstered chair. That seems to me to be a reasonable compromise.
- (vi) Historic England does not object to the choice of chair. Nor does the DAC. SPAB did originally object (see above) but no longer pursues an objection. It is only the CBC that has held out.
- (vii) This is a balancing exercise. I consider that the balance comes down in favour of allowing the chairs chosen. I will, however, impose a condition that the colour of the upholstery be approved by the DAC.
- (i) Provision of new furnishings for storage and sound desk, etc.
62. The parish seeks permission for new standalone furniture for storage, including storage chests and storage benches in the aisles. There were few concerns raised by the consultees, and the consultees have deferred to the advice of the DAC in relation to the most recent drawings submitted. There is no harm to the historic significance of the church in relation to this aspect of the proposals, and they are therefore allowed.
- (ii) Provision of new glazed internal doors to the porch
63. The parish revised its proposals in response to points made by the consultees. The original doors will be retained and fixed open. There will be no air curtain as originally proposed. The design of the proposed glazed doors, which will have oak frames, has been approved by the DAC and no objections have been raised. Any harm to the historic significance of the church is, in my judgment, minimal to non-existent.
- (iii) New wiring for electrical systems, lighting and audio-visual systems
64. The proposal is that the new wiring be installed in the floor screed during the floor refurbishment. This seems eminently sensible, will have no impact on the character of the building, and is not the subject of any objection by any consultee.

#### Major projects and consultations: the proper approach

65. It remains for me to say something more general about the proper approach when petitioning for a Faculty for a major project at an historic church, and, relatedly, to how

statutory consultations should be approached, when it is concluded that such consultations are needed.

66. This Court often sees Petitions for Faculty for major projects – be they significant internal re-orderings or proposals for extensions to historic buildings. Sometimes the Petition is in good order when it reaches me. But, notwithstanding the best efforts of the Registry, who have in many cases spent considerable time and effort liaising with petitioners before the Petition reaches me, sometimes it is not. All too often, the Court is left to wade through a mass of material, including detailed drawings, with no attempt being made by the Petitioners to explain precisely what is wanted and why, or how the proposals tie in with the drawings that are submitted. And often when one drills down further, it seems that insufficient consideration has been given to matters of detail, with no proper particulars being provided of matters (such as chairs, or flooring, or lighting) which could have been the subject of a Faculty application by themselves. This was not so extreme a case, but there were, nonetheless, matters which – as I have explained above – were not properly articulated and not fully developed.
67. This is not satisfactory. Petitioners for a Faculty for major projects cannot expect that a Faculty will be granted simply because a proposal is large-scale, with matters of detail to be left until later. On the contrary, a Petition for Faculty for a major project ought to provide a *fuller* explanation than one for a smaller matter. It is no good leaving the Court to wade through plans with little or no guidance or explanation as to what is going on.
68. Of course, I recognise that sometimes there will be an imperative to get some level of approval for a major project, in particular to facilitate the obtaining of grant funding, at a time when many details – for example, as regards flooring, or seating – simply cannot be decided upon. In such a situation, it is always open to a parish to seek Faculty approval for a project in principle, with further matters to be the subject of Faculty applications in due course. Projects can, and often should be, taken in stages. The present case is an example of this: the Petitioners have in the end, and very sensibly, focused on the matters that need resolving now, leaving approval for other matters to be sought at a later date.
69. Such an approach is likely to commend itself to the Court. In contrast, a Petition which seeks approval for matters that are still developing, lack detail, or are said to be likely to be the subject of change, is likely to find itself being referred back to the Petitioners, with no Faculty being issued at all. That only gives rise to delays and expense.
70. Similar considerations arise where a proposal has been, or needs to be, the subject of statutory consultation. The Faculty Jurisdiction Rules 2015, following the amendments introduced by the Faculty Jurisdiction (Amendment) Rules 2019, now require parishes,

and the DAC, to consider at a fairly early stage whether any or all of Historic England, the planning authority, the CBC and one or more amenity societies ought to be consulted, and to consult them if they conclude that that is necessary. But, to be of any value, that consultation must be meaningful. It is no good if consultees are asked for their views, but if objections raised or suggestions given are then ignored. It is incumbent on Petitioners to engage properly with consultees, to take their views on board and to demonstrate that they have done so (or, if they have not done so, why they have not done so). And the DAC ought not to issue a final Notification of Advice unless it is satisfied that the consultees' views have been properly taken into account: see the provisions of the Rules referenced above.

71. If those steps are not taken, all that happens is that it becomes necessary to direct that further consultation takes place – as occurred here. I was by no means satisfied that the consultation exercise had been properly followed through. In the event, the third round of consultation that took place was valuable. It allayed the concerns of the consultees; it caused me to be satisfied that their concerns had been taken on board; and it narrowed significantly the scope of the objections that were made. But if the consultation exercise is not completed properly before a Petition for Faculty is presented, all that happens is that time and effort is wasted.

### Conclusion

72. I direct and adjudge that a Faculty should issue in the terms sought by the Petitioners, as clarified in Mr. Garber's letter dated 16 May 2023 and as appears from the plans submitted most recently to the consultees and to the DAC, in respect of the proposed re-ordering comprising:
  - (a) Grading of the nave floor;
  - (b) Provision of new limecrete slab, floor finish and under-floor heating;
  - (c) Removal of the pew benches to be replaced with stacking chairs;
  - (d) Provision of new furnishings for storage and a sound desk;
  - (e) Provision of new glazed (internal) doors to the porch; and
  - (f) New wiring for electrical, lighting and audio-visual equipment.
73. That Faculty is subject to the following conditions:

- (1) In the event that any human remains or archaeological remains are uncovered during the excavations of the floor, work is immediately to cease and the DAC Archaeological Adviser is to be notified, so that suitable further directions can be given;
- (2) The colour of the upholstery for the Abbey chairs that are to be purchased to replace the pews is to be approved by the DAC.

Philippa Hopkins, K.C.  
Chancellor

21 September 2023