

In the Matter of Petition 011/15

In Upton (or Overchurch) St Mary

Judgment (3)

Introduction

1. By a Petition initially dated 30th September 2014 and lodged on 4th June 2015 the petitioners ('the parish') seek a faculty to permit the construction of a substantial new church centre at a cost of some £1.8 -1.9 m .
2. The works, if authorised, will involve reconfiguration of an existing Victorian small hall or schoolroom, demolition of an existing, unappealing, 1958/9 large hall, demolition of a detached Victorian house or villa in Gothic revival style known as 'Holmleigh' and the construction of a new two storey centre attached to the existing small hall.
3. There is significant local opposition to the petition, as indeed there was to the previous, strenuously contested, planning application. Wirral Borough Council, the local planning authority, ('LPA') had received 80 letters of objection and a petition containing 137 signatures against the work; 163 letters in support and a corresponding petition containing 267 names in favour.
4. I have considered 55 individual objections by letter and also written objection from the Victorian Society ('VS'). There are 14 parties opponent to the petition, three of whom, at my direction and in the interests of case management, have assumed the role of 'lead objector'. I am grateful to them.
5. The LPA granted full planning permission for the scheme, including the necessary demolition, on 22nd October 2014. There has been no appeal or application for judicial review in respect of that decision, although it is understood from the LPA that its decision was referred to the Ombudsman. No evidence has been adduced before me to suggest the LPA was considered to be at fault in any way. The objectors have throughout taken the view the grant of planning permission was 'very surprising indeed'.
6. One aspect of particular sensitivity to objectors has been, and remains, the future of Holmleigh. I considered it necessary to determine as a preliminary point whether or not I had jurisdiction at all over Holmleigh. Absent the court's jurisdiction, Holmleigh could have been demolished forthwith. Jurisdiction in turn depended upon whether or not I determined Holmleigh was , as a question of fact and degree, within the curtilage of the church.
7. For the reasons I gave in a judgment dated 30th November 2015 [2015 ECC Chr 1], I determined it was. That judgment dealt with the detailed background to Holmleigh, its

- history, setting and use, and should be read with this judgment. I need not repeat my analysis here. I did not find the decision altogether easy. My decision has not been appealed.
8. I had, I confess, considered that I was doing no more than determining jurisdiction in that previous judgment. As I recognised, (paragraph 71), it was likely to be necessary in any event to give thought to Holmleigh's nature, setting and role in any appraisal of the project and the validity of objections to it.
 9. In fact, for reasons to which I shall need to return, the objectors have sought to argue that the 'curtilage' finding signalled a conclusion the LPA decision was based on a 'fundamentally flawed approach'... 'a fundamentally erroneous basis, applying the wrong statutory test and planning policies'... in short, '...the decision to grant planning permission is not only now wrong, but was actually wrong at the time it was granted' [quotations from the written Closing Submissions on Behalf of the Lead Objectors].
 10. Needless to say, the petitioners took a different view.
 11. As early as my directions of 28th September 2015, I had made clear I did not intend to seek to act as an appeal tribunal from the planning decision.
 12. Rather, I proposed to follow and apply the jurisprudence reflected in ***Re St Mary's Churchyard, White Waltham (No 2)*** [2010 Fam 146; Bursell QC Ch. At paragraph 23, following a characteristically thorough review of authority, Chancellor Bursell QC said: '...in my view any court should recognise a proper comity between courts and tribunals of different jurisdictions. That being so... I have reached the decision that the consistory court is entitled to accept the reasoned decisions of a planning authority, or of a planning inspector, unless they are demonstrated to be wrong by cogent evidence. If the matter has been properly aired before such an authority or inspector the consistory court is entitled in my view to accept the planning decision as a reasoned starting point from which to begin its own deliberations. In such circumstances it is insufficient for an objector merely to voice dissatisfaction with a decision: any objection must itself be reasoned and supported by proper evidence'.
 13. The objectors in closing, whilst not apparently dissenting from this analysis, submitted that the LPA's 'fundamentally flawed approach' meant the court was 'free, and indeed in the circumstances obliged, to depart', from its conclusions.

The Church

14. St Mary's has a large, active, committed congregation and is a thriving parish church, evangelical in flavour. The 2015 Electoral Roll numbered 406. Usual Sunday attendance is about 375, with further Sunday attendance of over 100 children.
15. There is already a busy weekly programme of activity, serving both church and community, amply detailed in the papers before me. Church activity takes place in a number of buildings on and off its main site.
16. Funding for the proposed new building has largely been provided or pledged already, by some 240 donors plainly committed to the project and prepared to give sacrificially.
17. The proposed new church centre is designed to enable the church's varied ministry to be carried out more effectively, by providing flexible and practical facilities, focussed on one site. The proposed scheme has been under consideration for some time and designed, it is

said, to create hugely improved meeting and circulation space, office and catering facilities and storage. The arrangement of space around an internal 'street' lies at the heart of the plans. The hope is to provide overall coherence while also providing distinct, comfortable and flexible spaces for the enormous variety of activity which goes on.

18. One of the criticisms developed by the objectors was that the church had become something of a 'hub', drawing attendance from far beyond the parish itself, necessitating unacceptable pressure of traffic and parking. The evidence suggested 75% of the membership lives within a 2 mile radius. There had also been much reference to the fear the parish intends to create 'a conference centre', something it strenuously denied.
19. The church building itself is Grade II listed. It became listed on 28th March 1974.
20. It dates from 1868 and was designed by leading Liverpool architect John Cunningham. The style is early Decorated and the church occupies a prominent site at the junction of Ford Road and Church Road, standing within a small churchyard with groups of trees bordered by a random rubble stone boundary wall.
21. The church was sympathetically extended on the north side of the nave in 1977 and, in 2014, re-ordered internally with the introduction of carpeting and chairs.
22. The church is adjoined by a Victorian (School) Hall or schoolroom and a schoolhouse (presently the caretaker's accommodation), built at around the same time as the church and, like it, funded to a significant extent by Liverpool shipping magnate William Inman (1825-1881), a major benefactor to the village and area.
23. The hall is now attached to the church buildings by a modern flat roofed extension. The hall has an attractive, decorative, central bellcote. Although altered in recent years, the school hall and house remain substantially intact and contribute positively to the setting of the church.
24. There was substantial agreement between all parties that the 1958/9 large hall next to the school hall is not attractive and warrants replacement. It is of brick with a shallow pitched, felt covered roof. A toilet block built across the whole of the front elevation in the early 2000s has resulted in a rather bland elevation to Church Road.
25. Holmleigh is a Victorian villa in Gothic Revival style, built in 1869 as a private residence, occupied for a time as a vicarage, subsequently acquired and used as a Doctor's surgery and residence and, in 1985, purchased by the Parochial Church Council ('PCC') for church use. The building has been much modified, heavily used and is currently in a noticeably run down condition, something about which the objectors were critical of the church.
26. There is something of a professional debate as to the 'group value' of Holmleigh in the context of the other (historic) buildings mentioned.
27. For reasons which I shall explain, English Heritage (as it then was) declined to list Holmleigh in September 2014. I have set out a good deal of further detail concerning Holmleigh in my previous judgment. Its proposed demolition was, without doubt, one of the matters of gravest concern to the objectors. Their case was that a suitably proportioned, smaller, or differently configured church centre could mean the retention of Holmleigh or, possibly, its actual incorporation into new arrangements. The petitioners said they have considered, but for good reason rejected, such options.
28. The parish's Statement of Significance set out further information about the buildings and their setting which I have considered carefully.

The Views and Positions of Other Interested Parties

29. The PCC at its meeting of 4th November 2013 unanimously resolved support for the project.
30. The Diocesan Advisory Committee ('DAC') recommended the works in a Notification of Advice dated the 29th May 2015. The Committee's view was that the works were not likely to affect the character of the church as a building of special architectural or historic interest.
31. The Archdeacon of Chester in his written evidence said: 'The proposed new church centre is designed to enable[the church's] ministry to be carried out more effectively, by providing flexible and practical facilities, focussed on one site. I have myself visited the church on several occasions and have seen for myself the awkwardness of the configuration of the current premises and the need for change. The planned scheme has been very carefully thought through, to give hugely improved meeting and circulation space, office and catering facilities and storage. The arrangement of space around an internal 'street' will provide overall coherence while providing distinct spaces for the enormous variety of activities which go on at St Mary's'.
32. The Bishops of Chester and Birkenhead have (by letter) strongly supported the project, the former expressing the opinion the works will 'bring a greater benefit to the life of the church and indeed the wider community', the latter saying that the buildings, including Holmleigh, are 'no longer able to serve the growing ministry and vision that God is giving St Mary's'.
33. English Heritage (Designation) set out its reasons for not recommending Holmleigh for listing in a letter of 25th September 2014. The letter stated: 'While possessing a few attractive featuresthis is a typical mid to later C19 house which has to be considered alongside the very large numbers of undesignated mid to later C19 houses nationally.....Executed in a subdued Gothic-style, the building demonstrates no particular external architectural quality or innovation when viewed in the national context. Its overall design and architectural composition is of standard form and it lacks distinction and flair required of a house of this late date. Overall Holmleigh is typical of its period rather than accomplished or innovative in the national context...Given its lack of external distinction and the level of later alteration, it is considered unlikely the interior of the house would meet the high levels of quality and completeness demanded by the listing criteria'.
34. As to 'group value' it was said : ' The Grade II listed church, the adjacent unlisted schoolroom and Holmleigh were all funded by Mr Inman and constructed at about the same time in 1868/9; however, the house is not a purpose built vicarage and served as such only between 1911 and 1928, meaning that this is not a strong functional relationship. Holmleigh's proximity to the church is also weakened as it is separated from it by the unlisted schoolroom and a 1950s church hall which further reduces any potential group value benefit'.
35. No further contribution on the issues has been received from Historic England.
36. The Victorian Society was a necessary consultee at the planning stage and made its view clear in a letter to the LPA of 6th August 2014. The Society's objections remained substantially the same in these proceedings: 'We strongly object to the demolition of Holmleigh and to its replacement with the faith building proposed which would harm the setting of the listed St Mary's church and the wider historic environment'.

37. VS considered Holmleigh 'an attractive detached Victorian villa of great charm' with 'handsome elevations'. The Society reasoned it was an 'undesigned heritage asset' and argued that with church, schoolroom and schoolhouse, it formed a 'significant group' and 'helped to define the scale and character of Church Road itself, one of the oldest roads in Upton village'.
38. For these reasons, VS argued, 'the demolition of Holmleigh would be detrimental to the setting of the listed church and to the character of Church Road and would involve the loss of an important undesigned heritage asset (contrary to paragraph 128 of the National Planning Policy Framework (NPPF))'.
39. The Society considered the 1950s hall detracted 'from the setting of the listed building and the wider streetscape' and 'welcomed its demolition'. However, it objected to the 'scale, design and location' of the new building. 'It is even larger than the unsympathetically oversized present hall and would compound its error of encroaching on to Church Road. Quite apart from its scale, the anonymous commercial architectural idiom adopted for the new building would be harmful to the character and appearance of Church Road and the setting of the church and school. It is entirely inappropriate in this highly sensitive location'.
40. The letter concluded: 'The demolition of the present hall would expose a large plot between the former school building and Holmleigh that could accommodate a building of sufficient size without demolishing Holmleigh. Any new building should also be set back from Church Road so as not to protrude beyond the building line of the school, thereby reflecting the importance and contribution of Holmleigh and the integrity of this significant group of Victorian buildings'.
41. Some further correspondence with VS took place in 2015 relating to concerns about internal subdivision of the schoolroom and a possible false ceiling. Mr Hinton, for the parish, in a detailed reply, sought to reassure VS of the church's commitment to preserve as many as possible of the schoolroom's original features.
42. The Church Buildings Council (CBC) came relatively late to the discussion. The Chester Diocesan Advisory Committee (DAC) had judged, on the basis of the CBC's own published guidance, that referral to the Council was not merited in this case. The Archdeacon of Chester, who gave evidence on behalf of the DAC before me, did not accept this constituted a procedural flaw on the DAC's part.
43. In fact, following discussion between the parish and the chair of a neighbouring DAC, the parish itself consulted the CBC, representatives of which visited the site on 9th February 2016.
44. The CBC was 'in no doubt that better equipped space would be of great benefit to the church in delivering and developing its worship and mission'. It considered Holmleigh 'attractive' and judged it 'made a significant contribution to the character of the local area' and was 'valued by the local community'.
45. The CBC 'would prefer to see the villa retained but would be prepared to countenance its demolition if the replacement building were of sufficient quality'. The Council commented that 'a good conservation architect should be able to produce a scheme that retained and reused the villa' and was 'not convinced by the argument that cost of adaptation would be prohibitive compared to that of constructing a new building'.
46. The Council did not share the view of the LPA that the new building would 'harmonize with the existing buildings on site', but feared rather that 'the form and massing of the new

building will be entirely different from that of the listed church'. Further, the Council feared the building would be 'at odds with its wider context: the long low form and dominant fenestration is more reminiscent of a municipal building than the large Victorian houses and small residential blocks that surround it'.

47. The Council was unimpressed by the concept of a 'wide central corridor' and suggested the parish ask itself 'how else it might achieve its objectives', something to which, again, Mr Hinton sought to respond in detail.
48. Neither VS nor the CBC sought to participate in the hearing before me.

Planning Permission

49. Substantial pre-application discussion took place with Wirral Borough Council, including with Mr Matthew Crook the LPA's Conservation Officer.
50. There was substantial, well organised and articulate opposition by a large number of objectors on a wide range of grounds.
51. The objectors (then identified collectively as 'Upton First') had submitted a well prepared, illustrated, document of 114 pages dated 13th July 2014 and entitled 'Objections to Planning Application'.
52. There were 8 principal themes identified, substantially precisely those further developed in written material in these proceedings, namely: the lack of need; the likely impossible traffic and parking levels; the unnecessary destruction of Holmleigh; the unsustainability of the proposals; the poor design of the proposed building; the damage to the local community; the PCC's failure to consult and the failure adequately to assess alternative options.
53. For its part, the parish had also submitted a wealth of written material including an architect- prepared Design and Access Statement (40 pages) from Lovelock Mitchell; a Transport Statement (31 pages) and a Travel Plan framework (22 pages) from consultants Mott McDonald; and a detailed response to objections from the incumbent, Revd. Graeme Skinner, (with appendices addressing the life and activity of the church, traffic and parking, and communication in the parish and neighbourhood) (45 pages) .
54. There can have been no doubt the LPA was fully alert to all the relevant issues and the strength of feeling for and against the proposals.
55. The planning process itself was lengthy and thorough. It involved the church, objectors, supporters, local councillors, members of Parliament, the press and the LPA.
56. The application was deferred from the Planning Committee on 25th September 2014 to allow a formal site visit to take place. At the re-convened Committee on 22nd October 2014 a representative of the objectors addressed the Committee.
57. Despite objection, and (for what they were worth), the petitions I have mentioned, permission was granted unanimously by the committee, with a comprehensive set of conditions to be observed.
58. The Committee's written reasons are available.
59. The objections were accurately identified in writing by the LPA and specifically included (inter alia) loss of historic building Holmleigh; new building out of keeping with area and listed church due to its unsympathetic design; not enough parking spaces for proposed uses, particularly if conferences are held; increased activity worsening existing traffic hazard; loss

of parking spaces in front of the building; proposal unjustified by size of the congregation many of whom live outside the area; increase in number of people using the hall; inconsistent figures relating to increased floor space; contrary to NPPF; not sustainable and harm outweighs benefits; insufficient consultation.

60. Holmleigh was described by the LPA as an 'attractive Victorian building of a similar age to the small hall and caretaker's house', 'not a listed building, nor included in any local listing' but characterised as an 'unregistered heritage asset, as defined by NPPF'. The LPA reasons recognised 'the former curtilage [of Holmleigh] forms part of the overall church grounds'.
61. The policy context was accurately set out by the LPA, with reference being made to the Unitary Development Plan (UDP) Policy CH1 and the NPPF.
62. As to the proposals, the LPA said: 'The new building is a two storey development with the ground floor to include a meeting hall/activity room, refreshment area, toilets, offices, storage space and a circulation hub which connects all the new rooms and the existing small hall. The new building will be joined to the existing small hall by a glazed link and will occupy the space currently used by the existing hall and Holmleigh. The parking area currently has 38 spaces with an overgrown area to the east part of this area [which] will be used to create an additional 5 spaces'.
63. 'The existing church currently uses the church building, the halls and Holmleigh to provide meeting and activity space for a large variety of church and community uses. The applicant has advised that the existing space for all these activities totals 510m² (excluding the main church). The proposed hall would provide 624m² of space for church and community use over two floors with the main activities taking place on the ground floor. This represents an increase in meeting and office space of 114m². Not included in this figure is the central circulation space, entrance lobbies, toilets and storage space. Whilst the proposals will result in an increase in floor space for the church, this is proportionate to the overall site. The new buildings will lead to a more effective use of the site with people able to move between buildings without going outside and having less of an impact on neighbouring uses'.
64. 'Whilst the building is described as a two storey development, as the upper floor is located within the roof space, rather than [a] two storey building with a roof above, this gives the appearance of a one and a half storey building. The front elevation is a combination of brick with large areas of glazing which break up and add interest to the elevation. The building frontage is articulated to create depth and includes strong gable features to reflect the gable of the existing buildings on site. The front elevation of the new building is positioned slightly further back than the existing hall and will retain the views and setting of the listed church along Church Road. The consideration of the listed church is reflected in the design and position of the proposed buildings. This would address the objectives of UDP Policy CH1 and the approach to heritage assets outlined in NPPF'.
65. Of Holmleigh it was said by the LPA: 'The NPPF advises that retention of unregistered heritage assets should be proportionate to their significance and must be weighed against the public/community benefits of redevelopment. The building is currently used by the church as meeting rooms and offices. The size of the rooms and their accessibility limits their usefulness and effectiveness. It is considered that the loss of this unlisted building is outweighed by advantages which would result from a new building which is well designed, fit for purpose, accessible and more energy efficient'.

66. The LPA reasons concluded: 'The proposals will result in a modern church and community facility which has a simple design and appearance to harmonise with the existing buildings and landscaping on site. The additional floor space is accompanied with[in](sic) additional parking spaces. It is considered that the proposals satisfy the requirements of the relevant national and local planning policies' .
67. The planning permission granted remains valid.

The Hearing

68. I considered the matter unsuitable for disposal upon written representations. I gave case management directions on 28th September 2015, 1st December 2015 and 4th January 2016, identifying what appeared to me to be the relevant issues requiring determination, setting a timetable and making provision for the filing of evidence. The objectors made clear their intention not to file witness statements but rather to rely upon their lengthy and detailed document of 'objections to the faculty application', dated 28th February 2016.
69. On the 8th July 2016, and for the reasons I gave in an extempore judgment ([2016] ECC Chr 2]) at the conclusion of a telephone hearing, at which both parties had the inestimable advantage of representation by leading counsel, I refused what I determined was an inexcusably late application on behalf of the objectors to file (limited) evidence. I sought to apply the principles and approach in *In Denton* 2014 EWCA Civ 906.
70. The matter was heard, upon limited oral evidence, in the church for a full day on Saturday, 30th July 2016. The hearing was preceded by a view. I estimate over 150 people attended the hearing, perhaps some indication of local interest in the issues to be determined.
71. I had available a hearing bundle of approximately 1000 pages. I had available, as part of that, extensive and detailed written representations and photographs prepared by the objectors on every aspect of the case.
72. Both parties were represented at the hearing, the petitioners by Mr Geoffrey Tattersall QC, the lead objectors by Mr Gregory Jones QC and Mr Charles Forrest. I was grateful to counsel for their help, and in particular for their closing written submissions, delivered by the 1st September 2016.
73. For the petitioners I heard from Peter Hinton, a former churchwarden, who had been immersed in all aspects of the project since its inception, from Jerry Spencer, a consultant in conservation and urban design, with a substantial background in planning, who was the author of a Heritage Impact statement commissioned by the petitioners and dated 2nd February 2016 and from Revd. Graeme Skinner, the Vicar.
74. The objectors called no oral evidence nor was any individual objector cross examined, as Mr Tattersall QC submitted, 'an unusual position to adopt in a contested case'.
75. The Ven. Dr Michael Gilbertson, Archdeacon of Chester, gave oral evidence in his own right and (in the unavoidable absence of the DAC Chairman) answered, on behalf of the committee, questions put in cross examination. Indeed, all witnesses were robustly cross examined on behalf of the objectors.

The Law

76. The objectors submitted that the LPA approached the destruction of Holmleigh on a fundamentally erroneous basis, that is to say that Holmleigh was not a building within the curtilage of the listed church and therefore not a 'listed building'.
77. It was said that, in consequence, the wrong statutory test and planning policies were applied and this court should not defer to the LPA decision as *White Waltham* (supra) might tend to suggest.
78. In any event, and even on the (flawed) assumption Holmleigh was (merely) a 'non-designated heritage asset', it was submitted the LPA's officers' report never assessed its significance as required by NPPF paragraph 129. Thus, it was argued, the desirability of sustaining and enhancing that significance was not considered under NPPF paragraph 131, and the subsequent balancing exercise under NPPF paragraph 135 was fundamentally flawed.
79. I should in consequence, it was argued, reject, or at least attach little weight to, the LPA judgment that the loss of Holmleigh was outweighed by the advantages.
80. Some of these arguments, I am bound to say, sounded dangerously like 'appeal points' from the planning decision itself. I have sought however to look past that aspect to try to take a view (for myself) of the adequacy of the 'balancing exercise' in fact carried out, mindful that I too need to carry out a somewhat similar process.
81. The objectors submitted that my determination as to curtilage, combined with the fact that Holmleigh was constructed prior to the 1st July 1948, meant that by operation of ***Planning (Listed Buildings and Conservation Areas) Act 1990*** s. 1(5), Holmleigh was and is a listed building.
82. Section 1(5) provides that: " In this Act 'listed building' means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section: and for the purposes of this Act-
- (a) any object or structure fixed to the building;
 - (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land *and has done so since before 1st July 1948*, [emphasis added]
- shall be treated as part of the building"
83. The petitioners submitted that the objectors' interpretation was erroneous and that this provision simply did not apply here.
84. The church was listed on 28th March 1974. At that time Holmleigh was then in private ownership and had been since 1928. There was no functional connection of any kind to the church prior to the PCC's acquisition of Holmleigh in 1985. There was therefore, it was argued, no reasonable sense in which Holmleigh can have been said to have 'formed part of the land' [of the church], and to have done so 'since before 1st July 1948'. It could be said with some confidence Holmleigh was decidedly not 'curtilage' during the years of occupation and use by the local Doctor as his home and surgery.
85. Heritage England's own website comment stated: 'In general, any pre-1948 structure that formed part of the land and was in the curtilage of the principal listed building at the date of listing (or possibly 1st January 1969 for buildings listed before that date -this is not a settled point of law) and is ancillary to the principal building is considered to be part of the listing.'
86. As my previous judgment, I trust, made clear, curtilage issues are not always clear cut. As I have said, I needed to determine whether I had jurisdiction over Holmleigh at all. I decided I

had for the reasons I gave. That judgment was in no sense a ‘pronouncement’ upon curtilage from Holmleigh’s beginnings, let alone a 1948 date.

87. I accept the petitioners’ submission that the LPA was at liberty (not least some 12 months before my decision) to take whatever view it liked as to curtilage. The LPA was very familiar with the physical site, the architectural merit of Holmleigh and the ‘group’ history of all the buildings involved. Officers had visited and seen them for themselves. The LPA was, in the circumstances, wholly entitled in my judgment to treat Holmleigh as it did, namely as ‘an unregistered heritage asset’.
88. I cannot in the circumstances uphold the objectors’ closing contention that: ‘the decision to grant planning permission is not only now wrong, but was actually wrong at the time it was granted’. Nor am I persuaded the officers were making a ‘flawed assumption’ Holmleigh was a non-designated heritage asset. Nor do I find persuasive the contention officers failed properly or adequately to assess Holmleigh’s significance.
89. That said, the various criticisms and contentions raised concerning the LPA decision have, I know, caused me to approach my own (re)appraisal with particular care.
90. The jurisprudence in that regard is now well established. It is necessary for the court to determine whether the proposed works, if implemented, will result in harm to the significance of the church as a building of special architectural or historic interest: See **St Alkmund, Duffield** [2013] 2 WLR 854 at [87], where the Court of Arches said:
91. “...For those Chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:
 - (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,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.”
92. It was agreed that further guidance was given by the Court of Arches (of which I was myself a member) in **Re St John the Baptist, Peshurst** [2015] PTSR D40. Four matters were clarified at paragraph [22]: “(a) Question 1 cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in Duffield, paras 57-58, the court having already found in para 52(i) that ‘the chancellor fell into material error in failing to identify

what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change' (b) In answering questions 1 and 3, the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in the Duffield case, para 56 the court's analysis of the effect on the character of the listed building referred to 'the starting point...that this is a Grade I listed building'. (c) In answering question 4, what matters are the elements which comprise the justification, including justification falling short of need or necessity: see the Duffield case, paras 85-86. That is why the document setting out the justification for the proposals is now described in rule 3.3(1)(b) of the 2013 Rules as a document commonly known as a 'statement of needs', in recognition that it is not confined to needs strictly so called. (d) Questions (1),(3) and(5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article".

93. In *Re St Peter, Shipton Bellinger* [2016] Fam 193 the court stated at[48] that " When applying the Duffield questions, chancellors may find it helpful at all stages to bear in mind (if they are not doing so already) that the desirability of preserving the listed church or its setting or any features of special architectural interest which it possesses is a consideration of considerable importance or weight". This is because "all listed buildings are by definition of national significance" as "national interest is a key element of listing". In *Shipton* the court also accepted that objections from specialist societies such as VS are likely to carry more weight [34].
94. The burden of proof falls on the petitioners and there is no presumption in favour of granting the faculty (*Re St Mary's, White Waltham (No 2)*, supra, at [11]).
95. In *Re Holy Trinity, Eccleshall* [2011] Fam 1 the court held that a chancellor is not bound by expert evidence on aesthetic considerations including the effect on listed buildings so long as he specifically addresses that evidence and, if he is to reach a different conclusion from it, he gives a reasoned explanation of why it has been rejected.
96. Further assistance upon the issue of consultation is to be derived from paragraph [7] in *White Waltham*, and the objectors helpfully referred me to the decision of the Supreme Court (albeit in a very different context – a statutory duty of consultation in connection with benefit arrangements affecting all the inhabitants of an area) in *R (Moseley) v Haringey London Borough Council* [2014 UKSC 56 with its emphasis on fairness, consultation when proposals are at a formative stage, sufficient reasons to permit of intelligent consideration and response, adequate time for such consideration and response and conscientious taking into account of the product of consultation.
97. The objectors also referred me to *Edwards (PG) v Secretary of State for the Environment* (1995) 69 P&CR 607 in support of the contention that where there are clear planning objections to a proposal it is necessary to consider whether there is a more appropriate alternative especially where the proposal is bound to have significant adverse effects and where the major argument advanced in favour is need for the development.

The Issues and Evidence

Holmleigh

98. The parish, over a good number of years, had reflected deeply upon its building needs, their functionality and sustainability, and sought in a number of ways and at a number of locations to meet those needs. In the Faith Building brochure, published in September 2013, the parish set out something of its thinking about the anxious issue of the retention and refurbishment of Holmleigh: “ The once domestic residence of Holmleigh has been causing some concern. In our modern health and safety conscious society we are aware that the 19th century house is falling well below modern regulations for accessibility, for office and community use. As we tried to design a modern environmentally friendly building it became quickly apparent that any attempt to refurbish Holmleigh and include it in our plans would compromise our hope to develop a building that would be of the best possible service to its users and local residents. Trying to phase our building work with several projects in different buildings over the next few years would leave us with an architectural muddle that would be more costly to build and maintain. A single project makes sense.”
99. The Vicar reasoned at the planning stage: ‘I have sought to demonstrate that Holmleigh has no viable use as it is no longer used as a domestic dwelling. It is not a designated Listed Building nor does it have a local listing. Holmleigh is unsuitable as a working environment and it is not welcoming for private or pastoral meetings (which I am regularly called on to provide). The new design will provide an integrated, modern, environmentally sound and pleasing building and will be a real living asset to the community. Our plans are that the living asset of the new building and the vision for the future will far outweigh the significance of an impractical dwelling’.
100. In his statement for the present proceedings the Vicar said: ‘At the very start, our initial ideas and concepts, having consulted with all the user groups, resulted in a much larger building than our present proposal. We radically reduced these plans, aware of likely planning and community concerns and our financial constraints. However, to make sense of any building proposal, we were still committed to design a building that would match our present needs at peak times; especially on Sundays when we run children’s activities for several age groups and our Sensory Sunday services for families with special needs. The proposal is based on the idea of providing enough rooms to do what we are already doing, but providing better spaces and resources. It became clear that a single integrated building with every downstairs room linked to the circulation area would provide the best possible resource and benefit for the present and future life of church and community. St Mary’s is continuing in her life and service at the moment, despite the inadequate buildings, and her people have the desire and capacity to add a significant economic, social and environmental asset to Upton with a new building and renewed people. The public benefit of such a scheme is clearly demonstrated in our documents, and why anything less will undermine the intent and extent of that benefit. This is opportune time for such a Faith Building’.
101. The Archdeacon said in his written evidence: ‘I do not know how many of the objectors have ever been inside Holmleigh. I have visited it on several occasions, for meetings on both the ground floor and the (split level) first floor. It would manifestly be very difficult and very expensive to incorporate it into a new church building. To say that the layout of the building is inconvenient as office or meeting space would be an understatement’.
102. No doubt mindful of the considerable sensitivity surrounding the future of Holmleigh, the petitioners instructed Mr Spencer to produce a report and to give evidence

at the hearing. He had had no involvement in the designing of the proposals and had formed his own, independent, view on the merits of Holmleigh, and its role in the proposals.

103. He was clearly mindful of the NPPF context and identified relevant paragraphs in his report. He had evaluated the responses of English Heritage (now HE) and VS to the building. He was satisfied the petitioners had made a thorough assessment of the building's significance. He concurred with English Heritage's view as to the building's date, group value, intactness and historic interest, but considered EH had perhaps been 'rather dismissive' of the architectural quality of the building. In his view it 'has distinctive and rich detailing on two elevations towards the north and west', as well as other interesting features.
104. That said, he did not consider the building to have any particular external quality. He considered later additions had diminished rather than enhanced its integrity, the interior was neither complete nor of high architectural quality and the historic interest (through Inman) was merely modest.
105. On the issue of 'group composition' and contribution to 'village character' he said : 'In my view the house is now visually separated from the church by the bulky and incongruent form of the 1957 hall. The hall projects beyond the building line of the school and thus obscures it from clear view in the group composition. The general character of the street is very mixed with a number of much later houses built opposite. In view of this, I do not consider that Holmleigh particularly contributes to or reinforces a special character in the wider area and in this regard I agree with the view expressed by EH'.
106. He concluded EH had been right not to list the building but agreed it merited recognition as an 'unregistered heritage asset'.
107. He recognised the requirement for a balanced judgment implicit in NPPF paragraph 135 and conceded it was reasonable to commence from a position where retention would be preferable, not least because what was proposed was total loss. Strong justification and convincing public benefit seemed necessary. He had considered the parish Statement of Needs. He noted the scheme architect had advised that '...such a major redevelopment had been driven by the need for a united space, flexibility and accessibility, office modernisation, the need to link the church and ancillary spaces for associated use, higher catering standards, improved security particularly surrounding children and improved energy and maintenance costs. The present facilities are sub-standard because they are not capable of being improved to current day energy efficiency standards, are not fully compliant with part M of the Building Regulations (accessibility standards), do not provide adequate storage or office space and are not integrated into a single core building'.
108. Mr Spencer had seen for himself that the hall was 'built to a poor standard of construction and design, typical of much rapidly built post war infrastructure'. He also 'noted the convoluted access arrangements between the various component buildings on site'.
109. He expressed himself 'convinced that a scheme of redevelopment of many of the facilities on this site would bring significant benefits to the community, helping to reinvigorate established and much valued activities'.
110. He conceded he had not initially been convinced of the need for Holmleigh to be demolished. He had reflected on possible use as office or other 'cellular' space.
111. The architect to the scheme had explained the building could not realistically be adapted to modern, regulation-compliant, standards at reasonable cost. The house was

spread across three levels, with some essential facilities accessed off a half landing, which would make lift or other access arrangements almost impossible. Provision of a conventional vertical lift to all levels would entail the loss of the best part of a floor on each level. I observed some of these actual and potential difficulties for myself during the view.

112. Further, he said in his report that the architect had also looked more recently at a proposal to amend the current design which retained Holmleigh. There were a number of potential difficulties: the church garden would be lost (or at least reduced); there would be additional costs in refurbishing Holmleigh; there would be some loss of height to half the new hall which would limit flexibility; the basic concept of facilities being laid out along an internal 'street', with the church at one end and the hall at the other, allowing activity and easy circulation, would be lost; the kitchen could not be adjacent to the hall as storage areas and toilets take this area, therefore the servery from the kitchen into the hall would be lost; there would be safeguarding and security issues for children and groups in small rooms.
113. Mr Spencer had also enquired whether the house could be sold off, perhaps reverting to its original use as a dwelling. The difficulty with such an option, it was said, was that the reduced buildable footprint would very likely result (unsatisfactorily) in a rather higher building, or loss of garden, or both. The Design and Access Statement submitted at the planning stage had described some of these alternative proposals.
114. Mr Spencer's opinion was expressed in these terms: 'I am convinced by the statement of need that the current facilities are not of an acceptable standard and that they would be greatly enhanced by the proposed redevelopment of the site. I have explored with the scheme architect the reasons for his view that the house cannot be incorporated as part of the new development and I conclude that it cannot be converted to meet contemporary standards without excessive cost and very inefficient resulting space planning. Although I consider Holmleigh to be an unregistered heritage asset, I consider that its loss can be justified by the great public benefit which the larger resulting developable site would unlock'.
115. Later in his report he added: 'I agree that the building is poorly suited for the evolving needs of the community and that alternatives to its demolition have been considered. On balance, I consider that the substantial benefits of the proposed scheme to the residents of Upton outweigh the loss of the building as an unregistered heritage asset'.
116. The objectors profoundly disagreed with almost every aspect of his analysis in respect of Holmleigh. They argued that on any proper application of both NPPF provisions and *Duffield* the demolition of Holmleigh was unjustified – the church and its setting would be considerably harmed by its loss.
117. The reasoning in support was developed extensively in the objectors' 'Objections' document, and in a Statement of Significance for Holmleigh submitted to the Registrar by Mr Broadhurst. I have considered the wealth of detail carefully. It is necessary only to summarize the essential themes.
118. The objectors rejected the argument keeping Holmleigh would render the proposed church centre too small. They considered the proposed building to be 'dramatically oversized for the usage levels which the PCC has presented'.
119. They considered Holmleigh had high significance in terms of local history and amenity. It was a distinctive building with 'significant design synergy with the Gothic-style church'. Its demolition would be a 'massive loss of amenity to the people who live in Upton

and the very many who travel through...'; it would 'hugely detract from the setting of the Grade II listed church, transforming the top of Church Road from a domestic-scaled, historic and pleasantly open feature of Upton village to being an ugly, cramped and commercial looking appendage which would rapidly become choked with traffic given the extra capacity of the proposed complex'.

120. The objectors argued the parish had failed to prove Holmleigh could not successfully be incorporated into a re-designed complex, that the garden, or all of it, needed to be retained, that the additional costs of refurbishing Holmleigh would be other than marginal, that the 'internal street' thinking was justified, given other existing circulation space, that suitable room reconfiguration of a kitchen, offices etc could not be devised, that floor levels could not be rationalised, existing staircases removed or a lift constructed or that parish opposition to 'cellular' offices was reasonable or justified. Further, it was asserted that the building could, with imaginative measures, be rendered ecologically efficient.
121. One of the objectors' less attractive arguments, sensibly not explored by counsel, and one I do not intend to address at length, was the suggestion that 'a major driver for the PCC' in seeking demolition of Holmleigh was to secure 'a VAT exemption'.
122. Regrettably this is not the only point at which the objectors have sought to impugn the integrity and motives of some in the church leadership. This particular accusation purported to be traced to comments made by the vicar to which he has replied in detail. I unhesitatingly reject this argument. Tax avoidance has had no place in the proposals to demolish Holmleigh.

The need for the new church centre

123. A number of Statements of Need (15th July 2012; 22nd April 2015; 29th January 2016) prepared by the parish extensively detailed the church's existing activities and operation. Activity struck me as diverse and impressive.
124. In the first mentioned statement it was said: 'The proposals allow much better flexibility and an expansion of activities and groups using the centre. There is also the opportunity for growth of activities and for outreach into the local community and the wider area. St Mary's is a place that resources ministries well beyond the parish into Wirral'.
125. Later in the same statement it was explained : ' St Mary's, both as a church and as one of the major Upton community facilities, has reached a point at which it needs to be re-designed in order to meet the needs of church and community now and in the future, especially as the local authority is becoming increasingly unable to fund community facilities, particularly with the youth and vulnerable of the parish'.
126. As to the Centre 'concept', it was said: ' The selected plans have been developed around the concept of the 'street' which is a wide multi-purpose area which will form the hub of the scheme linking the church at one end with the large hall at the other end. A range of meeting rooms, activity areas and a coffee area will be located off the street to bring life and activity to this hub area. The offices will be located at first floor in a more private area. A number of rooms and the coffee area will open up on to a rear garden to allow full use of this enclosed and safe area. The 'street' concept is integral to how we see our vision being fulfilled. The space will enable a mixing of user groups, eg 'community' parents waiting for children with church members attending activities. The street would unite the life of the church and community in a single space. We believe that the proposals

will make a considerable impact on the lives of people in our area, networks and in times to come. We believe that our buildings are about Faith Building....bricks serving people’.

127. Mr Hinton said in his written evidence: ‘ St Mary’s has always been aware of the Lord’s great commission to love our neighbour and to preach the gospel, and has sought to meet these challenges in whatever way that is most appropriate at any given time. It has met these needs in buildings as opportunities presented themselves, but has always endeavoured to make sure that those buildings meet the needs of the church’s ministries, both spiritual and secular, in a manner which is most efficient in every aspect’.
128. So it was that works were undertaken in 2001 but, he continued: ‘...the intervening 15 years have shown that those alterations did not fully meet the needs of the church, due to the remaining poor location of the available spaces and facilities. Therefore, the congregation has once again looked at the buildings which we have, their inadequacies and configuration, and sought to address those issues this time in a major scheme which would solve all the existing needs, and have the built in flexible means of providing for future changes in the life of the local community, both church and secular, without having to look for piecemeal solutions’. The faculty application was, he said, ‘about making a necessary, bold venture to provide a modern, fit for purpose building within which to win souls for Christ as we invite them to explore the Christian faith and become disciples of Jesus...’.
129. He emphasised how the need had evolved from the experience of the congregation and that there was (internally at least) a sufficiently agreed consensus to enable the not inconsiderable cost to be raised.
130. The parish’s impatience or frustration with proceedings generally was perhaps discernible in the final sentences of Mr Hilton’s statement: ‘One has to ask – given that the state has ruled on the planning application – what is the purpose of the church in this matter? Is it to maintain a Victorian villa, or to advance the ministries of Christ?’
131. My not altogether easy task in ecclesiastical law is to attempt to have proper regard to both.
132. Mr Skinner was robustly cross examined about need. He rejected the suggestion more space was being created than was warranted or that elements of the project (offices; storage; toilets) were excessive. He outlined further the parish’s carefully developed aims and priorities. He stressed the primary aim was to achieve buildings fit for purpose with the aim of ‘maintaining’ numbers. He said he hoped more people would come, but the parish was not ‘setting out to vastly increase numbers’.
133. Further, he regarded the repeated emphasis objectors (in pre-planning publicity and within these proceedings) had placed on the parish’s intention to create a ‘conference centre’ as ‘constant misrepresentation’ and an attempt by opponents to ‘create a nightmare scenario in the village of an influx of traffic from outside the area’. He did not dispute having once used the words ‘conference centre’, and the word ‘conference’ indeed appeared in the 2013 brochure describing re-ordering aspirations for inside the church building itself. This was some way from the references to ‘conferences for up to 400 people’ which had been published in Upton First opposition literature.
134. As he said, this accusation (with many others) had featured in objections to the LPA but ultimately been found by the authority to be unpersuasive. He said the parish was ‘categorically not’ designing a conference centre. Of course, occasional conferences of various sizes had always taken place at the premises and would continue to do so. Most

were significantly smaller in number than an average Sunday congregation. The vicar did not feel able to accede to Mr Jones QC's suggestion the appropriate answer to lay this to rest would be for a condition prohibiting or restricting conference use.

135. Mr Tattersall QC submitted in closing that the church was, in effect, a major non-statutory organisation investing for the wellbeing of the whole community for the future, in a somewhat declining and resource-challenged village. Appropriate and effective buildings were, it was argued, required to build on the existing and extensive good work in which the church had engaged.
136. For the objectors it was submitted that for the destruction of Holmleigh (which, of course, they contended was a designated as opposed to undesignated heritage asset) it would be necessary (at the very least) for the petitioners to establish this was necessary to achieve substantial public benefit that outweighed the harm or loss.
137. This, it was argued, the petitioners had conspicuously failed to do. Their own case had been confused and internally contradictory and, very likely, presented to the LPA on a different basis to that which was now being presented to me. Previously, to the LPA it had been said: 'Much of what we are planning to do is simply to provide better buildings that improve what we already do rather than to 'hugely increase our operating capacity' as stated in the Upton First leaflet (26th June 2014), which was distributed to local homes. Essentially we do not have any major plans to expand into new activities but essentially we seek to improve what we are doing now'.
138. This, it was said, contrasted misleadingly with written references to 'new activities' elsewhere in the evidence. Mr Hinton and Mr Skinner were cross examined and it was said in submissions the former 'contradicted himself' whilst the latter was 'disappointingly less than straightforward' on the subject of increased usage, new activities and consequent traffic.
139. The objectors' case was that the parish had, in truth, pointed to little or no need for this ambitious project. In one breath there was aspiration to growth and new activity, in another a vision, essentially, of 'more of the same'. That inherent confusion, it was argued, also been carried forward into, and fundamentally flawed, the traffic evidence presented to the LPA.
140. Again, the objectors' arguments had been developed in considerable detail and a summary here will suffice. There was no real need for the new centre because the parish had abundant, and significantly underused, existing facilities. Figures and analysis upon a mathematical basis ('weekly usage figures') accompanied the papers. The existing additional buildings and sites were enumerated and described. The re-ordered church was itself now a 'flexible' space (something which it was said the LPA appeared to have overlooked).
141. It was argued that not only were certain of the existing buildings 'massively underused' but 'new elements' of the proposed complex would be used to a 'mere 35%' of their capacity with 'Meeting Room 2' used for 'a miniscule 10%' of its availability.
142. Whatever precise conclusions may be drawn from respective analyses of data of this kind, the objectors' contention was clear: 'the scale of the proposed complex is, at best, merely desirable or convenient to church operations rather than in any way essential...so the huge damage which this development would wreak on Upton – on its heritage, on the setting of the Grade-listed church, on local traffic and parking, on local businesses, on the environment and on the quality of life of hundreds of people living in Church Road and

nearby roads – must be seen in the context of a development of this size simply not being necessary or justifiable in the first place’.

143. The objectors considered the parish’s omission of any mention of ‘conference activity’ from the LPA and faculty applications ‘must be deliberate’ and, as such ‘underhand’, another seemingly blatant attack on the integrity of the church’s leadership.
144. It was said there was no need for ‘co-location’ of activities in a single complex attached to the church. A variety of existing (and future) events could continue to be run at ‘The Centre’, ‘The Bank’, (a refurbished) Holmleigh and the local Victory Hall nearby.
145. In his closing submissions for the parish, Mr Tattersall QC characterised the ‘under use’ cross examination as ‘wholly unrealistic’. He submitted: ‘It simply ignores the fact that the church was hoping that the proposed development would allow it to do better than which it already did, and that it was impossible to predict what might happen in the future. A church should evolve over time to meet the changing needs of the community, particularly at a time when local councils are economically and financially constrained’. Later he added: ‘Moreover it is inconceivable that the 240 persons/households in the congregation could have been persuaded to fund very substantially the proposals unless satisfied they were necessary’.

The suitability of the new building

146. Mr Spencer addressed the suitability of the proposed building in his written report. It was plain that, initially at least, he was not altogether enthusiastic: ‘ I am concerned that such a large building might dominate the Victorian schoolroom and harm the setting of the listed church. However, I accept that the building volume cannot be reduced to make a material difference without loss of valuable community facilities and on balance I consider the value to the community would outweigh the harm to visual amenity. However, I believe that this harm could be ameliorated through minor alterations to the detailed modelling and detailing’.
147. His report suggested some such minor modifications including some reduction in the size of the entrance to the new building, some reduction in the glazed element in the height and width in order better to emphasize the existing small hall, and the provision of suitable artwork on the far end gable wall.
148. The detail was explored further in evidence and I was told in Mr Tattersall’s closing submissions that the LPA had confirmed those aspects were likely to be capable of being dealt with by non material amendments to existing permission.
149. Having conceded in cross examination that ‘up till last week’ he had not considered the building ‘acceptable’, Mr Spencer said he was now satisfied that the building would be a ‘very largely suitable’ one on the basis of the changes he had suggested, indeed he went further to say the minor amendments suggested would make it ‘entirely suitable in my view’, and that he was ‘content with the design as amended’.
150. He considered himself satisfied the building would not be in visual competition with the schoolroom and there would be a good complement to the school room gable. He said he considered this ‘as good a building as can reasonably be expected in this area’.
151. The current facilities were not, he considered, of an acceptable standard and would be greatly enhanced by the proposed development.

152. The objectors, echoing and endorsing the views of VS and the CBC, considered the proposed building to be excessively dominant in terms of massing and scale, entirely disproportionate to any demonstrated parochial need, inappropriate to its 'sensitive location', designed in an 'anonymous commercial idiom' and, indeed, bearing a 'striking resemblance' to a particular Aldi supermarket in Crewe.
153. There were criticisms of design, materials, roofline, fenestration and detailing. Some content of the petitioners' Design and Access Statement was ridiculed as 'clearly nonsense on both architectural and even grammatical grounds'. The PCC's proposals would, it was argued, 'permanently destroy' the unique and attractive flavour of the immediate locality.
154. The objectors asserted: 'The design of the proposal is architecturally very poor, completely out of scale with its surroundings, unsustainable by local infrastructure, strategically unacceptable for the local infrastructure, and hugely harmful to the setting of the grade-listed church and to the appearance and character of Upton Village. The proposal would therefore contravene NPPF 17 (bullets 4 and 5) and NPPF 162, and should therefore be refused as per NPPF 64'.
155. The contention was that as the proposed Centre's footprint was significantly larger than the church and its ridge height was almost equal to it, the size, combined with projection forward, would dominate Church Road and eliminate St Mary's current status as that road's primary and defining building. The objectors also contended that the proposed building's design homogeneity was totally at odds with the existing varied and intricate form of the historical buildings along Church Road. NPPF para 131 spoke of the desirability of 'new development making a positive contribution to the local character and distinctiveness', however, it was argued, the proposal made no such contribution - quite the opposite.
156. It was suggested Mr Spencer's was not a balanced assessment and his transformation from opposition to support was essentially inconsistent and certainly unconvincing. Mr Spencer disagreed, albeit accepting that other experts might have taken a view different to his.

The likely adverse impact of additional traffic and parking needs

157. There was ready acceptance by the petitioners that at times traffic and parking conditions in the immediate locality could indeed be difficult. Copious material, amply illustrated, provided by the objectors both to the LPA and to me, gave a distinct flavour of some of the problems. It was impossible to deny that church use contributed to that, though the church also assisted in easing local parking difficulty by making its car park freely available as it did. Mr Hinton did not agree there had been issues with access by emergency vehicles. 'We live with traffic', he said, stressing the efforts the church had made to alert the congregation to the problems and to encourage mitigating strategies such as car sharing.
158. Further, some additional car parking spaces were to be provided and the setting back of the proposed Centre from the existing hall would allow for the provision of three spaces for designated users with disability, something not currently available. The in-and-out drop off point would also be improved.
159. The petitioners' submission was that the LPA had had available a comprehensive report on transport issues from Mott MacDonald, no doubt considered in the context of the overall proposals by the appropriate traffic specialists in the LPA, and had approved what was sought. It was argued the court should accept those conclusions. A condition of the LPA

permission was the submission of a 'Travel Plan' following the building being brought into use.

160. The petitioners protested that many of the objections were based on a false, even deliberately alarmist, premise that there would be an exacerbation of existing problems caused by conferences, concerts and the use of the premises as an art gallery.
161. In material submitted to the LPA the objectors had certainly forcefully and in detail alerted the authority to their concerns about what they regarded as the inevitably increased traffic the new Centre would generate. They had underlined their unshakeable conviction use would greatly increase. They had analysed the 'significantly flawed' Transport Statement with its 'massive omissions' and 'fatal flaws'. The LPA cannot but have been well aware of the arguments.
162. The objectors reasoned that traffic and parking in Church Road – particularly adjacent to the church and halls – was already 'chronically bad'. On their analysis of existing available spaces, the objectors said the parish was wrong to suggest spaces were to increase. In fact, it was said, there would be a net decrease.
163. The existing problems were identified in detail and it was said that a substantial proportion of the traffic caused by St Mary's was "non-local, unsustainable and therefore runs contrary to NPPF para 17 bullet point 12 on delivering 'services to meet local needs'".
164. It was argued that the proposals would gravely exacerbate existing problems and that it appeared the 'PCC expects local residents simply to accept the massive and unsustainable traffic and parking implications of the...development'.
165. Given that the objectors case was that a differently configured or more modest building would meet all the demonstrated parochial needs, it was not always easy to see why, if that were approved, fewer journeys might arise or traffic issues be avoided.
166. Mr Hinton conceded the application for planning permission was made on the basis that there would be no material increase in traffic generation and stated that it was not believed that further traffic would be generated by the proposals. That was why consultants had been instructed and that had been their conclusion.
167. He was challenged as to references in the Statement of Needs to 'new activities and groups', and when it was put to him this was 'the antithesis of the case put to the planning committee' he agreed. He accepted that no revised traffic assessment reflecting that particular 'need case' had been produced 'in a document'.
168. The Mott MacDonald report had concluded: 'The existing community centre comprises a collection of old buildings that are expensive to maintain and not fit for purpose. The proposed development is required to replace these buildings with modern accommodation. The existing schedule of activities will remain the same and therefore there is not expected to be any increase in use and, therefore, trip numbers'.
169. Mr Hinton was said, in closing submissions, to have 'rowed back' from traffic increase in re-examination, explaining that the petitioners had not 'set out to increase traffic generation'. For his part, Mr Skinner had said in evidence that while he 'hoped more will come and join us, we are not setting out vastly to increase numbers'.
170. Mr Jones QC's submission in closing was that what the petitioners may intend (and indeed whether they had materially misled the LPA) was not the principal issue. What mattered was that traffic impact had not properly been assessed on a 'cumulative basis'.

Further, that necessary assessment ought to have embraced, but did not in fact embrace, increased use linked to the re-ordered church itself.

171. The consequence of this, Mr Jones QC submitted, was that 'whilst the LPA is normally best placed to assess things such as traffic impact, in this case it has plainly failed to do so, and granted permission on an erroneous basis (e.g. without taking into account the cumulative impact of the proposal on existing traffic use in and around the site) and it is respectfully submitted that a faculty should not be granted in reliance on that permission and particularly without robust evidence of the expected trip generation before the court'.

The overall environmental impact of the building proposed

172. The objectors rightly reminded me, as was said in *In Caring for our Heritage, National Trust for Scotland 2012*, 'the greenest building is one already built'. They relied upon that in respect of the 'huge and needless waste of all the embodied energy in Holmleigh'. They further developed arguments in respect of air pollution. The fear was that by encouraging more people to drive to use the new facilities there would be increased air pollution from vehicle emissions. The construction works themselves would significantly and detrimentally impact the local environment.

173. For their part, the petitioners pointed to the report to the planning committee which, under 'Environmental Issues', stated: 'The proposals would replace existing buildings with a more energy efficient alternative' and outline a variety of (now conventional) means by which any new centre would deliver such things as low energy use etc.

Subdivision of the schoolroom

174. Mr Spencer had initially shared the view of VS, at least in so far as a false ceiling to the former school room was concerned. Like VS, he was concerned at the likely disruption to the spatial quality and integrity of the room. VS was also concerned that subdivision of the room would in itself be harmful.

175. Mr Spencer had had further discussion with the architect who had agreed that retention of the full height over at least part of the eastern room was possible and that this could be incorporated into the design. This would, in turn, allow a view of the full height of part of this space and an appreciation of the former character of the building as a unified space.

176. In their written document of objections the objectors had said they regretted the proposed subdivision of the schoolroom, considering it 'damaging and unnecessary'. They considered 'a more imaginative scheme' could have been devised. They added: 'however, our concern is with the other matters in this document and so we do not wish to pursue this particular element of the proposals'.

177. In Mr Jones QC's final submissions he recorded that, while the changes relating to opening up the ceiling suggested by Mr Spencer were welcomed, subdivision of the room was still opposed.

Any adverse impact upon a significant beech tree

178. The objectors feared for the future safety of what they term a 'magnificent' beech tree close to Holmleigh. The concern was that extensive works so close to the tree would

inevitably 'present a major risk to the tree's health through damage to the root system from excavation and vibration and the cutting back of the canopy in order to accommodate the forward building line of the proposed 'Faith Building''.

179. Of great concern to the objectors was the fact that in at least one visualisation of its proposals, the PCC showed the beech tree removed and replaced by a newly planted tree instead.

180. The petitioners pointed out that the tree was to be retained. It is protected by a Tree Preservation Order, the making of which the PCC did not oppose. Condition 10 of planning permission required submission of technical details relating to foundations and adjoining trees and Condition 11 required tree protection.

Likely local noise and disturbance during the course of the works

181. The objectors feared ('nothing short of horrific') levels of disturbance and disruption likely to be caused by the works in a densely residential area would adversely affect many people and be unacceptably high. Moreover, the fact that the car park was likely to serve for site offices, and a point for delivery and storage of materials, was likely further to compound local traffic and parking problems. A smaller project, it was argued would mean correspondingly less disruption.

182. The petitioners did not seek to suggest there would be other than some temporary adverse impact, such as would be the case with any building project, including of the kind advocated by the objectors. They set out some of their practical proposals to mitigate disturbance with hours and days of working, timed deliveries, parking of site-related vehicles and suchlike.

183. Their conviction was that time limited disruption was inevitable but would ultimately yield a substantial benefit to church and community.

The adequacy of local consultation/communication by the petitioners

184. This aspect of the case has, I regret to say, occupied a disproportionate and, for my present purposes, largely unhelpful aspect of the case. Each 'side' was wedded to its opinion. The parish and individuals in the church leadership have been accused variously of deceit, dishonesty, manipulation, calculation, being underhand, disregarding local people, undertaking 'absolutely no' consultation, 'leaning on' people, 'telling people' what was to happen, aggression and even intimidation.

185. It was an extraordinarily serious and unpleasant catalogue of accusation – quite incapable of any proportionate, let alone detailed, appraisal or attempt to make findings in these proceedings. Not least because not a shred of oral evidence, capable of the slightest testing, had been called in support of it.

186. The parish, for its part, had considered some at least of the opposition, as it has been presented during the last two years, to have been unfair, untrue, unreasonable, unjustified, unrepresentative and cynically coordinated to inflame the local situation. 'The weight of objection has been stirred up on the crest of a frenzied campaign of objection', wrote Mr Hinton to the CBC on 10th March 2016.

187. The objectors submitted in closing that the proposals in the petition had ‘driven a division through the heart of the parish’, such that the present faculty ought not to be granted.
188. Mr Skinner, who was extensively and robustly questioned about the whole consultation process, explained in evidence that he felt ‘extremely sad’ that early opportunity for dialogue had been ‘set off in the wrong direction’ by a poster which had put out information from objectors about what was in mind that had been ‘misleading and incorrect’.
189. It had included accusations the proposals were ‘Destructive, Unnecessary and Anti-Social’ and (in bold) said: ‘Don’t Let Them Ruin Our Village –We need to unite quickly against this development’. Mr Broadhurst’s name and address appeared as a contact for ‘the campaign’ – ‘Save Upton Village’.
190. That publicity had, Mr Skinner explained, ‘shocked and horrified’ some and had had ‘the reverse effect’ on others. Thereafter, he explained, the parish had (unwillingly) found itself in a ‘largely defensive position’, unable always to identify the principal source or sources of objection behind the corporate veil of objector identity and engaged in something of a dialogue of the deaf, in which the preservation of Holmleigh had seemingly become, for objectors, a non-negotiable point. ‘We couldn’t consult properly’, he explained in evidence.
191. In his written and oral evidence Mr Skinner gave a detailed account of the evolution of the project He had become vicar in 2006 with a brief to consider the issue of inadequate buildings. By 2012 active consultation with user groups about requirements was under way and options were considered by a PCC working party, leading to communication with those in the immediate vicinity.
192. Mr Skinner explained the (not unfamiliar) dilemma facing church leadership in the planning of such projects. Without congregational ‘backing’ a project has little prospect of being financed; to solicit backing there has to be presentation of a fairly specific ‘plan’.
193. Thereafter, there was a meeting to discuss traffic issues in 2012 to which everyone whose property was adjacent to the church on every side was invited. The church indicated at such a meeting their then (very preliminary) ideas for the new development.
194. On 30th July 2012 a longer letter was sent to ‘the neighbours’ (approximately 60 homes) with preliminary explanations of the buildings, inviting their response for incorporation into future plans.
195. The objectors protested in closing this limited circulation, which they submitted would be unsatisfactory ‘under any circumstance’, was particularly so where there were, as here, well known traffic issues which could be affected by the proposal and which currently impacted a far greater radius than that immediately adjoining the church site.
196. There were then four parish wide invitations to discuss plans in December 2012, September 2014, December 2013 and April 2014.
197. Notices about the developing proposals appeared in the parish *Faith for Life* magazine (in December 2012, September 2013, December 2013 and April 2014) delivered to over 11,000 people in some 5340 homes. Each included an invitation to talk to Mr Skinner.
198. There was an open meeting on 5th September 2013. Invitations had been delivered to several hundred homes. At that meeting a brochure had been produced but, on page 7, a page headed ‘Making Buildings ‘fit for purpose’’, it was stated ‘All the drawings in this brochure are just outline proposals at this point. If we do proceed, detailed drawings will be

made taking into account all the comments that have been made and heard'. Mr Hinton had some recollection of a tea held to discuss proposals prior to this date, but could not recall the date.

199. Mr Skinner wrote a further letter to 'neighbours' on 17th December 2013, with an update on progress of plans for the proposed works, saying there had been pre-planning discussion with the Council and plans were being modified. He again offered to answer and respond to questions.
200. Further open meetings occurred on 25th February 2014 and 2nd September 2014. The latter was repeated in the afternoon and evening to ensure maximum attendance. There were also, Mr Skinner explained, many informal and 'doorstep' conversations as part of the consultation process.
201. Meanwhile, on 31st July 2013, Mr Skinner had written to Mr Broadhurst, the then only known member of the group of objectors asking to meet. Mr Broadhurst had declined the offer on behalf of the 'campaign group', unless current proposals were withdrawn and an alternative option was prepared which did not involve demolition of Holmleigh. This response, it was said by Mr Skinner, effectively prevented any further consultation with those who were, in due course, to become parties opponent.
202. The objectors protested there had been a failure lawfully to consult, let alone work closely with, objectors. In consequence, it was argued, (and mindful of the deficits in the proposals themselves) the strength of opposition was entirely predictable.
203. The professionally produced brochure distributed at the first open meeting signalled, it was argued, the scheme was 'virtually a *fait accompli*' and 'the public meeting was meaningless'. This was, it was suggested, 'presenting not consulting'.
204. At the second meeting it was submitted that a 'slightly amended version of the proposal was presented', reflecting essentially feedback from the LPA and failing to engage with the many concerns of the objectors.
205. Mr Skinner conceded that some aspects of consultation were 'not satisfactory' and as a result it may be 'some local people were not consulted'. One male attending the hearing before me called out from the floor of the court that he lived locally but had not received any letter. It was not appropriate to explore that individual's situation further, but the intervention lent perhaps some support to Mr Skinner's concession there may have been some imperfections in the communication process.
206. All that said, given the intensity of local activity and debate which has now, over some three years, surrounded these proposals, not to mention a hotly contested planning application, it is difficult to think that anyone wishing to be heard, or to make their point, has not had that opportunity.

Whether alternative possible schemes have been sufficiently appraised

207. The objectors submitted that where there were clear planning objections to a proposal it was necessary to consider whether a more appropriate alternative could be devised (*Edwards*, supra). This, they said, the petitioners had failed to do, or at least had failed to present sufficient evidence of having done.
208. Both Mr Hinton and Mr Skinner gave evidence that alternative schemes had been considered but it had been concluded they did not meet the needs of the church and wider community. The objectors were suspicious that 'alternative plan layout' drawings with the

papers were dated January 2016 and suggested the PCC's brief reasoning may have been 'knocked up in a hurry'. Mr Jones QC argued those could not have formed part of any options appraisal prior to the grant of planning permission. Moreover, he argued, the alternatives were based on the same floor space as the proposed Church Centre; little regard had been paid to reducing the size of the Centre floor space.

209. In his report Mr Spencer related his own discussions with the architect about consideration of alternative schemes. The architect had 'provided some plans'. Mr Spencer said: 'I accept that alternative options were explored for design and large scale massing at the planning stage and that these did not deliver a better relationship between the new building and its setting'.

210. Somewhat unsatisfactorily, and under protest from Mr Jones QC, elevation drawings (showing a three storey construction) were produced only on the morning of the hearing. Mr Jones complaint was that, once again, such drawings were premised on a floor space the petitioners (unreasonably) claimed to need.

211. It was argued, further, that no relevantly qualified technical evidence had been produced by the petitioners to support any assertion Holmleigh could not be retained or adapted to useful function. Mr Spencer had, as I have indicated, given evidence of his discussions on this subject with the architect and set out his own opinions upon Holmleigh and its retention or incorporation into the scheme.

212. I was invited to place little or no weight on this aspect of Mr Spencer's evidence. His expertise, as he rightly conceded, was not upon the question of what building would best serve church or community. That was for the court. Further, without being shown the full objections to the proposals, he had simply accepted the petitioners' (his clients') asserted floor space requirements as a given and assessed alternative sketches upon that basis. He was said not to have considered properly the heritage impact of a scheme which included a two storey Centre (with a smaller floor space) and the retention of Holmleigh.

213. It was submitted the parish had not considered, sufficiently or at all, the options of (a) trialling the recently re-ordered church as the main open space in the complex (in addition to making use of the other multi-purpose spaces which are or would be available); (b) retaining and adapting Holmleigh to more beneficial use, there not having been any real appraisal of how perceived problems there might be overcome and (c) moving to a new site nearby.

214. No evidence whatever on any of these alternatives has been filed by any objector.

Discussion and Conclusions

215. My starting point in the consideration of this Petition, which has without doubt raised extraordinarily strong opinions and emotions on both sides, has been, and remains, the planning decision.

216. There can be no doubt the objectors have voiced profound dissatisfaction with that decision. They have submitted the decision was wrong in law and that there have been widespread failures properly to apply aspects of the NPPF. It has been argued the demolition of Holmleigh in particular was approached by the LPA on a fundamentally erroneous basis, applying the wrong statutory test and planning policies. In the light of that flawed approach, it was argued, the court should readily depart from the conclusions of the LPA.

217. I have sought carefully to weigh all the arguments, and the wealth of written material advanced in support, both to the LPA and in these proceedings. I have reflected in particular on the legal issues relating to Holmleigh and curtilage. That argument apart, it has been difficult to identify any essential point not fully developed by objectors at the planning stage.
218. In these proceedings I have been invited, and indeed required in the light of objectors' submissions, to revisit every other issue arising for determination prior to the grant of planning permission. I refer, for example, to the bulk, height, design and scale of the new Centre; its visual impact; its relationship to the listed church; traffic issues in the locality; the demolition of Holmleigh as part of the development.
219. As I have said, much of the hearing had the flavour of an appeal in which it was being reasoned the LPA was simply wrong to grant the permission it did.
220. That is a decision I am unable to reach despite the rigour of the objectors' arguments, which I accept were reasoned. Those arguments, however, have been supported by no evidence, let alone cogent evidence. Much of the case presented to me consisted of no more than bare assertion and argument, largely repeating points made previously.
221. I am wholly satisfied the LPA had accurately identified the core objections. There is no evidence to suggest they failed properly to weigh them in the balance.
222. I do not consider the LPA was wrong in the circumstances to treat Holmleigh as a non designated/registered heritage asset. That was a decision open to the authority, in my judgment. It did not flaw or undermine their overall approach.
223. I have no doubt whatever that they had taken Holmleigh into account as such in determining the application. I have no reason to conclude its significance was not considered or assessed, even if more detail could have been spelt out by officers. I have no reason to doubt they weighed the application and its likely effect on Holmleigh and sought to arrive at the balanced judgment required of them, having regard to the loss and the significance of Holmleigh (see NPPF para 135).
224. It was, I judge, properly open to the LPA to conclude that the loss of (unlisted) Holmleigh was outweighed by the advantages which would result from the new building; that that building had a simple design and appearance which would harmonise with the existing buildings and landscaping on site.
225. I have had to reflect independently in these proceedings on the thought that Holmleigh might, by reason of being part of the curtilage of the church, require treatment as a designated heritage asset. That would in turn necessitate a different balancing exercise.
226. For my part, I would still reach the same conclusion. I found the petitioners' arguments for the changes proposed, and the likely benefits flowing from them, convincing and compelling, and in the circumstances sufficient, as I shall seek to explain, to justify the loss of Holmleigh.
227. I accept the evidence of Mr Spencer as to 'group value' and Holmleigh's significance more generally. I accept the petitioners' evidence that options to retain Holmleigh have been considered and for good reason rejected. I am entirely unconvinced that a smaller Centre, or incorporation of Holmleigh into a re-designed Centre, or extensive refurbishment of Holmleigh, represent wise or practical use of money or resources, given the benefit I discern in the pursuit of larger project proposed.

228. I am not persuaded (any more than was the LPA) that the demolition of Holmleigh will have anything like the harm on the church and its setting for which the objectors contend or that it has the high significance in terms of local amenity suggested.
229. I find there will be some harm to the significance of the church as a building of special architectural or historic interest in the loss of Holmleigh (and in the construction of the new Centre), but not that it is significant or serious to the degree contended for by the objectors. It will be very modest harm only. Indeed, the replacement of the 1950s hall will, on one view, mark at the same time some improvement in the overall setting of the church.
230. As it was put in the petitioners' Statement of Significance: 'The overall impact of the PCC's proposals will have a very low direct impact upon the structure of the building, but a high impact on the improvement of the building's ability to present Christ to the congregation and community, in a place of worship, care and love'. I agree.
231. Given the strength of opposition and the question of the (total) loss of any heritage asset, designated or not, I have been mindful of the imperative to look with particular care at the petitioners' justification for what is proposed. I have, I hope, adequately summarised the respective arguments at paragraphs 123-145 above.
232. I wholly reject the argument this is merely a desirable or convenient, rather than an essential, project. I also reject any suggestion the petitioners have sought to present inconsistent or misleading 'cases': to the LPA a 'more of the same' case, to me a case for expansion and new activity. I am wholly satisfied the plan is not to establish a 'conference centre'. I unhesitatingly accept Mr Skinner's evidence that the primary aim of the project is to achieve buildings fit for purpose for the future, better to serve the church and community.
233. I have found the petitioners' rationale compelling and their thinking convincing. The project has evolved over a considerable period of time. It is underwritten financially by a very significant number of the congregation. It is ambitious and visionary. It is designed to replace an existing hall which is, frankly, something of an eyesore. It is addressing long overdue need for improved and flexible meeting, office, catering and storage space. It is imaginative and not self indulgent in its desire for 'circulation' space, realistic and practical in its basic design. It avoids, in my judgment, the mistake made in many such building projects of succumbing to the temptation to save money by aiming at the smallest building affordable, irrespective of the true perception of parochial and community need. The arguments advanced by objectors about 'under use' of rooms and spaces and multi-location operation were unconvincing and, ultimately, betrayed a significantly impoverished understanding of the needs, demands and challenges of contemporary church life.
234. The church has a proven track record of community involvement and activity, a 'heart' for the village and its life and affairs and a desire to do better than which it already does. The petitioners' proposals will, I was satisfied, enable that and are more than sufficient here to rebut even the 'strong presumption' against harm to the Grade II listed church, or Holmleigh.
235. It would be naive to think the proposed building could please everyone. Again, I have sought to summarize the respective contentions. Even the petitioners' own expert had his concerns, concerns which he said in evidence had substantially been met by some relatively minor modifications, only very recently agreed by the petitioners.

236. I confess this aspect troubled me, not least in the light of the concerns earlier expressed by VS and the CBC. Having seen the location, looked at drawings and 'artists' impressions' and reflected on the evidence of Mr Spencer, I am satisfied, as he testified, the amended design is satisfactory and that the building is suitable to its location. Again, that was precisely the conclusion reached by the LPA, the body charged statutorily with reaching decisions about the very contentious issues (massing, scale, height, setting etc) all of which had been raised before the authority, as they were again before me.
237. Traffic was also something which troubled me, though no evidence was called by objectors as to the 'cumulative impact' which Mr Jones QC urged was so significant and which was, he argued, so underestimated or misunderstood by the LPA, if not actively misrepresented by the petitioners.
238. I accept the Mott MacDonald material may have been somewhat complacent about 'trip numbers'. What I cannot accept is that the LPA and its traffic experts, deluged as they were with as much material as I was on this subject, were so ignorant of local conditions, or so startlingly naive about the proposals, as to sanction something as untenable or unsustainable as the objectors suggest. The LPA cannot but have considered the issue. A condition of permission relates to the subject. I do not believe the LPA was misled by the petitioners on traffic volume. The reality probably is that no one can confidently predict precise numbers and use. I find it likely there may be some modest increase in traffic movements, at certain times, associated with the new Centre, but do not find that a basis on which to refuse the faculty. The objectors themselves argued for new, but smaller, premises, contending that everything the church wished to achieve could still be done. Even absent any new development, numbers and activity at the church could increase in the normal course of growth. Church growth appeared to be something to which the objectors, very sadly, seemed to be fundamentally opposed.
239. No evidence has persuaded me I should, in all the circumstances, reach a conclusion different to the LPA in respect of the unacceptability of increased traffic flowing from the proposals.
240. Nothing else raised by way of environmental objection remotely sufficed, in my judgment, to displace the LPA's approval of what the petitioners sought. I am satisfied existing buildings will be replaced by a more energy efficient alternative.
241. As to the issue of the subdivision of the schoolroom, again, I accept Mr Spencer's evidence that the changes he suggested will enable continued appreciation of the former character of the building as a unified space. Otherwise, I am satisfied subdivision is a necessary and wholly justified aspect of the scheme.
242. The beech tree is to be retained and is protected by a Tree Preservation order. I had no doubt the petitioners would honour their commitments in respect of the tree and abide by the planning conditions which address it.
243. Without doubt there will, during the period of works, be noise and disturbance to local people. Again, the LPA cannot have ignored this aspect. I am satisfied time limited disruption (inherent in any substantial works of this kind) will ultimately produce a substantial benefit for the church and the community.
244. It is beyond argument that parishes should consult widely when undertaking major schemes. Alternative sketch plans should ideally be produced for discussion so as to make clear different ideas may be considered. It should be done in a spirit of openness and in an

attempt to reach a right and fair result (see the discussion in *White Waltham*, supra, paragraphs 7-10).

245. The question of consultation is one which can be taken into account by the court when exercising its discretion. It is not incumbent on petitioners, or a PCC, to secure unanimous support for a petition before it is presented, nor is it necessary to compromise or even jeopardise parts of a scheme to try to meet objections where those parts are considered crucial overall to the effectiveness of the scheme.
246. The proposals before me have been the subject of intense local debate, discussion and disagreement for some years. Objectors have been fully aware of the parish's plans. The parish has been fully aware of objections, indeed those objections were very fully developed at the planning stage.
247. I am of the view that the objectors here represent a vociferous minority in the parish as a whole. I accept the petitioners' evidence that at least some of the opposition has indeed been unfair, untrue and unjustified. I deprecate the, at times, frenzied tone of some of what has been written and the accusations of mala fides and dishonesty made against Mr Skinner in particular. I accept his evidence that the tone and nature of objection created a defensive climate.
248. I accept the steps he described (letters, open meetings, invitations to discuss) taken to notify local people occurred. This was a small village. The works were widely publicised. I accept a scheme was presented, and, as Mr Skinner conceded, there were some unsatisfactory aspects to consultation, but there was ample opportunity, from a very early stage, for interested parties or objectors to make representations and many did so about that scheme. A number of matters changed as a result. Even if objections had not impacted the petitioners prior to the planning process, there was then an opportunity, which objectors took, to critique almost every aspect of the proposals in great detail.
249. Any flaws in the consultation process fall far short of what might cause me to dismiss the petition upon that ground.
250. Finally, as to the appraisal of alternative schemes, I accept the evidence of Mr Hinton and Mr Spencer that the parish, with their architect, had considered alternatives including options which retained Homleigh, required a new building of three storeys, relocated the main hall forward or backwards on site and modified the internal 'street'/circulation concept. As is common where resources are so short, these various options had not been 'worked up' in any significant detail, I accept, but that is not to say they were not considered. They were, I find, discussed and evaluated, even if informally, and it was, realistically in my view, concluded by the parish they did not meet the needs of the church and the wider community.
251. It follows that I have concluded the petitioners have established their case and I intend to grant the faculty sought for the works proposed. I reject the broad submission made that I should determine not to follow what was said to be the fundamentally flawed approach of the LPA. The LPA reached, in my judgment, the right decision upon the basis Holmleigh was an undesignated heritage asset. My conclusion is the same even if Holmleigh is treated (by reason of curtilage) as a designated heritage asset.
252. I am satisfied the public benefit to be obtained from what I am wholly persuaded will be an exciting, gospel driven, community facing, fresh chapter at St Mary's will outweigh the loss even of a house for which some in the locality feel such affection.

253. The faculty will be subject to the following conditions:
- (i) The works shall be completed within the next 2 years, or such extended time as the court may permit.
 - (ii) The works shall be under the direction and subject to the inspection of the church's architect.
 - (iii) The works shall be subject to the minor amendments identified in evidence by Mr Spencer and agreed by the petitioners. All necessary planning consent shall be obtained in respect of any amendments.
 - (iv) A photographic record of good quality shall be made of the existing halls and Holmleigh and preserved with the church's archive.
 - (v) The rooms and spaces created by the works shall be, and shall remain, part of the church and subject to the management and control of the incumbent, churchwardens and PCC and shall be used for purposes which are consistent with the mission and ministry of the church.
 - (vi) Any electrical works should be carried out by an electrical contractor accredited with NICEIC or ECA, to the standards recommended in the Guidance Note: *Electrical Wiring Installations in Churches*, available via Churchcare.
 - (vii) In the event of the disturbance of human remains during any aspect of the works the immediate directions of the Registrar shall be sought.
 - (viii) There is permission to apply to the court for further directions as to implementation or execution of the terms of this faculty.
254. The costs of the hearing on 8th July 2016 were reserved. I shall invite the petitioners in the first instance to submit to the Registrar and forward to the lead objectors or their solicitor, by letter within 28 days of receipt of this judgment, their application, if any, for costs and I will thereafter, if appropriate, give further directions for the objectors to respond and as to arrangements for the determination of any issues in dispute.
255. Subject to any appeal, this decision brings to a conclusion a somewhat unhappy chapter in Upton village and church life. I hope that, despite the inevitable frustration and disappointment (and probably frank disagreement) some may feel at my decision, there may be a readiness (on all sides) to look forward in Christian grace and generosity of spirit, and to support the important role St Mary, Upton, will, for certain, continue to play in the spiritual and temporal life of the village.

David Turner

His Honour Judge David Turner QC
Chancellor of the Diocese of Chester

10th October 2016

