



Faculty – Grade II listed Victorian village church (1855-57) by George Edmund Street – Major internal re-ordering – Underfloor heating - Objections by Victorian Society and Historic England to proposals for replacement of G. E. Street’s tiled flooring in the nave with stone flooring – Faculty granted save for the proposed new stone floor finish (and subject to conditions)*

Application Ref: 2017-009381

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 28 November 2021

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Mary the Virgin, Wheatley

BETWEEN:

THE REVEREND NIGEL HAWKES (Vicar)

ZANNIFER MASON and

JANE FANNING (Churchwardens)

Petitioners

- and -

THE VICTORIAN SOCIETY

Party Opponent

Opposed petition determined on written representations and without a hearing.

The following cases are referred to in the Judgment:

Re All Saints, Hooton Pagnell [2017] ECC She 1

Re St Alkmund, Duffield [2013] Fam 158

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393

Re St Peter & St Paul, Aston Rowant [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265

Re St Peter, Shipton Bellinger [2016] Fam 193

JUDGMENT

Introduction and background

1. This is an opposed online faculty application dated 18 December 2020 by the minister (the Reverend Nigel Hawkes) and the churchwardens (Zannifer Mason and Jane Fanning) of this Grade II* listed Victorian village church (situated within the Wheatley Conservation Area) in the Archdeaconry of Dorchester:

(1) to undertake an internal re-ordering to include: the disposal of pews (although ten rows of short, unaltered benches will be retained on each side of the nave); the introduction of chairs; the replacement of heating and lighting systems; alterations to the chancel aisle; the conservation of the tiled chancel floor; the replacement of the floor throughout the nave; the replacement of the existing enclosure at the west end of the church and the creation of a kitchenette and WC facilities in this area; the introduction of bespoke timber storage; the installation of a servery and a welcome area at the west end of the church; and the creation of a first floor meeting room within the west tower;

(2) to carry out associated external alterations, including a ramp to the vestry door and a new single-glazed timber frame door to the south porch; and

(3) to regularise an earlier interim faculty permission granted on 18 June 2019 for investigations into the floor;

all in accordance with drawings by Brocklehurst Architects Limited (**Brocklehurst**).

2. The present proposals are the product of extensive discussions with the Diocesan Advisory Committee (the **DAC**) and their officers, consultation with the Church Buildings Council (the **CBC**), Historic England and the Victorian Society, and consequent revisions, over the course of several years. This evolving process has generated a vast amount of documentation: over 100 documents have been uploaded to the supporting documents and images section of this online faculty system application (the **OFS**). As a result of this facilitative approach, the position has been reached where the Victorian Society, as the only party opponent, actively oppose only one specific aspect of the proposed works, namely the treatment of G. E. Street's tiled flooring in the nave of the church. In this, they are supported by written

representations from Historic England. In agreement with the views of the DAC and the several consultees, and applying the *Duffield* guidelines, I am satisfied that, subject to this one remaining contentious aspect of the proposals, the petitioners have made out a clear and convincing justification for the works that they propose to undertake which far outweighs the resulting serious harm to the significance of this Grade II* listed church building. This judgment is therefore directed to this one contentious aspect of the petitioners' proposals.

The church

3. Wheatley is a large village in Oxfordshire, about five miles to the east of the City of Oxford and a little to the south of the M40. The village church was designed by the prominent Victorian architect George Edmund Street and is considered to be one of his best rural churches. Since its construction in 1855-57, the church has been little altered, allowing visitors to the church to appreciate Street's well-executed, broad, and unfussy interior in the Early English style. There is a detailed, 23 page illustrated Statement of Significance prepared by Artemis Heritage in May 2017.

4. The church was first listed on 18 July 1963. The listing entry reads:

“Church. 1855-7 by G.E. Street. Coursed squared limestone rubble with ashlar dressings; plain-tile roof. 3-bay aisled nave, chancel with 2-bay north aisle, west tower and south porch. C13 style. Chancel and aisles have grouped lancets separated by buttresses with cusped circular windows over the lancets at the ends of the south aisle. South porch, built 1887, has an outer arch in Decorated style. West tower, completed by Street in 1868, has a broach spire with tall 2-light belfry openings in the gables and lucarnes on the angles. West doorway of 3 chamfered orders below a 3-light window with plate tracery. Interior: Very plain with arch-braced collar-truss roofs, except chancel which has a wagon roof and carved capitals to aisle and east window. Stained glass of 1875 in east window. C19 fittings.”

5. The entry at page 537 of the current (2017) edition of the volume of *Pevsner's Buildings of England* for *Oxfordshire: North and West* (by Alan Brooks and Jennifer Sherwood) reads (so far as material):

“ST MARY. By G.E. Street, 1855-7, in chaste C13 style, built at the instigation of Bishop Samuel Wilberforce. The fine W tower with broached spire was completed only in 1867-8. It is a bold design of great simplicity, faceted like a gemstone; gabled bell-openings with plate tracery, additional lucarnes above, set diagonally. The windows of the church are mostly stepped lancet triplets, varied around the S doorway and at the ends of the aisles. Interior quite plain, with three-bay nave arcades with round piers with moulded capitals. Only the two-bay chancel N arcade and E window have carved foliage decoration. S porch added, in matching style, in 1887. Simple FITTINGS by Street, including the quatrefoil FONT, polygonal stone PULPIT and *Minton* TILING ...”

The Statement of Needs

6. There is a detailed, illustrated revised Statement of Needs which extends to 13 pages. This notes that:

“Here at St Mary's we see our mission as serving the community for Our Lord and have a real heart to see this grow. To facilitate this, we need to make sure that our lovely

building is 'fit-for-purpose', thereby presenting a welcoming, warm and comfortable safe area for all. We also need to ensure that it can be used seven days a week as a community hub rather than just for Sunday worship."

The parish explain that they have explored the issues, consulted the congregation and the wider local community, and undertaken a survey of parishioners and village residents:

"In short, the feedback to date has focused on the inadequate heating, poor lighting, uncomfortable benches and insufficient toilet and kitchen facilities. If we are to serve the community in God's name, we need to be able to offer versatile accommodation for the 'now' and for the future. This is imperative given the new building being undertaken in the locality with some 300 houses planned within the next few years. We need to be ready to cope with any influx and, more importantly, to have the right facilities in place to serve. The Church was built some 160 years ago with few changes since that time, the last major change occurring 17 years ago. There is a need to look afresh at what we do and what we can provide, taking into account how the needs of the Church and community have changed. With inefficient and ageing facilities in place, now is the time to take steps."

The parish address how their proposals will contribute to environmental sustainability. They consider that the existing benches "... represent the main barrier to achieving their vision for the future of St Mary's" and they have therefore "... wrestled long and hard over the issues of the significance of the benches and the impact of the proposals on that significance". They have considered the four options of: (i) retaining all the benches, (ii) reducing the length of the seventeen 3.5 m long benches by one metre, (iii) disposing of the long benches and retaining some of the shorter 1.6m benches, and (iv) fully disposing of all the benches and replacing them with flexible seating, probably stacking chairs. This is the parish's preferred option. Although it would mean moderate harm to the significance of the building as a whole, and substantial harm to the benches in particular, the resulting public benefit is said to outweigh that harm by making the parish's aspirations to create both a welcoming environment and a community hub effectively achievable within the space available, and significantly reducing the physical efforts required to accommodate community events. The Statement concludes:

"The proposal outlined in the Statement of Needs is the largest re-ordering project since the church was constructed over 160 years ago. We are fully aware of our Church's architectural value, highlighted in the Statement of Significance, and it is our intention to enhance the building to meet our current and future needs. In essence, our proposals are to enable our church to worship God in a more appropriate setting and grasp opportunities to serve the varied needs of the growing community of Wheatley in the name of Christ."

Planning

7. On 22 June 2020 the local planning authority (the **LPA**) granted planning permission for the external works under Application No: P20/S1242/FUL. These comprise: (1) the construction of a ramp to the existing vestry door; (2) the installation of a boiler flue and safety valve discharge pipe; (3) the installation of a WC extract vent; and (4) the installation of a new door and sidelights and a top-light to the south porch. Details of the final finish, fenestration, and materials, in respect of the steel-framed glazed door to the south porch and the ramp to the vestry door are to be submitted to, and approved in writing by, the LPA before the relevant part

of the development has begun. In giving their reasons for their decision, the LPA acknowledged that whilst some harm to the significance of the listed building and its special architectural interest had been identified by elements of the development (namely, the glazed doorway), it was considered that there were resulting public benefits which outweighed that harm. In addition, the harm could be overcome by requiring approval of the final finish, fenestration, and materials. The LPA have not yet been consulted about a proposed change to the design of the porch door as the parish have been awaiting faculty permission before addressing the discharge of the planning condition requiring detailed designs to be submitted for approval prior to construction.

The consultation process leading to the Notification of Advice

8. The DAC's Senior Church Buildings Officer (the **SCBO**) has prepared a helpful note detailing the three rounds of consultation that have taken place with the CBC, Historic England, and the Victorian Society since March 2018. The note emphasises that:

“Throughout the development of this extensive project the church team have fully engaged with the DAC process and taken great care to retain as much historic character as possible whilst planning the changes necessary to enable the building to serve its community for years to come. They have engaged fully and openly with the consultation process, carefully considering the responses received and amending proposals and providing further information where required.

Though the loss of Street's floor design within the nave is regrettable, the condition survey of the floor illustrates it is not possible to retain the existing floor, and the heating documentation establishes that sufficient output to achieve a comfortable internal temperature would not be possible if only the areas beneath the pew platforms had under floor heating (UFH) installed. The floor design as proposed reuses all the Victorian tiles it is possible to salvage and outlines the areas of pew platform to speak to this previous arrangement of the church. The large areas of concrete repair, and tiles beyond repair, indicate that there would not be sufficient tiles salvageable to floor the aisles ... The mix of replacement tiles and salvaged ones will also create a floor in which some areas will need replacement far quicker than others due to the uneven wear that would be introduced. The ceramic tiles are also not expected to produce such a successful conduction of the UFH than the stone proposed. The justification for the present floor proposals was detailed further in the August 2020 consultation documents.”

9. The note acknowledges that “... the parish have made considerable revisions to reduce the harm of the proposals since the scheme was first proposed in 2016”. It records that the CBC were content to delegate further consideration of this application to the DAC. Since the LPA and the DAC were both content with the proposals, the DAC decided to issue their Notification of Advice despite the “not entirely supportive response” from Historic England and what was then the lack of any further response from the Victorian Society. The DAC issued their Notification of Advice on 14 December 2020, recommending the present proposals for approval by the court (subject to conditions) even though the DAC acknowledge that these are likely to affect the character of the church as a building of special architectural or historic interest. In the light of this acknowledgment, notice of the proposals was published on the diocesan web-site pursuant to rule 9.9 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**). No objections have been received in response to this notice or to the usual public notices (which were displayed

between 14 December 2020 and 13 January 2021). Following the issue of the DAC's supportive notification of advice, these faculty proceedings were commenced on 18 December 2020.

The Victorian Society's letter of 18 December 2020

10. On the same day, Mr James Hughes, the Senior Conservation Adviser to the Victorian Society, wrote to the DAC to express the Society's views and advice on the revised proposals for the reordering of the church in the (unfulfilled) hope that his letter would arrive in time for the DAC and the parish to take account of those views, and, in particular, to act on their advice in respect of the floor. The Victorian Society's Southern Buildings Committee recognised that the scheme had developed positively in many respects since they were first consulted. They acknowledged too that certain revisions had been made since the previous round of consultation in March 2020, and it considered that what was now proposed represents a less harmful scheme than that on which they had commented previously. Taking each of the amendments in turn:

(1) The parish had come a long way in an attempt to address the Victorian Society's concerns on the proposals for the historic benches. While the Society considered that more benches could and should be retained, and that the extent of the loss of bench seating would result in clear harm to the character, appearance and integrity of this fine Street interior, the Victorian Society were prepared to compromise and would no longer wish to pursue an objection to this element of the scheme.

(2) The Victorian Society had previously expressed and clearly explained their preference for a stackable bench or chair that better reflected the qualities and character (and hue) of the existing seating. Whilst they stood by that advice, they would not formally object to the Theo chair.

(3) The change from ash to oak for the west-end timber interventions was welcomed. While the design of these, particularly the partitioning to the reworked tower-base facilities, remained, in the view of the Victorian Society, somewhat jarring and more attractive in theory than in practice, they also felt able to withdraw their objection to this aspect of the proposals.

(4) The amendment to the design and detailing of the porch door represented an improvement and the Victorian Society raised no objection to it.

(5) Finally, glazed screens between the chancel and the vestry would be more acceptable than the partitions previously proposed, whilst still having a marked effect on the spatial qualities and views of the chancel east end of the church.

11. The Victorian Society considered that whilst these interventions, both individually and collectively, would still cause harm to the significance of the church, that harm would not, arguably, be serious and might, in any case, reasonably be considered to be justified by the documents the parish had produced. There were, in the view of the Victorian Society, two exceptions to this: the first was the continued intention to dispose of all elements of the Edward Nevell memorial screen (which is no longer an issue and need not be considered further) and the second – “most significantly” – was the treatment of the floor. As to the latter, the Victorian Society wrote:

“By far the most pressing matter as far as the Society is concerned, however, is the treatment of the floor. In a sense we can now do little more than reiterate our previous comments on this issue. Our email of advice of June last year began by first addressing works to the floor, and highlighted the importance of the tilework to the overall

character and appearance of the interior, and the need to preserve it. Following the consultation earlier this year we responded on the floor to say that it ‘will be essential that the tiled surface – at the very least down the central aisle and across the west end – is preserved, even if, as may be required, in a restored state. In our view there is no reason why all the tiled areas could not at least be replicated within a new floor, if required. In light of their importance to the character and appearance of the interior, and to an appreciation of the Street aesthetic, this must be the expectation’.

The fact is there is no overriding impediment, practical or otherwise, to the retention of the tiled floor in either a conserved or a restored state. Indeed, the option of retaining the tiled surfaces as part of the wider reordering was one that was considered perfectly acceptable by those members of the parish present at the site visit I attended (albeit that was some time ago now). The retention of a tiled surface where there are presently tiles laid was even proposed in the last round of consultation. We are disappointed, therefore, and rather baffled, that it is now intended to destroy Street’s floor and repave the entirety of nave and aisles in stone. The effect of this, in tandem with all the other works proposed, would be to critically undermine the character of the church interior and its high significance as a seriously important work of one of the great architects of the Victorian age. In this respect the fate of the floor differs from that of the screen: the floor, unlike the screen, is an essential component of Street’s interior, and therefore an intrinsic part of the core significance of the building.

The Society is prepared to compromise on nearly all other aspects of the reordering, despite the harm that they would cause. We must, however, object strongly to the proposed loss of Street’s red and black tiled floor, and urge that the parish and its architect amend the scheme accordingly.

I am sorry to sound so critical a note, particularly in respect of the floor. However, our advice on this has been consistent and should not, therefore, come as a surprise. While it may be disappointing to the parish, they should take heart from the fact that there are now so few points of dispute (and only one – the floor – that we consider absolutely critical), and from the fact that resolving these issues will involve no fundamental shift of approach or practical implications for the final scheme.”

The SCBO’s January 2021 update

12. Following the issue of the Notification of Advice on 14 December 2020 and the receipt of this further response from the Victorian Society, the SCBO produced a further update in January 2021, summarising matters of process, and explaining why the DAC had resolved to recommend the proposals for faculty permission:

“The DAC adopts the principles of conservation philosophy, as set out within the ‘Conservation Principles’ published by English Heritage in 2008, and the numerous international charters published by ICOMOS, and applies these when evaluating proposals. This approach advocates a number of core principles during the management of change to historic buildings, including the retention of as much historic fabric as possible, minimal intervention, reversibility, and legibility of both old and new. Building projects within churches must balance these considerations with those of its users in order to ensure the building remains fit for purpose, and therefore is not in danger of redundancy. The DAC must consider significance of the fabric affected, the level of

harm which may be inflicted on this significance as a result of the proposals, the public benefit of the proposals, practical design issues, and economic constraints. This was the case during the DAC's considerations of the works proposed at Wheatley St Mary.

The floor of the church is not specifically mentioned within the listing description, or by Pevsner, although it may be said to contribute to the 'very plain' and 'quite plain' interior that they respectively describe. The tiles used by G. E. Street throughout the walkways of the nave at Wheatley St Mary are plain red and black tiles laid in an appealing lattice pattern in a mixture of diamonds, checker work and large Greek crosses.

Lack of significance specifically attributed to an area of historic fabric would certainly not be sufficient reason for the DAC to support its removal, as all elements of a building may be said to contribute to its character (either positively or negatively) but where practical concerns arise in retention of historic fabric which does not itself have high significance, especially those which may lead to long term maintenance issues or failure to meet the stated needs (heating output, resistance to wear), a balance must be struck.

In coming to its recommendation on the scheme the DAC was mindful that the key liturgical features of the church are to be retained (the font, pulpit, altar rail, choir stalls, all by Street). Whilst this does not in itself provide support for proposals which involve the loss of historic fabric, it does go some way to ensuring the significance of the church interior, and Street's design presence, is retained. The mass, form and architectural features such as the arch braced collar trussed roof, broach spire, fenestration, and plain, airy nave arcades provide much of the character of the church and all remain unaffected by the proposed scheme. The DAC recognises the importance of the floor in setting the character of a church space, and the large role this plays in bringing coherence to the interior. It was with this in mind that the DAC initially deferred resolution on the pew removal and floor, requesting further justification and evidence for these elements of the scheme, which it felt was necessary in order to demonstrate that the harm, which would undoubtedly be caused by the loss of the existing fabric, was unavoidable to meet the stated need, and that this need had been sufficiently demonstrated. The parish undertook further work on these elements and submitted further justification which convinced the DAC that it would not be practical to retain the existing tiled floor, predominantly for reasons of wear and heating output. Had a greater proportion of the tiles been in salvageable condition their retention in the nave, supplemented by a small number of replacements, and with the underfloor heating provided beneath, may have been required by the DAC in order to provide its support to the scheme.

Retention of all the tiles in sufficiently good condition, their inclusion in the nave floor within areas of less footfall and physical impact, the design of the new floor referencing the previous layout, and the selection of a stone tile of appropriate size, material and tone, led the DAC to a supportive response on the proposals for the floor. The further explanation of the reasons behind the floor proposals provided by the parish (within documents 'Appendix B Floor assessment report Rev A 2019-11-07' and '5066 – 22 Assessment of existing ground floor finishes' uploaded to OFS 7.1.20) convinced the DAC that it would not be practical to retain the floor. The DAC felt the subsequent revised floor design appropriately referenced the original, retained historic fabric where possible (albeit not in the same location), and was of the most appropriate material to meet the identified needs of the building and its users."

The progress of the petition

13. On reviewing the OFS application, I directed that special notice under FJR 9.3 should be given both to Historic England and to the Victorian Society. This was done on 12 February 2021. On 22 February Historic England responded by way of written representations only, pursuant to FJR 9.5 (1) (a); and I have had regard to these when considering this petition. Following an extension of time to enable them to take legal advice, on 22 March 2021 the Victorian Society submitted their particulars of objection (in Form 5). Despite concerns about a number of aspects of the proposals, the Victorian Society conceded most of its objections; but the Society continued to press its objection on one issue:

“That issue in dispute concerns the flooring in the nave. The petitioners propose to lift G. E. Street’s existing tiled floor and pew platforms, install underfloor heating and create a new floor finish in stone, demarcating the position of the aisles and pew platforms, and re-laying what original tiles can be salvaged around the font, nave piers and walls. The Victorian Society has no difficulty with the petitioners’ proposal for underfloor heating, and it accepts that this will necessitate major alterations to the existing floor.

The specific point of concern is this: the Victorian Society maintains that a new floor laid on top of the underfloor heating should replicate Street’s tiled design closely, in pattern, colour, material and dimensions. The Victorian Society has no firm preference on what finish should replace the pew platforms. This is therefore a very limited and focused objection, but one which has very substantial consequences in terms of damage to the significance of this church.”

The grounds for the Society’s objection were that the proposal would cause very significant harm to the significance of the building and that the justification for causing this significant harm was not made out because the aims for improved heating could be achieved by the Society’s proposal of replicating Street’s floor, rather than installing the stone floor proposed by the petitioners. In other words, the same objectives could be achieved without causing this harm. In summary, the Victorian Society considered that there was no functional need to implement the petitioners’ proposal (which would cause serious harm to the church’s significance), and no functional reason to reject the Victorian Society’s proposal (which would preserve that significance). Therefore, there was no compelling reason to cause that harm, which was entirely avoidable.

14. Due to their own limited resources, the Victorian Society asked for the case to be heard on the papers if possible. By email dated 13 April 2021, the petitioners confirmed that they too were happy to proceed by way of written representations, and without a hearing. Since both parties agree to this course, I am satisfied, having regard to the overriding objective of enabling the court to deal with this faculty application justly, that it is expedient to order (pursuant to FJR 14.1) that these proceedings should be determined on consideration of written representations instead of by way of a hearing.

15. I visited the church on the morning of Saturday 14 April 2021 when I was in the area. I was not attended by representatives of either of the parties. I paid particular attention to the Victorian floor tiles, rolling back a little of the covering carpeting to view them more clearly. I found many of them to be ill-fitting, cracked and damaged, with an area of missing tiles at the east end of the north aisle where they had been replaced by an area of concrete infill. Despite a sunny morning, the church smelt musty, although I recognise that this may have been contributed to by the effects of the Coronavirus restrictions which were then in force.

16. On 8 June 2021 the Victorian Society submitted witness statements from:

- (1) Mr Richard Peats, dated 7 June 2021, addressing the significance of George Edmund Street, his work in this particular church, and the floor in dispute in this case; and
- (2) Mr Steve Sinnott, dated 1 June 2021, on the technical particulars of the petitioners' proposals and the Victorian Society's recommendations, and especially the practicalities of replicating Street's tiled floor over underfloor heating.

The petitioners responded to these statements on 20 July 2021. Having worked through all the many documents on the application during the course of August 2021, I considered that I should allow the parties one last opportunity to make final written representations to me on the witness evidence should they wish to do so. Since the petitioners had already included their representations on the Victorian Society's evidence in their own witness evidence, I invited the Victorian society to make any written representations first, with the petitioners to follow. On 17 September 2021 the Victorian Society produced their final written submissions (prepared by Mr Robin Hopkins of counsel). The petitioners' final submission is dated 30 September 2021. This provoked a further short email from the Victorian Society on 4 October 2021, alerting the court to one factual point arising from that submission. Unfortunately, due to the pressure of work in this Diocese, this judgment has taken me much longer to produce than I had either anticipated or would have wished. For this, I offer my sincere apologies to the parties. Before I proceed to summarise the points made by Historic England and the parties, it is convenient for me to set out the legal framework by reference to which this petition falls to be determined.

The legal framework

17. Since the church of St Mary the Virgin, Wheatley is a Grade II* listed building, this faculty application falls to be determined by reference to the series of questions identified by the Court of Arches in the leading case of Re St Alkmund, Duffield [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court's later decisions in the cases of Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393 at paragraph 22 and Re St Peter, Shipton Bellinger [2016] Fam 193 at paragraph 39). These questions are:

- (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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted?
- (3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, 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?

18. When considering the last of the Duffield questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed

works can 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. I recognise that these questions provide a structure and not a strait-jacket: to adopt a well-worn phrase, these are guidelines and not tramlines. Nonetheless, they provide a convenient formula for navigating the considerations which lie at the core of adjudicating upon alterations to listed places of worship, namely a heavy presumption against change, and a burden of proof which lies upon the petitioners, with its exacting evidential threshold. Since my judgment in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265, a practice has also developed of inquiring whether the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of the particular church building concerned. At paragraph 7 of my judgment in that case I said the following (with reference to the fifth of the *Duffield* questions):

“In considering the last question, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be needed before proposals can be permitted. It also has to bear in mind that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. In applying the *Duffield* guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works, then that is highly relevant. In such circumstances, it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit.”

Against this legal framework, I now turn to summarise the points made by Historic England and the parties.

Historic England

19. In Historic England’s written representations under FJR 9.5 (1) (a), dated 22 February 2021, Rachel Fletcher, an Inspector of Historic Buildings and Areas with Historic England, reiterates their reasons why St Mary’s church is “so special”:

“St Mary’s Church is considered to be one of G.E. Street’s best early stone churches and is a fine example of the way he had achieved complete mastery of English and continental medieval architecture and took its forms and details to create something that was completely original and of its time. The interior of the church survives largely as he designed it and is an excellent example of his work. The nave has a spacious feel and is simply decorated and this is a very deliberate design decision. He designed the building to focus attention on the chancel and the altar in particular. The lavish decoration, in the form of Minton floor tiles is used only in the chancel, together with poppy head choir stalls and elaborately carved pier capital between chancel and vestry. The mixture of tiles in the walkways and timber under the benches forms part of a very coherent pattern of flooring which gets more elaborate the further east you go. The pattern of tiling in the nave and aisles are simple and this contrasts with the chancel and emphasises the hierarchy of the church spaces. The fabric of the tiles themselves are of relatively limited significance as they were mass-produced. But the simple pattern that the tiles were laid

in, together with the affordability of the material, ensured that the chancel appeared as the most special part of the building.

It appears possible that the original design of the flooring could be recreated with either salvaged and new tiles (as at All Saints Boyn Hill) or wholesale replacement tiles where salvage is not feasible. Underfloor heating beneath tiles should also be possible. Replacement of the timber pew platforms with tiles, in a simple manner befitting the original design intent also appears possible. This would retain the qualities and coherence of the original design by Street, together with a simple, durable and architecturally sympathetic material.”

The Victorian Society's evidence

20. Mr Richard Peats has a masters' degree in buildings archaeology and for 20 years he has pursued a career in conservation. For the last 10 years he has worked for Historic England (formerly English Heritage), initially as an Inspector of Historic Buildings, covering Berkshire, Oxfordshire and Buckinghamshire, and latterly as Team Leader for development advice in those three counties (amongst others). He has published studies on the church interiors and furnishings of George Edmund Street in the Diocese of Oxford. Mr Peats notes that the Victorian Society objects to one specific aspect of this petition for the re-ordering and the works to the floor at the Church of St Mary, Wheatley, arguing that Street's existing tiled scheme should not be replaced in stone as the petitioners propose but that Street's tiled scheme should be replicated over the proposed underfloor heating instead. This is because of the materiality of the harm that the petitioner's proposal would cause. His report, made in his personal capacity, seeks to assist the court in understanding and assessing that issue. I accept that Mr Peats is eminently well-qualified as an expert to assist the court in this way.

21. Mr Peats first addresses the importance of the church's architect, George Edmund Street, and the place of the church in his corpus of buildings. Street was one of the leading exponents of high Victorian Gothic architecture. A deeply serious man, with a strong personal faith, Street saw building beautiful churches as a sacred task which demanded the best he could give. He insisted on designing every detail of a building personally and he rarely repeated details. Despite his vast output of 153 new churches, and many more extensions and restorations, each is a thoroughly unique work, designed specifically for that particular situation. His inventiveness was extraordinary. He had an encyclopaedic knowledge of medieval forms from both this country and the continent and he was able to combine these in novel ways to create buildings that are highly individual. He was particularly gifted in combining simple forms to create powerful, confident buildings that captured the spirit of the age and the Victorian church. Street was arguably more gifted than some of his better-known contemporaries. His buildings are generally more sensitive than his one-time mentor George Gilbert Scott; and they are more adventurous and sophisticated than those by A. W. N. Pugin. He should be considered one of the most talented architects this country has ever produced: few working in any style have shown his inventiveness in detail and talent for composition. All of his intact buildings should be viewed as works of a major English artist.

22. St Mary's was designed in 1855, early in Street's career. It is very English in inspiration, unlike his churches of the later 1850s, which draw on much wider precedents. The outstanding quality of St Mary's has long been recognised. Its architectural importance is reflected in its grade II* listing. Most of Street's country churches are listed grade II, and only a select few are given a

higher grading. The interior of the church is as important as the exterior, and it remains largely as Street conceived it. Each fitting was designed specifically for the church. Whilst it is not one of Street's richest or most spectacular interiors, St Mary's is much more elaborate than the majority of his country churches. The simple but bold fittings complement perfectly the robust and direct first pointed architecture of the building as a whole to create a satisfying and dignified interior. At paragraphs 11 to 13 of his report, Mr Peats addresses the contribution of the floor to the significance of St Mary's as follows (referring to a number of photographic images which he attaches to his report, five of which I have included at the end of this judgment):

“11. Street's church interiors were very hierarchical and focused on the altar as the most sacred spot in the building. As one moves east the building gets progressively more elaborate. Fittings are more richly carved, the roof structures get more elaborate, architectural detailing on the walls becomes richer. Floors were used by Street to create this sense of progression and he clearly gave a great deal of thought to their design and layout. He normally used tiles and their pattern would get more elaborate, and incorporate more colours, the further east they go, reaching a climax in the sanctuary. His simplest churches, such as St James-the-Great, Eastbury, had red tiled naves. Black and red check or diamond patterns were common in many of his restorations for simple country churches, such as St James-the-Less, Denchworth (fig. 1) or St Andrew, Great Rollright. His most elaborate nave floors such as that found at St Mary, Bloxham (fig. 2) or St Dunstan, Monk's Risborough or St Nicholas, Ivinghoe, incorporated stone pavors, yellow and green tiles to create more complex patterns. As with all his details Street would have designed the tiling pattern at St Mary's Wheatley himself ...

12. The pattern at Wheatley (fig. 3), which is of a red background divided into a lattice by black bands into which a variety of patterns have been inserted, is unique to the building and very unusual for Street. Normally his flooring patterns are much more regular. The only example of a similar pattern can be found in the Nave at St Peter, Filkins (fig. 4). While it is not one of his most sumptuous nave floors it suggests that, in common with the rest of the building, a particular degree of care from this most careful of men was devoted to it. This sets it apart from in [sic] most of his buildings and restorations.

13. The nave floor is thus of significance as an integral part of Street's design for one of his more important works, that makes an value [sic] contribution to the coherence and feel of the church as a whole. The important role that floors play in giving this character and coherence to Street's interiors can be seen by comparing two of his buildings where the nave seating has been removed but different approaches were taken to the floor. At St Nicholas, Cuddingdon (figs. 5-6), which was once one of Street's finest restorations in Buckinghamshire, the nave benches and the entire floor have been replaced, leaving the chancel intact. While a good quality stone floor has been fitted this has not been particularly successful visually. It has become a building of two halves, the very modern aesthetic of the nave clashing with the thoroughly Victorian Chancel. By contrast, at St Mary's, Holmbury, Surrey, one of Street's last works built as his own expense as a memorial to his wife, the nave benches have been removed but the tiling in the nave floor has been retained (figs. 7-8). The result is a much more coherent interior in which nave and chancel read as two separate but closely connected spaces and the building retains much more of its original Victorian character.”

23. After studying ceramics at Glasgow arts, Mr Steve Sinnott worked as a journeyman, travelling extensively learning varying techniques, in Pompeii, the Vatican and Rome. His company, Heritage Tiling and Restoration, has been in operation since 1982. He has restored and conserved historically significant floors in over 400 listed buildings in over 25 countries in the course of 48 years. His core work is in the restoration of Victorian encaustic (patterned) and geometric (various colours in geometric shapes) tile schemes for walls and floors. His experience and expertise have resulted in work on significant projects, not only nationally but also internationally. He installed part of the world mosaic at Lisbon Harbour. Mr Sinnott is a member of ICON Institute of Conservation and is currently nearing the end of his Accredited Conservation Restorer qualification (degree equivalent) which is recognised internationally. He is a Member of the Michelangelo Institute. I accept that Mr Sinnott is appropriately qualified to address the practicalities of replicating Street's floor; but I am concerned that his statement fails to comply with many of the requirements of FJR 11.5 (3). Mr Sinnott supports the Victorian Society's recommendation that Street's scheme should be replicated in new tiles and any that can be salvaged compatibly with the rest of the petitioners' proposals.

24. Mr Sinnott explains that Victorian tiles were widely used in all types of buildings but are becoming increasingly rare. They now have a scarcity value and need to be carefully conserved. He considers that the replication of Street's design in new tiles, and incorporating what can be salvaged, as outlined by the Victorian Society, is by far the best proposal. It will uphold the integrity of Street's design; and a floor of combined original and reproduction historic tiles over underfloor heating will be hardwearing, easy to maintain, and fulfil the petitioners' needs. Mr Sinnott agrees with the view held by the Victorian Society that the petitioners' proposal to use uniform stone with some salvaged tiles would not "successfully reflect Street's original vision". Uniform stone in a diamond pattern would not reflect the richness of the colour and pattern in Street's original design. The Victorian Society's proposal to recreate Street's tiled design in the areas which are currently tiled, over the proposed underfloor heating, would better preserve and reflect Street's original vision. Due to his experience in restoring and recreating tiled floors in Victorian and listed buildings Mr Sinnott considers that he is qualified to comment on the technical detail of the petitioners' proposals, and the suitability of the Victorian Society's recommended alternative. The purpose of his statement is to explain how the Victorian Society's recommended solution of recreating Street's tiled floor over the proposed underfloor heating would work in this context. Based upon his experience in very similar contexts, Mr Sinnott is confident that this solution would work. He considers that the petitioners' arguments that it would not work are not correct.

25. At paragraphs 9 to 11 of his statement, Mr Sinnott considers the technical suitability of the Victorian Society's proposal. In 2016 Mr Sinnott undertook a project at Salisbury House, Dorchester, a Grade II listed building, to lift a badly damaged Victorian tiled floor and install a Victorian reproduction above an anhydrite screed laid over underfloor heating (water pipes). Whilst a domestic project, the scale of the project, and the technical details, were similar to what would be required in the present context. Based upon his experience of this project, Mr Sinnott is confident that that an anhydrite screed could be installed over the proposed underfloor heating in this church, and that this would allow for the implementation of the Victorian Society's proposal without causing any of the practical problems envisaged by the petitioners. If implemented correctly, an anhydrite screed is self-levelling and gives a massive advantage over concrete or sand and cement screeds. The anhydrite screed would allow for the relaying of tiles that reflected Street's design. Mr Sinnott sets out the process for laying that screed at paragraph

11 of his statement. Since the completion of the works at Salisbury House in 2016, there have been no complaints or problems with the installation. There is nothing to suggest that the anhydrite screed with replacement Victorian tiles has caused any problems whatsoever; and Mr Sinnott can see no reason to believe that things would be any different if the same approach were to be taken in the context of this church. Mr Sinnott also refers (at paragraphs 13 to 17) to work that he had undertaken in 2003 at St Paul's Church, Irton, a Grade I listed church in Cumbria, to lift and reinstall a Victorian tiled floor, albeit without underfloor heating. At paragraphs 19 to 27 of his statement, Mr Sinnott responds to the petitioners' concerns about the Victorian Society's recommendation. In summary, Mr Sinnott makes the following points: (1) The petitioners' reference to British Standards is based upon insufficient knowledge about Victorian geometric and encaustic tiles since these standards do not apply to such types of tile schemes, and it is incorrect to rely upon British standards in response to the Victorian Society's recommendation to suggest that this proposal would be inappropriate. There is no minimum requirement to use 3 mm joints, as geometric tiling is not covered by the British standards. To suggest that large tile joints would be required in this case is simply wrong. (2) The concerns about movement joints are readily manageable and should not be seen as a practical barrier to the Victorian Society's proposed solution. (3) Mr Sinnott does not agree with the petitioners' concerns that smaller tiles would be unsuitable for the proposed new uses of the nave. Smaller tiles are better at loadbearing than larger tiles as they can move slightly and, unlike large tiles, do not crack and break easily. Based upon his own experience, Mr Sinnott sees no basis for concluding that the tiles proposed by the Victorian Society would have durability problems. (4) The concern that the pattern and colour of the tiles could not be replicated again reflects too limited an understanding of what can be achieved, in this case relatively straightforwardly. As most of the original tiling scheme is intact, the original scheme can be extrapolated from the existing tiles and patterns. Mr Sinnott's view is that suitable replacement tiles can readily be sourced. (5) The extent to which the petitioners estimate that the original tiles would be lost strikes Mr Sinnott as being on the high side. He would estimate that more of the original tiles could be salvaged, and that only the badly cracked or damaged tiles would need to be replaced. He has undertaken projects where floors have been lifted and more than 90% of the tiles have been re-used.

26. Based upon what Mr Sinnott has seen and understood of this project, he is confident that the Victorian Society's proposed solution in this case is feasible. He does not consider the petitioners' objections to hold water. As with all projects of this kind, drawing on suitable experience can unlock better solutions, and can dispel practical concerns about whether a solution that minimises harm to historic significance is workable in practice. In this case, the Victorian Society's solution would minimise harm, and it would be workable. The tiled floors that would reflect Street's scheme can be replicated compatibly with the rest of the petitioners' proposed works. On a personal note, Mr Sinnott adds that it is his view that – alongside Street's vision – the craftsmen who installed the original floor should be honoured by the preservation of its design where possible; and that is certainly possible in this case.

The petitioners' response to the Victorian Society's evidence

27. In their response, the petitioners thank Mr Peats for his report; but they point out that the photograph identified as Figure 3 is incorrectly described as depicting the nave floor when in fact it shows the organ space and the vestry. This small, low-use area, laid on a ground bearing slab, is not representative of the condition of the nave floor, as can be seen from the

previously uploaded photographs and the further photographic evidence attached to the petitioners' response, which depicts tiles showing movement, damage, cracking and small cut infills; design patterns which are not centred, with irregular cut tiles and in-situ infill; and irregular cutting against parallel edges in the laying of the tiles. The petitioners emphasise that they have taken great "care" to ensure that their proposed understated nave floor is "not sumptuous" and that it does not "clash" with the "Victorian chancel"; together with all the other proposed changes, they are confident that they have retained a "satisfying and dignified interior" that contributes to the "coherence and feel of the church as a whole", fully reflecting Street's philosophy of taking "medieval forms and [using] them in new ways and with new materials to create buildings that were utterly of their time and suited to the needs of a rapidly changing society".

28. The petitioners also thank Mr Sinnott for his witness statement and recognise that he has many years of experience in tiling and restoration, albeit primarily on domestic projects. However, the petitioners do not agree that "the scale of the project and technical details" of a domestic project "are similar to what would be required" for their church. They also have concerns with Mr Sinnott's statements that British Standards are "incorrect", "do not apply" and that they are a "red herring". Their church is one of assembly and, as such, the design and specification for such major repair and upgrade must reflect current codes of practice. The petitioners say that they

"... have shown that both the floor tiling and substructure have been recorded as failing for over 60 years. In lifting the nave floor we would like to re-use whatever materials are salvageable, but have concluded that the condition and quantity of the salvaged tiles would not be sufficient to reinstate Street's original design and would also not be suitable for a uniform hard-wearing nave floor. We have considered the beneficial value of what could be reinstated and we have discounted the option of an inferior and prohibitively expensive manufacture of bespoke small quarry tiles in various shades to create an approximate historical reproduction of parts of our tiled walkways. We have taken a holistic approach with regard to the cohesion and character of our nave floor which reflects, but does not imitate, the Street original. We have committed to salvage sufficient of the original tiles to restore the vestry floor and to showcase the Street designed pulpit, font and pillars."

29. The petitioners make the point that their

"... functional need is for a uniform hard-wearing floor meeting current building regulations and construction best practices that respects and does not harm our cultural significance as a Street church and as our place of worship. We are confident that our proposed design is the best compromise that may be achieved. We reject the Victorian Society proposal and we re-state that what remains of our eroded tiled floor has no unique merit or unusual design and state that our proposed holistic design will enhance our "satisfying and dignified interior". The pattern and colour of our tiles has been carefully chosen and designed to highlight our former nave walkways as well as the areas occupied by our pew platforms, and therefore retains that sense of progression towards our chancel and increasing sumptuousness of design as one moves east in our building."

30. In his final written submissions on behalf of the Victorian Society, Mr Robin Hopkins reiterates that there is no objection to underfloor heating or to any other aspects of the proposed works. The sole issue in dispute before the court is whether the petitioners should be permitted to lay a new stone floor over the underfloor heating, or whether (as the Victorian Society advocates) they instead should lay replacement tiles replicating the pattern of the existing decorative scheme by G. E. Street. The Victorian Society's case is that: (1) the loss of Street's tiling scheme would cause substantial harm to this church's significance; and (2) the petitioners have not discharged their burden of providing sufficiently cogent justification for their proposed flooring. Put another way, the evidence is clear that the Victorian Society's proposed solution would work, and there are no adequate reasons to prefer the petitioners' far more harmful solution.

31. Mr Hopkins submits that as to the first three of the *Duffield* questions (relating to harm), the overall answer is clearly yes: the jettisoning of Street's floor tiling scheme, and its replacement with an entirely different flooring scheme would cause substantial harm to the significance of this church as a building of special architectural or historic interest. The Victorian Society submits that the court can scarcely conclude otherwise on the evidence before it. Mr Peats's evidence confirms the importance of Street's work in general, and about the importance of this particular church within his corpus of works. There appears to be no controversy on those points. Mr Peats's evidence also shows why the petitioners are mistaken in suggesting that their proposal would cause limited harm. The petitioners' position (in their Form 6 Reply) is that "the nave floor contributes to the significance of the building but is not significant in its own right". In other words, they focus on the flooring scheme in isolation; but Mr Peats's evidence (at paragraph 11) shows why that is the wrong way to assess this flooring scheme. It must instead be assessed in terms of its role in Street's overall decorative and liturgical/theological scheme as a whole. Further, paragraph 12 of Mr Peats's evidence establishes the distinctiveness of Street's flooring scheme in this particular church. In other words, this flooring scheme is not only important to the thinking, design and execution of a very important architect; it is in fact distinct and notable within his corpus of works. This leads to Mr Peats's conclusion at (at paragraph 13) that:

"The nave floor is thus of significance as an integral part of Street's design for one of his more important works, that makes a [valuable] contribution to the coherence and feel of the church as a whole."

The Court is also invited to note that Mr Peats's evidence does not only support the significance and value of what (on the petitioners' proposals) would be lost. Paragraph 13 also illustrates the harm that would be done to Street's overall scheme by the introduction of the entirely different flooring scheme the petitioners wish to introduce, where Mr Peats contrasts a restoration that has preserved and been sympathetic to Street's vision with one akin to what is proposed here, where a unified and coherent interior is replaced with "a building of two halves, the very modern aesthetic of the nave clashing with the thoroughly Victorian Chancel". This is what Mr Hopkins submits would happen here: something distinctive, important and valuable in terms of the overall scheme within this church would be jettisoned and replaced with something entirely different that would do substantial harm to the coherence of Street's scheme, producing an interior of two halves. In summary, Mr Hopkins invites the court to conclude that the petitioners' flooring proposals would, if implemented, cause very substantial harm to the special architectural and historic interest of this church. That is what the evidence establishes, and

nothing set out in the petitioners' case gainsays that evidence. That conclusion is said to have obvious, and significant, consequences for the next stage of the analysis, namely the petitioners' justification for causing this harm.

32. Mr Hopkins submits that the burden is on the petitioners to establish a sufficiently "clear and convincing" justification for carrying out these proposals, bearing in mind the "strong presumption" against causing such harm (to use the language from *Duffield* questions 4 and 5). The Victorian Society submits that, to the extent that the petitioners' justification is based on aesthetic preference – as appears to be the case, at least to a very substantial extent – it should be found wanting. This is because such a preference cannot constitute a sufficient justification for doing the sort of harm that would be done here. In some cases, one aesthetic preference may trump another, but that cannot work here because Street's decorative flooring scheme that the petitioners wish to jettison is too significant and valuable. So the petitioners' case on justification cannot succeed to the extent that it is based on aesthetic preference. Nor can a case based on the furtherance of public interests and/or missional objectives. In many cases, the balancing exercise inherent in *Duffield* questions 4 and 5 entails weighing harm to significance against such objectives and, in particular, missional objectives; but that is not the case here because the Victorian Society's objection does not stand in the way of the church's ability to further such objectives. There is no objection to the other changes the petitioners wish to make, or even to the introduction of underfloor heating. The dispute in this case is confined to "stone vs tiles". The Victorian Society's focused – but important – point is that the stone option is not justified or proportionate to the harm that it would cause.

33. On the issue of justification and proportionality, Mr Hopkins invites the court to bear in mind what I said at paragraph 7 of my judgment in *Aston Rowant* (cited above) and to apply the same exceptionality threshold here. He also invites the court to agree that there is a suitable alternative that would have the same benefits (i.e. it would be compatible with the other proposed changes, including underfloor heating, and would not stand in the way of missional or public interests objectives) while causing much less harm. This is the Victorian Society's proposed solution of laying tiles that replicate the existing Street scheme as closely as possible. The crux of the justification analysis is said to be this: bearing in mind the burden on the petitioners, and the strong presumption against causing significant harm to a Grade II* listed building, the petitioners' preferred flooring should only be allowed if the court is satisfied that the less harmful alternative (tiles) would not work. The Victorian Society submit that this is the right approach, by the application of long-established principles from case law. The Victorian Society further submit that the court cannot be satisfied, on the evidence before it, that only the stone option would work in practice. Indeed, the evidence – specifically that of Mr Sinnott, who has had ample direct experience over several decades – points to the opposite conclusion. He also has actual experience of reproduction Victorian tiles being laid successfully over underfloor heating. The petitioners' response to this last point appears to be that the example Mr Sinnott gives concerns a domestic building rather than a church, but that does not detract from his point. There is no good reason to think that this distinction makes any difference to his point that reproduction Victorian tiles can be laid successfully over underfloor heating. Mr Sinnott's evidence could not be clearer: based upon his personal knowledge and experience, the Victorian Society's proposed solution would work. Mr Sinnott also allays other potential practical concerns. He confirms that tiles would be "hardwearing and easy to maintain. The Victorian Society submits that nothing in the petitioners' case undermines Mr Sinnott's conclusions. The Victorian Society has now explained how its proposed solution could work in some detail,

through the evidence of an experienced and appropriately qualified person. Nothing in the petitioners' response of 20 July 2021 gainsays Mr Sinnott's conclusion. In short, there is said to be a sufficient evidential basis for the Victorian Society's submission that tiles would work. In contrast, there is no sufficient evidential basis for the proposition that the petitioners need to make good, namely that tiles would **not** work. Their case on justification and proportionality with respect to their preferred stone flooring option is not made out. The court is therefore invited to grant a faculty for all of the proposed works, save for the proposed new stone floor finish. Instead of that, the petitioners should be directed, in whatever terms the court deems appropriate, to work with the DAC to select and arrange for the laying of reproduction tiles such that Street's flooring design is replicated.

The petitioners' final submissions

34. The petitioners disagree with the Victorian Society's assertion that their proposed floor finish would cause substantial harm to the special architectural and historic interest of the church since their full structural investigation proves beyond doubt that the nave floor has failed structurally, both in finish and foundation; and they have a demonstrable need, and a strong justification, for replacement. Through extensive consultation and investigation (including the DAC, Artemis Heritage, the Victorian Society, Historic England and other professional parties) the petitioners claim to have a full understanding of the current situation. They have discovered that much historical harm has been done to the nave floor through inappropriate conservation, repair and intervention. They state that there are no encaustic (but only geometric patterned) tiles in the nave, and that by 1960 some 20% of the quarry tiles had been replaced using concrete screed. They state that: (1) there is no specific evidence that Street took personal care of the tiling work (being absent in London for most of the building work); (2) the design was neither "meticulous" nor "detailed"; and (3) the tiling workmanship was not of a good standard due to the asymmetric setting of the tile layout, and the use of many small mosaic-sized tile pieces and mortar in-fill. By the 1960s, the condition of the nave tiles had been eroded to the point that they were no longer of any historical significance. Indeed they were so far beyond further 'repair' or 'conservation' that they were covered with carpet and they have been unseen (even by experts) for over 60 years.

35. The nave floor replacement has offered the church a previously unavailable background heating solution over and above those schemes which were already being considered. Having sought DAC advice, the church have agreed to install underfloor heating, supplemented by trench heaters at strategic points around the perimeter and across the current aisles. Following lengthy consultations, the choice of Portland stone (in preference to tiling) was made on the basis that Portland stone is hard-wearing, absorbs sound and light, is cost effective and, as such, would best meet the needs for a partial change of use, thus making the building suitable for the whole community. In addition the colouring of the stone is in keeping with the adjacent stone walls and pillars. Following further consultation with the Victorian Society, and with the full encouragement of the DAC, the original layout was modified to further reflect the building's architecture by using contrasting patterns to accurately lay out the historical position of the aisles and pew platforms. That modified layout re-uses the salvaged tiles in the chancel aisle floor. It also re-uses the salvaged tiles in the nave floor as decorative features around pillars, the font and the pulpit and it improves the overall relationship with the seating, the screens, and the furnishings. To re-lay the nave floor using reproduction tiles, so that Street's flooring design is replicated would be contrary to guidance given by the Society for the Protection of Ancient

Buildings, the DAC, Historic England and RIBA National Building Standards, which state that that major unavoidable replacement should not seek to create a poor copy of historic fabric but that new work should complement the existing building whilst speaking of the past. Even the Victorian Society agree that an exact ‘like for like’ replication is not achievable. It could certainly no longer be called Victorian, and it could not be regarded as a Street floor, but rather as a “fake” that in some ways resembles the floor that used to be in the church when it was first built. Indeed, the introduction of this pastiche might itself cause significant harm to the church since it would contain no original material, and it would only approximate to the Street tile layout, design, and tile colouring. Furthermore, the Victorian Society’s suggested method is not the only method of replication and other replication methods are available. One example would be an approximate visual likeness, simply achieved through painting on wooden platforms. Another example would be a 100% accurate “(warts and all)” photographic image printed on vinyl. The petitioners say that they have justifiably rejected each of these replication methods since, in each case, they would not be a Street floor, and they would undermine the authenticity and significance of the church building. Moreover, there is no “beneficial value” to the community in the Victorian Society’s inauthentic proposal and in their solitary assertion that, by being more similar to the historic floor, it would cause “much less harm” when compared to the petitioners’ proposal. In addition, the exorbitant inherent costs of their proposal could certainly run into hundreds of thousands of pounds without any improvement in terms of durability, or any reduction in maintenance costs, and it would lengthen timescales considerably. The Victorian Society’s proposal is very likely to jeopardise the viability of the church’s mission.

36. In a section headed “Mission and Petition Background” the petitioners explain that their goal is to create a space that is warm and inviting, by replacing the nave floor and refurbishing the church building. Their mission is to make St Mary's a more-welcoming place of worship and to meet the wider needs of the community. If the church are unable to fulfil their mission, the future of the church looks very bleak. The petitioners refer to the work of the DAC, praising them for having given valuable advice on how to judge the merits, scope and strengths of expert opinions, and how to reconcile differing opinions. In short, the petitioners maintain that the DAC have helped them to scope and contextualise opinions with regard to the cultural significance of their church, their statutory duties, their regulatory duties, and their moral obligations. Rhetorically they ask: Who are we to turn to if we are unable to rely fully upon the DAC and act upon their advice and guidance?

37. In conclusion, the petitioners say that they have welcomed

“... the rigour that the DAC have brought in the completion of our petition and the rigour it continues to bring to these proceedings. We have already consulted with the DAC on tiling options (including the Victorian Society direction to re-lay ‘reproduction tiles’) and together we are both confident that our unamended petition represents the best compromise that may be achieved. Our petition is (a) practicable, affordable and sustainable; (b) it is deliverable within a reasonable timescale; and (c) it maximises beneficial value from achievable and desirable goals as stated within our mission statement. We therefore ask that you accept our petition and disregard the Victorian Society objection, proposal and direction.”

38. In a short email retort, the Victorian Society wished to alert me to one factual point arising from the petitioners’ most recent submission: the assertion that the Victorian Society is the only consultee to recommend that the historic floor be restored or recreated. In fact, from

the very earliest stages of consultation in this case, Historic England have highlighted the significance of the floor as an integral part of Street's overall conception for the design of the building, and it has consistently advocated a restoration in some form so that the integrity of Street's vision can be preserved, referencing (by way of example) Historic England's letters of 9 March 2018 and 23 October 2020. Historic England's final letter of 22 February 2021, in response to being served with special notice of the petition (cited above), is said to support precisely the proposal that the Victorian Society is advocating.

Analysis

39. I should preface this part of my judgment by explaining that the corollary of the ecclesiastical exemption from the need to obtain listed building consent from the local planning authority before any works can lawfully be carried out to a listed church building is the need for the faculty system to apply equivalent levels of transparency, openness and rigour in maintaining appropriate levels of protection for that significant part of the national heritage that church buildings represent. As Chancellor Singleton QC (in the Diocese of Sheffield) explained at paragraph 20 of her judgment in *Re All Saints, Hooton Pagnell* [2017] ECC She 1:

“... churches, particularly listed churches, constitute a tangible and spiritual history which touches everyone including the people of the past, the present and the future including those from within and from outside our church communities and from within and outside their geographical area. They connect us to each other and to those who went before us and to those yet to come by our mutual and continuing appreciation and enjoyment of their beauty and history. These buildings need and deserve to be preserved, renewed and improved, expertly, professionally and within a process open to public scrutiny. That is my understanding of the purpose of the strict law which applies to listed buildings generally and within the Faculty Jurisdiction as applied to listed churches generally and Grade 1 and 2* listed in particular. Within the church the preservation and development of beauty and history is undertaken to the glory of God.”

40. Applying the *Duffield* framework, my assessment of the present proposals is as follows:

(1) Harm

41. On the basis of the evidence of Mr Peats, supported by the representations from Historic England, I am entirely satisfied that, if implemented, the petitioners' proposal to replace Street's areas of tiled flooring in the nave with stone flooring would cause substantial harm to the special architectural and historic significance of this Grade II* listed church. I accept Mr Hopkins's reasoning and analysis in the Victorian Society's final submissions (cited above). I find that the permanent, and irrevocable, removal of Street's tiled flooring, with its progression from the church tower in the west to the chancel in the east, would cause substantial harm to the significance of this church, even though I accept that this part of the floor contains only geometric, and not encaustic, Victorian tiles (as these terms have been explained by Mr Sinnott). Such harm is evidenced by the completely different visual impressions and “feel” which is created by the different approaches that have been taken to the floors of Street's churches at Cuddingdon and Holmbury (as depicted in the photographic images at figures 5 to 8 below).

(2) Justification

42. The next question is whether the petitioners have succeeded in establishing a sufficiently “clear and convincing” justification for the permanent removal of Street's tiled flooring, bearing

in mind the “strong presumption” against causing such harm. I agree with Mr Hopkins that such justification cannot be founded upon any aesthetic preference for stone over tiles because of the significance of Street’s tiled flooring, both for this particular church, and for the wider body of his outstanding body of work as a church architect. Nor is this case one of the many cases where the balancing exercise inherent in the fourth and fifth of the *Duffield* questions entails weighing harm to the significance of the church building against competing missional objectives because the Victorian Society’s objection does not seek to stand in the way of the church’s ability to further such objectives by introducing underfloor heating into the church building. I am satisfied that the church have sufficiently demonstrated the need for such heating. If the only practicable way that this could be achieved would necessitate the permanent removal of Street’s tiled flooring, then, harmful and regrettable though this would be, I would find that the petitioners had established a clear and convincing justification for such removal, even in the context of a Grade II* listed church building. However, that does not form the battleground in the present case, which comes down to a dispute between a stone as against a tiled floor in the nave. The focus is therefore upon the Victorian Society’s assertion that the stone option is neither justified nor proportionate to the harm that it would cause because there is a suitable alternative that would have the same benefits while causing much less harm; and the burden on this issue falls on the petitioners. I accept Mr Hopkins’s submission that the petitioners’ preferred flooring should only be permitted if the court is satisfied that the less harmful alternative proposed by the Victorian Society of laying tiles that replicate the existing Street scheme as closely as possible either would not work or would itself cause similar harm to the church building. This case must therefore focus upon the practicability of the Victorian Society’s alternative means of achieving the same end of working, and effective, underfloor heating.

(3) *Alternative means*

43. The Victorian Society submit that the court cannot be satisfied on the evidence before it that the stone floor option is the only one that would work in practice. Indeed, the evidence, specifically that of Mr Sinnott, who is said to have had ample direct experience over several decades, is said to point to the opposite conclusion. Mr Hopkins submits that the Victorian Society have adduced a sufficient evidential basis for their submission that tiles would work whereas there is no sufficient evidential basis for the converse proposition that the petitioners need to make good, which is that tiles would not work. Mr Hopkins submits that the petitioners’ case on justification and proportionality with respect to their preferred stone flooring option is not made out.

44. I can begin by rejecting the petitioners’ argument that re-laying the nave floor using reproduction tiles, so that Street’s design for the floor of the nave is replicated, would amount to introducing a fake, or pastiche, floor which might itself cause significant harm to the church building on the basis that it would contain no original material, and would only approximate to the Street tile layout, design, and tile colouring. The October 2019 Existing Floor Assessment (Revision A) produced by Brocklehurst and referenced in the SCBO’s January update (cited above) estimates that 50% of the existing tiles would be lost during the lifting process leaving some 35 square metres available for re-use. I am satisfied (from Mr Sinnott’s evidence) that it should be possible to replicate the colour, design and layout of any lost tiles; and that this would serve to preserve the coherence and feel of Street’s design for this church.

45. I therefore come, finally, to the crux of this case: have the petitioners adduced a sufficiently clear and convincing case that a stone, rather than a tiled, floor is the only practicable

solution? In my judgment, Mr Hopkins places undue reliance upon the evidence of Mr Sinnott. Mr Sinnott relies, by way of evidence, upon only two detailed case studies. The first (in point of time) – the church in Cumbria – did not involve the additional complicating factor of accommodating underfloor heating (as Mr Sinnott readily acknowledges). The second, the house in Dorchester, appears to have involved the laying of a completely new, reproduction tiled floor (over underfloor heating) rather than seeking to combine old tiles with new; and it did not involve the complication of producing a floor combining Victorian tiles (whether original or reproduction) with another material (as will be the situation here in the areas presently occupied by the existing wooden pew platforms). Further, Mr Sinnott does not state that he has even visited the church and had the benefit of lifting the carpeting and inspecting the tiled floors (as Brocklehurst have had). Nor is it clear whether he has had the benefit of considering the detailed floor assessments prepared by Brocklehurst (who had pulled back the carpets to view the floor beneath). Certainly, Mr Sinnott's evidence of having undertaken projects where floors have been lifted, and more than 90% of the tiles have capable of being re-used, would seem to have little application to the present case, where Brocklehurst's informed estimate is that 50% of the existing tiles would be lost during the lifting process. Mr Hopkins's submissions also seem to me to overlook the fact that, in conjunction with their professional advisers, and with the expert assistance of the DAC and its experienced buildings officers, the petitioners have carefully considered whether the benefits of underfloor heating could be achieved in a manner less harmful to the heritage value of the church building by replicating Street's tiled flooring; and they have concluded that they could not. That is a conclusion that has been endorsed by the DAC.

46. The Petitioners have suggested that the Victorian Society's proposed solution will be more time-consuming and expensive than their preferred solution of a stone floor. On the basis of Mr Sinnott's evidence, that may well prove to be the case, although there has been no attempt by the petitioners to quantify the increase in costs, or the additional expenditure of time, that would be involved in bringing the works to completion if the Victorian Society's proposed solution were to be adopted. I note that, according to the petition, this project is already estimated to cost in the order of £750,000, and that the church will need to raise further sums totalling about £407,000 in order to finance the costs of the works which are presently proposed. It is not clear how much more expenditure a tiled floor would require. The court is naturally loathe to impose further financial burdens upon the parish (although I do not discount the possibility that the retention, rather than the loss, of Street's original design for the floor of the nave might assist the church's fund and grant-raising efforts). However, in the absence of any clear evidence of additional costs and time, the court cannot properly factor these into its decision.

47. I confess that I have not found this an easy issue to determine. But I bear in mind that the burden is upon the petitioners. On the evidence that is before this court, I am not satisfied that the petitioners have adduced a sufficiently clear and convincing case that a stone, rather than a tiled, floor is the only practicable solution to the provision of underfloor heating in the present case. I therefore propose to grant a faculty for all of the proposed works save for the proposed new stone floor finish. Instead of that, I will direct that the petitioners are to work with their professional advisers and the DAC to select and arrange for the re-laying of as many of Street's original tiles as can be salvaged, and to commission as many suitable reproduction tiles as are required, to replicate Street's original design for the nave floor. However, I recognise that this may prove difficult or impracticable. In this event, the court may be prepared to limit the Street tiled flooring to the central aisle and the north and west ends of the nave, leaving the north and

south aisles to be covered by a stone surface. In this context, I note from the Brocklehurst assessment that the tiles to the central aisle of the nave would appear to be in a better condition than those in the north and south aisles. I also note, on the basis of the photographic images of the church at Holmbury, that it is the central aisle of the nave, leading to the chancel, that is the most visually striking, and thus the most significant, feature of Street's floor design. With the removal of the wooden pew platforms, I can see some logic in replacing the tiling in the north and south aisles with stone; but (apart from a passing reference to this as a possible solution in the Victorian Society's letter of 18 December 2020) this intermediate option does not seem to have been considered or addressed by either of the parties to this petition in any detail. I will give the petitioners permission to apply to the Court, by letter to the Registry (which is to be copied to the Victorian Society, as party opponent), for further directions as to the carrying-out of this Order, or for the variation of this faculty in the event of any difficulties presenting themselves.

(4) Balancing exercise

48. On the evidence, and for the reasons set out above, weighing the resulting harm to the church building against the benefits of the proposals, the balance clearly comes down in favour of approving the proposals and granting the petition (save for the proposed new stone flooring).

Disposal

49. For these reasons, the court will grant a faculty for all of the proposed works save for the proposed new stone floor finish. Instead of that, I direct that the petitioners are to work with their professional advisers and the DAC to select and arrange for the re-laying of as many of Street's original tiles as can be salvaged, and to commission as many suitable reproduction tiles as are required, to replicate Street's original design for the nave floor. I give the petitioners permission to apply to the Court, by letter to the Registry (which is to be copied to the Victorian Society, as party opponent), for further directions as to the carrying-out of this Order, or for the variation of this faculty in the event of any difficulties presenting themselves. The faculty will be subject to the following conditions:

- (1) Before commencing any works, the petitioners must notify the church's insurers, complete their building works questionnaire, and comply with the terms of Ecclesiastical's letter dated 18 December 2020 and any further recommendations or requirements that they may make or impose.
- (2) Before commencing any works that will necessitate public worship being held in another building, the petitioners are to obtain the consent of the Bishop to alternative arrangements for public worship and they are to comply with the terms of such consent.
- (3) The petitioners are not to commence any separate phase of the works without ensuring that adequate funding is in place to complete that phase.
- (4) No works are to be undertaken to windows.
- (5) Where possible, all chasing into walls to accommodate cabling should be avoided and surface back boxes used.
- (6) A photographic and graphic recording survey of the church interior should be carried out prior to works commencing. Copies should be deposited with the DAC and in the local study archive, as well as in the church building for future reference by scholars and the local

community. (In order to comply with this, reference should be made to ‘Historic England’s Understanding Historic Buildings: A Guide to Good Recording Practice’ (May 2016).)

- (7) No spoil is to leave the churchyard and any charnel should be reburied with due reverence.
- (8) Should any articulated remains be discovered, excavations should cease and directions sought from the Diocesan Registry.
- (9) Should the terms of any grant funding require the parish to display a plaque recognising the funder’s contribution, the parish are to seek the approval of a DAC officer to the proposed location, design and fixing method of the plaque.
- (10) If site cabins or welfare units on the church site are found to be necessary, the parish are to liaise with DAC officers to agree a suitable location.
- (11) The petitioners are to follow the DAC’s April 2018 guidelines on electrical installations.
- (12) The petitioners are to comply with the conditions in the planning permission for the works which was granted on 22 June 2020 under Application No: P20/S1242/FUL (subject to such permitted variations as may be approved by the DAC or, in default, by the court).

In the first instance, the period allowed for the proposals to be implemented will be three (3) years from the date of the grant of the faculty so as to allow further time for any further necessary fund-raising and grant applications.

50. I waive any fee for this written judgment. The petitioners must pay the fees for this petition including any additional fees incurred by the Registry in dealing with this application.

David R. Hodge

The Worshipful Chancellor Hodge QC
The First Sunday in Advent 2021

Figure 3: St Mary, Wheatley



Figure 5: St Nicholas, Cuddington, nave looking east



Figure 6: St Nicholas, Cuddington, nave looking west



Figure 7: St Mary, Holmbury, nave looking east



Figure 8: St Mary, Holmbury, nave looking west

