



*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 (subject to conditions) save for the proposed new stone floor finish: see [2022] ECC Oxf 8 – Request for variation of faculty to permit stone flooring due to difficulties and cost of replicating Street’s original design with replica or reproduction tiles – Whether just and expedient to vary faculty – Variation refused*

**Application Ref: 2017-009381**

**IN THE CONSISTORY COURT**  
**OF THE DIOCESE OF OXFORD**

Date: Easter Monday, 10 April 2023

**Before:**

**THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR**

**In the matter of:**

**St Mary the Virgin, Wheatley (No 2)**

**BETWEEN:**

**THE REVEREND NIGEL HAWKES (Vicar)**

**ZANNIFER MASON and**

**JANE FANNING (Churchwardens)**

Petitioners

- and -

**THE VICTORIAN SOCIETY**

Party Opponent

Application for variation determined on written representations and without a hearing

The only case referred to in the Judgment is

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

## JUDGMENT

### *Introduction and background*

1. This judgment is a sequel to, and should be read in conjunction with, the written judgment that I handed down on 28 November 2021 on an opposed online faculty application for a major re-ordering of this Grade II\* listed Victorian village church (situated within the Wheatley Conservation Area) in the Archdeaconry of Dorchester. By the time the petition reached me, the position had been reached where the Victorian Society, as the only party opponent, actively opposed only one specific aspect of the proposed works, namely the treatment of George Edmund Street's tiled flooring in the nave of the church. In this, they were supported by written representations from Historic England. By my judgment, which bears the neutral citation reference [2021] ECC Oxf 8, the court granted a faculty for all of the works proposed by the petitioners save for the proposed new stone floor finish. Instead of that, I directed that the petitioners were to work with their professional advisers and the DAC to select and arrange for the re-laying of as many of Street's original floor tiles as could be salvaged, and to commission as many suitable reproduction tiles as were required, to replicate Street's original design for the floor of the nave of the church. I gave the petitioners permission to apply to the court, by letter to the Registry (to be copied to the Victorian Society as party opponent), for further directions as to the carrying-out of my order, or for the variation of the faculty, in the event of any difficulties presenting themselves. The actual faculty was issued on 2 December 2021 and it allowed three years for the completion of the works.

2. On 28 November 2022 I received an email from the Diocesan Registry forwarding a letter from the petitioners requesting a variation to the faculty. In working with their professional advisers to replicate Street's original design for the nave floor of their church, the parish had commissioned a report from Brocklehurst Architects Ltd (**Brocklehurst**) entitled '*5066 Floor Options Appraisal A3 Rev*', covering the difficulties, and the practicalities, of replicating Street's flooring, and considering all the available options. This had been submitted to the Diocesan Advisory Committee (the **DAC**) on 8 September 2022. The DAC had discussed this report at a meeting on Monday 14 November 2022, following which the Head of Church Buildings for the Diocese had reported back to the PCC by email on 16 November 2022. The petitioners now applied to the court for a variation of the faculty to allow them to proceed with Option 4 (an all new stone floor to a design by Brocklehurst in collaboration with Artorious Faber), as supported by the DAC, which was the petitioners' preferred choice. Having already experienced lengthy delays and considerable additional costs due to inflation, the parish indicated that they would welcome a prompt response.

### *Brocklehurst's Floor Options Appraisal*

3. The email attached a copy of the Brocklehurst floor options appraisal dated August 2022. This is an impressive, illustrated 25-page document, with photographic images, floor plans, and floor and furniture layouts. It begins by identifying the following areas which were agreed as part of the faculty and do not form part of the report:

- It is agreed that it is not possible to retain the floor as existing
- Underfloor heating is permitted
- The Chancel is to remain as existing, with cleaning/repair as appropriate
- The porch tiling is to remain as existing with cleaning/repair as appropriate
- The vestry to be relaid with salvaged tiles
- The west end floor finish is to be 450 x 450 diagonally laid porcelain tiles
- The principle of replacing the wooden pew platform areas with square laid limestone is agreed, but the exact extent of this, and the detail for the walkway floor material/detail, is still to be determined.

4. The purpose of the report was to set out various options that complied with the court's directions and to evaluate them in terms of cost, practicality, and the ability to create a coherent design in keeping both with Street's original vision and the future design of the church. The report sets out the methodology for cost comparison:

For the sections relating to cost we have taken costings for stone from Artorius Faber, for reproduction tiles from Craven Dunhill Jackson, for labour costs from the contractor Savvy who submitted a tender for the original tender package.

The costs only include basic materials and labour costs and are for the purposes of this document to create a basis for fair comparison only. Figures have been rounded to the nearest £100.

The cost comparisons focus only on the areas still to be agreed (the nave/aisles) and do not include costs that are the same for each option (west end, porch, vestry, chancel).

5. The report describes, and illustrates, the original, and the existing, floor design and furniture layout. The existing floor is badly damaged and large areas have been replaced or infilled with concrete. Because of this, and the uneven nature of the remaining tiles, all the tiled walkways in the main church have been covered with carpet for day-to-day use. This in itself has an impact on the significance of the church. The layout no longer closely reflects the furniture layout as was originally intended. There are no longer pews to the far western end of the church, leaving a clash between the original layout and the current furniture. The report proceeds to consider the condition of the existing floor, the potential for salvaging and relaying existing tiles, the opportunities for mixing salvaged tiles and replica and modern reproduction tiles, the proposed stone flooring, and mixing areas of stone with reproduction tiles.

6. The report then goes on to consider a number of options:

- (1) Option 1A would be to replicate the floor design with salvaged tiles.

Even if all the existing floor tiles were capable of being salvaged and relaid, it would not be possible to replicate the original floor design with salvaged tiles because large areas of the original floor no longer exist. The combined floor area of the tiled area in the nave/aisles and vestry is 87sq. m. Brocklehurst estimate that the salvaged tiles would only be capable of laying, at best, just over 20 sq. m so this is not a feasible option.

(2) Option 1B would be to replicate the floor design with bespoke replica tiles.

In this option the tiled areas within the nave/aisles would be recreated with bespoke replica tiles, and the areas currently occupied with wooden pew platforms would be Tynham Limestone in a square pattern with Kimmeridge English Limestone Border at a total cost of £272,400. Due to the prohibitive cost of this option, and the court's wish not to '*impose further financial burdens upon the parish*', this option has not been considered further. The project funding could not support this option, which would therefore be unable to proceed.

(3) Option 2 would be to replicate the floor design with reproduction tiles.

In this option the tiled areas within the nave/aisles would be recreated with reproduction Victorian tiles, and the areas currently occupied with wooden pew platforms would be limestone as in Option 1B. The total cost would be £73,600.

Brocklehurst are concerned that having a change in materials between stone and tiling and a complicated tiling pattern would lead to additional movement joints which can spoil the overall effect of the floor. A further concern is that simply replicating the existing tile pattern and layout would clash with the proposed fitted furniture and pew layout of the church. There is a clash with the font location, the welcome area, and the community kitchen area. In Brocklehurst's view, it would be more in keeping with Street's original design to simplify the floor layout to suit the proposed furniture layout and use of the church rather than rigidly stick to a design which has lost some of its relevance now that the pew arrangement and overall use of the church is different. To create a 'replica' also begs the question of how far the desire for an exact match is taken. For example, the current layout includes ventilation grilles and hatches to access a furnace below which will now be redundant. Should these features still be included in any proposal? As stated in the final submission from the PCC, there is no specific evidence that Street took personal care of the tiling work, the design was neither 'meticulous' nor 'detailed', and the tiling workmanship was not of a good standard due to asymmetric setting out of tile layout, the use of many small mosaic-sized pieces and mortar in-fill. The tiling pattern was not always worked out to work with the geometry of the tiles - should a re-creation seek to standardise the design or replicate these presumably unintentional imperfections?

(4) Option 3 would be to use reproduction tiles only in the nave.

Brocklehurst note that the court had recognised that it might be difficult or impracticable to replicate Street's original design and that, in this event, the court might be prepared to limit the Street tiled flooring. The court had also noted "*on the basis of the photographic images of the church in 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.*" Based on the expense of Option 2, and the lack of coherence between layout and floor pattern, Brocklehurst have produced Option 3, which simplifies the floor layout to suit the proposed use of the church (with diagonally laid stone to the walkways and square laid stone to seating areas), and replicates the

current central aisle pattern in reproduction tiles, at a total cost of £57,600. Although this would have the same difficulty as Option 2 in using two different materials, the simpler layout of tiles would require fewer movement joints.

Brocklehurst's concern with this proposal is that it breaks the flow of movement around the church. In Street's original design (and Option 4), the walkway areas are all the same material and give similar importance to each area (although the central aisle is wider and with a more complicated tiling pattern). Having the central aisle a different material seems to reflect a predicted use pattern of people entering from the door at the west end and progressing to the front of the church, but the west end ceased to be a main entrance early on when the tower was used as a robing area - first screened by a curtain, and latterly the Neville screen. The majority of users will enter via the porch and then make a right turn down the central aisle, and this proposal does not reflect that. Whilst Brocklehurst would agree that the floor finish at St Mary, Holmbury is a very positive example, there are some key differences to St Mary's, Wheatley: the west end of the former church is still in active use and is visually linked to the nave; a photographic image shows panelling, which includes glazing and an open doorway showing a connection between the route taken by parishioners and the patterned tiles. Additionally, at Holmbury the patterned aisle includes lighter toned tiles which tone well with the selection of material for the seating areas and give coherence to the whole design. At St Mary's, Wheatley the red and black tiles are considerably darker than the proposed stone to the seating area and may create too stark a contrast, as can be seen in the photographs of the two tile and stone sample panels, and at St Mary the Virgin, Willsborough. In Brocklehurst's opinion, Option 3 could be seen as attempting to accommodate too many stakeholders and ending up satisfying none of them. If they are to keep to the basic layout of walkways flowing across east and west ends, as well as the three aisles, it is hard to see how a three material proposal could work without the change of material stopping the flow at some point.

(5) Option 4, as proposed on drawing no 5066-60A, would be to introduce a stone surface to the whole of the nave.

Additional work has been undertaken with Artorius Faber to specify the proposed stone choice and layout for the floor layout proposed in the original application. Care has been taken to select a project-specific blend of mixed tone beige to create darker walkways and more consistent lighter toned beige to the seating areas, at a total cost of £54,800. From a practical point of view, this is the simplest solution, with the same material across the nave, minimising the amount of expansion joints required.

Brocklehurst appreciate that the court has ruled that an '*aesthetic preference*' cannot justify removing the element of tiles completely, and that they cannot demonstrate that an entirely stone floor is the only practical solution. However, their view is that the choice of stone, rather than tiles, is not an entirely '*aesthetic*', cost or possibility based one, but more one based on the original design intent of Street's proposal. Throughout this process, most of the parties have referred to the '*coherence*' of Street's design. To Brocklehurst, this relates to the demarcation of walkways/seating areas and the flow around the church, whereas to others it is specific to the tiling and the progression of the tiling pattern. Brocklehurst's view is that a consistent stone floor that reflects the current use of the church fully reflects Street's philosophy of taking medieval forms and using them in ways, and with new materials, to create buildings that were utterly of their time, and suited to the needs of a rapidly changing society. They also consider it of importance that there should be a clear distinction between Street's original design and new interventions. The

Victorian Society's view is that is the retention of the floor pattern and material, rather than the actual historic fabric, that is important, whereas Brocklehurst's view is that it is adhering to the philosophy of materiality and pattern, reflecting and informing the use of the church, that is the most important. They consider that the comparison to St Nicholas, Cuddindon is not a fair one, as there is no distinction between aisles and seating areas. The proposal shown in 5066-60A has a clear demarcation, and would ensure that the retained pews were sited in an orderly manner. Adhering to the principle of two separate, but complementary, surfaces for the walkways and seating areas creates a flow around the church that reflects the proposed use, and the way people will move around the building. This option has been designed by a single professional body, with regards to the design of the church as a whole.

7. Brocklehurst have provided a summary of the costs of the various options. In the judgment, it was noted that *'the court is naturally loathe to impose further financial burdens upon the parish'*. Option 1B (bespoke replica tiles) would be so prohibitively expensive that the church would be unable to proceed at all. Option 2, to replicate the current extent of tiling with replica tiles, is almost £20,000 more expensive than the stone flooring Option 4. Brocklehurst point out that since obtaining the initial tenders for the project (which were returned in February 2020), construction costs have gone up considerably. Construction is not now planned to commence until April 2023. A conservative estimate would be to increase the lowest tender by 10% (based on RICS forecasts) although by the time the project starts on site it could be up to a 15% increase in overall costs. The church will already need to omit or postpone some of the package in order to commence work, and any increase in costs, however modest, may call the viability of the entire project into question. The cost of salvaging and relaying the tiles to the vestry (proposed in all options) is considerable, at an estimated £10,700.

8. In terms of practicalities, having different depths of materials does increase the complexity of the construction, although as the court recognised in its judgment, it is not impossible to combine the materials. Due to the complex layout of Option 2, many additional movement joints would be required. The tiling layout would already be different in appearance to the original as 3 mm joints would need to be included, and movement joints would further dilute the legibility of the pattern. Option 3 would be simpler as the tiles are limited to the central aisle only. From a practical perspective, Option 4 is the simplest, as whilst different types of limestone are proposed, they are all the same depth and material.

9. Turning to design considerations, Option 2 clashes with the proposed layout of the church. As the disposal of some of the pews and the inclusion of the fitted furniture has been given permission, it should also follow that the floor layout should be altered to suit the proposed use and layout of the church. Option 3 is more legible, but Brocklehurst still have considerable concern as to entering the church from the porch, but then seeing the dark band of tiles to the west end across one's line of sight. It breaks up the flow of how parishioners would actually use the church, particularly, for example, a bride entering from the porch entrance and turning right down the aisle. Brocklehurst are also concerned that there will be too stark a contrast between the darker tiled runway down the centre of the church and the beige limestone selected for the other walkways and seating areas. Due to the layout of the church, it is hard to envisage a solution involving three different flooring materials that would prove satisfactory. Although it departs from the original progression of tiles and their complexity of pattern, Brocklehurst would argue that Option 4 is still the closest in spirit to Street's original proposal as the flow of walkways around the church is uninterrupted, and there is a contrast between

walkways and seating areas, but one which is complementary rather than stark. This is the option preferred by the parish.

10. Brocklehurst conclude as follows:

Option 1A is not possible as there are insufficient original tiles capable of salvaging, and mixing old and new tiles has been discounted. Option 1B is prohibitively expensive as the church would not be able to proceed if more than £200,000 was added to the construction cost.

Whilst £20,000 may not be an insurmountable barrier if Option 2 answered on all other points, it is still a considerable sum and would be a financial burden to the viability of the project. However, in both points of practicality and coherence of design, Option 2 does not answer: an exact replica of the existing tiling layout whilst allowing a proposed change of pew and fitted furniture layout creates a discordant proposal, which will only be further diluted by the number of movement joints required to facilitate the design. It is also difficult to judge to what extent an exact 'replica' should be produced: e.g. try to replicate the now-redundant features such as ventilation grilles and imperfections in the pattern, or produce a more regimented sanitised version which would seem to negate the importance of Street's design.

Whilst Option 3 is more expensive than Option 4, the difference is not prohibitive. The increase in complexity by incorporating another material is also not insurmountable from a practical point of view. The difference in the two proposals is more a philosophical one and different people/groups will have different opinions. If the opinion is that the type of material and pattern is the uppermost consideration, Option 3 will take precedence. In our opinion it is the overall flow of the space, coherence in selection of quality materials and importance that the floor materials reflect the design and use of the church that is the most important, and Option 4 should be selected.

11. The DAC's initial response to this report, as set out in the email from the Head of Church Buildings dated 16 November 2022, was as follows:

The DAC noted that the parish had gone to great lengths to understand the condition and design of the existing floor, and to carefully consider the implications of each proposed option. The time and effort which had been spent on this work was clear and greatly appreciated by the DAC.

The DAC reiterated their support for Option 4 (all new stone floor to design by Brocklehurst Architects in collaboration with Artorious Faber) and supplemented this by also supporting Option 3 (a new stone floor with the creation of a tiled east to west central aisle).

I would encourage you to now approach the Chancellor for his directions (copy to the Victorian Society as directed), including this note within the documentation provided to him.

## *Directions*

12. On 29 November 2022 I directed that:

(1) Within 28 days after service on them of these directions, the Victorian Society (as party opponent) were to file with the Registry, and serve on the petitioners, any written representations in response to the petitioner's request for a variation of this faculty, together with copies of any supporting documents, stating also whether they were content for the matter to be dealt with on the basis of written representations.

(2) Within 21 days thereafter, the petitioners were to file with the Registry, and serve on the Victorian Society, any written representations in response to the representations of the Victorian Society, together with copies of any supporting documents, stating also whether they were content for the matter to be dealt with on the basis of written representations.

(3) The papers were to be returned to me after compliance with these directions.

(4) Permission to the petitioners, and to the Victorian Society, to apply by letter (to be copied to the counter-party) to vary or set aside these directions within seven days after the date of service of these directions upon them, whereupon the counter-party should have permission to respond to such application by letter (to be copied to the applicant), after which the papers were to be returned to me to determine such application on the papers.

13. On Monday 12 December 2022 the Registry forwarded to me an email sent on behalf of the petitioners and dated 6 December. It noted that the request for the variation of the faculty, made with the full support of the DAC, was based on the practical and financial viability of the four options listed within Brocklehurst's latest filed report, which they had initiated in December 2021. The petitioners were most anxious to avoid any additional lengthy delays due to statement and counter-statement as their project was scheduled to commence just after Easter 2023. The petitioners were very disappointed that the court was not yet able to approve the variation, and that it might still be several months more before they received my approval.

14. On the same day, I directed the Registry to respond to the petitioners stating that whilst I appreciated their concern about the delay in progressing the works, the proposed variation would constitute a substantial change to the works already authorised by the faculty so, pursuant to rule 20.3 (3) of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**), the court was required to give such directions as to the giving of notice to the public and to such other persons and bodies as it considered just. It was clearly just that the Victorian Society, as the party opponent to the original faculty petition, should be given the opportunity to respond to the variation request. I recorded that I did not understand the petitioners, by their email, to be seeking to vary my directions (pursuant to paragraph (4) thereof). I pointed out that it would always be open to the petitioners to respond to any representations from the Victorian Society within less time than I had allowed, which would speed up the process.

## *Response of the party opponent*

15. When I was alerted to the fact that the Victorian Society had failed to respond to my direction to file further written representations by the due date of 29 December 2022, I invited the Registry (on 4 January 2023) to write to the petitioners (with a copy to the Victorian Society) informing them that the Society had not submitted any representations in response to my directions, and asking them to confirm that the petitioners were content for me to consider the application to vary the faculty on the basis of the material they had previously submitted, and without the need for any hearing. This confirmation was duly forthcoming from the petitioners



later that same day. Shortly thereafter, I was forwarded an email from Mr James Hughes, Senior Conservation Adviser with the Victorian Society, informing me that the shared amenity society database on which the Society rely (which is managed externally) had recorded an incorrect consultation deadline date for this case of 12 January. That being the case, the Society had thought that they were still well within the deadline. Mr Hughes asked for the attached letter, and the important points that it raised, to be taken into account by the court, and the parish, before any judgment was made. Since the wrong deadline date for this case (12 January) had been recorded in the relevant database, I indicated that I was prepared to take account of the Society's representations; and I directed the Registry to invite the parish to respond to the same.

16. The Victorian Society's letter began by noting that the proposed amendment to the faculty concerned the treatment of the floor, which had been the main point of contention, and the sole element of the scheme to which the Society had formally objected, in 2021. The Society's Southern Buildings Committee had considered the proposed amendment – and the material supporting that proposal (chiefly the Option Appraisal dated August 2022, prepared by Brocklehurst) – at its meeting at the end of December. The Society's comments, subsequent to the Southern Buildings Committee's discussion, were as follows:

In a sense it should not need reiterating, but in light of some of the content of the Options Appraisal – particularly parts on page 20 that question the benefit of retaining Street's design, and suggest ways in which the spirit of Street's design might be otherwise reimagined – it is worth stressing the level of harm that the loss of the design of Street's floor would have on the integrity of the interior (and the building) as a whole. Both during the consultation phase of the project, and in the papers for the consistory court, the Society argued that the loss of Street's floor would cause serious harm to the significance of the building. This view was supported by the Society's expert witness, and was upheld by the Court, as explicitly stated in the Judgment. We do not think it appropriate to question this Judgment, or to re-engage in discussions over the respective merits of retaining or losing Street's floor design. Its loss and non-reinstatement, as established at Court, would cause serious harm to significance.

For the same reasons, we do not think that it is reasonable to attempt to justify the proposed amendment, at least in part, by asserting the need for copious expansion joints and 3 mm grouting joints throughout, when the Society's expert witness authoritatively testified that these would not be necessary. Street's tiled floor could be replicated without utilising 3 mm joints, and incorporating piped expansion joints only around the perimeter of the tilework, (and at changes in material (e.g. at joints between stone and tiles, or tile and arcade)), not through it.

For these reasons we find no merit in the Options Appraisal's technical justification, grounds of which were covered in depth at consistory court in 2021.

In our view, the only substantive new evidence presented by the Options Appraisal is the matter of cost, of which no real details were provided in 2021.

We don't suggest that the figures presented have been artificially inflated, but it seems only right to scrutinise them closely.

Firstly, while we welcome the parish's desire to obtain tiles of the highest quality, we would suggest that sourcing tiles from a provider other than Craven Dunnill would be one way of reducing costs. Has the parish explored the option of purchasing replacement tiles from elsewhere? This could reduce the financial burden considerably.

Furthermore, we would welcome a little more detail of who is quoting the figures for workmanship cited in the appraisal. It is customary to obtain a number of (generally three) quotes for work such as this, and it may be that a suitable level of workmanship could be obtained less expensively from alternative craftspeople.

Even on the basis of the figures that are quoted, the difference in cost between a full re-creation of Steet's floor (as indicated in Option 2) and the parish's preferred proposal for an all-stone floor (Option 4) is £18,800. Whilst acknowledging this discrepancy, in the context of the entire project, and given that Option 2 would preserve the significance of the interior whilst Option 4 would cause serious harm to the significance of the building, we contend that this is not an unreasonable sum. If cheaper tiles could indeed be sourced from elsewhere (as seems likely), then the difference could of course be reduced further. We note the parish's concern over the lack of correspondence between the proposed location of the font and the floor beneath it, but this is a minor design issue that could be readily addressed.

There is no evidence that the parish has attempted to raise the funds for a reinstatement of Street's floor. In his Judgment, the Chancellor justly noted that a reinstatement of the tiled floor surfaces might offer the parish an additional means of fundraising, and it is certainly the case that grants for this type of work are obtainable. By way of assistance, the Victorian Society would gladly write a letter of support that could accompany any application the parish might make for grant funds for this specific element of the scheme.

Finally, a minor point, but we would just like to observe that the floorplans in the Options Appraisal indicate the retention of fewer benches than was permitted under the faculty. This is surely a basic error, but in the interests of accuracy this ought to be amended.

#### *The response of the petitioners*

17. The petitioners responded to this letter by way of a letter that was forwarded to me on 16 January 2023. This reads:

*In November 2021, we were directed 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' with the specific caveat that 'this may prove to be difficult or impracticable'.*

After lengthy consultations with our architects, Brocklehurst, consultants Artorius Faber, Craven Dunhill Jackson, Savvy and members of the DAC, we submitted our revised plans in October 2022. In November 2022, the DAC discussed our scheme and *‘noted that the parish had gone to great lengths to understand the condition and design of the existing floor, and to carefully consider the implications of each proposed option.’* The time and effort which had been spent on this work was clear and greatly appreciated by the DAC.

We are therefore disappointed that the Victorian Society finds *‘no merit’* in the report produced by these professional bodies together with members of the DAC. In contrast to the Victorian Society, we acknowledge the care and professionalism exhibited by all parties concerned with the production of our report and we believe that in these matters we must be guided by their expertise, recommendations, and conclusions.

Regarding the Victorian Society’s *‘minor point’* our document is concerned with the nave floor and the drawings do not *‘indicate the retention of fewer benches than was permitted under the faculty’*. As agreed by all parties we are retaining a meaningful number of pews and each drawing may not accurately reflect the positions and number of all pews (20), tables (15) and chairs (100).

The Victorian Society have stated that they would support *‘a full recreation of Street’s floor’* indicated in Option 2 (Replicate Floor Design with Reproduction tiles) as this *‘would preserve the significance of the interior’*. The Victorian Society have also restated *‘that the loss of Street’s floor would cause serious harm to the significance of the building. This view was supported by the Society’s expert witness’*.

However, we would like to point out that this same witness, responding on behalf of Historic England, stated to us in November 2018 that

*‘Having seen the carpets lifted and the condition of the floor I accept that it is not in good condition and may have to be changed. **I think that the sketch proposals shared (see below) could form the basis of a scheme which we could accept.** Key issues would be the treatment of the nave floor, which would have to complement the character of the building, and the number of pews retained, which would need to be meaningful.’*

[The reproduced floor sketch (extracted from the February 2018 Design Proposal), shared with Richard Peats, showed a new tiled floor extending to all of the nave.]

In conclusion, the Victorian Society support for Option 2 (Replicate Floor Design with Reproduction tiles) is not a viable choice for us as it does not have the support of the DAC. The DAC do however support Option 3 (a new stone floor with the creation of a tiled east to west central aisle) and Option 4 (all new stone floor to design by Brocklehurst Architects in collaboration with Artorius Faber) as both may be considered meaningful treatments that complement the character of the building and the number of pews retained.

Finally, to re-iterate, we are reapplying to the court for a variation of the faculty to allow us to proceed with Option 4 (all new stone floor to a design by Brocklehurst Architects in collaboration with Artorius Faber) as supported

by the DAC and being the preferred choice of our parishioners. We would welcome a prompt response in order to mitigate any further delays and additional costs.

*The views of the DAC*

18. In view of the reliance the petitioners placed on the views of the DAC, I invited the DAC to comment on the parish's letter. On 3 February I was asked whether the matter needed to go back to the full DAC committee, which would not be until March, or whether members could be sent a 'round robin' email inviting their comments. Since I was reluctant to leave the matter over to the DAC's March meeting, I proposed the latter course. Unfortunately, due to the pressure of work being experienced by the Diocese's church building officers, this did not prove to be feasible. Thus it was that the matter fell to be considered by the DAC at their next meeting on the afternoon of 13 March.

19. The relevant extract from the minute of that meeting was provided to me on the evening of 16 March. It reads:

The DAC, in coming to its decision, was aware of information regarding project delivery costs and timeframes, and the mood and morale within the congregation.

In 2021 the project costs were estimated to be £550k and in the 2022 report the differing floor finishes were estimated as follows:

Floor Finish Option 1, £272k	[In fact, £272,400]
Floor Finish Option 2, £73k	[In fact £73,600]
Floor Finish Option 3, £57k	[In fact, £57,600]
Floor Finish Option 4, £54k	[In fact, £54,800]

In 2023 the parish have invited tenders for the project, with a start date after Easter 2023 and a completion date before Advent 2023. The best tender response is £850k excluding VAT and professional fees. In order to keep the project viable and moving forwards the parish lead has asked the architects and contractors to find savings of £175k. To simplify the tender process the parish instructed contractors to only quote for Option 4.

The project was originally scheduled for 2022 but was delayed addressing the objections raised by the Victorian Society. In the past year they have incurred further costs, both through the delay and further professional fees, to produce the report requested by the judgment. The project has so far cost the parish £150k over six years. The parish lead has informally reported to the Head of Church Buildings that the parishioners are at the point where further delays or increases in cost may result in the project being abandoned. Finally, the parish will be entering into a 12-to-24-month interregnum from Easter 2024 and feel the moment is now to make the project happen.

The DAC echoed the Chancellor's concerns about the Victorian Society's expert witness's evidence on the ease of recreating a tiled floor (option 2). The

Chancellor's judgement accepted option 2 might be very expensive, prohibitively so (only regretting at that point the lack of actual figures), and the parish have now demonstrated that to be the case (and incurred further cost paying advisors in doing so). The DAC are of the view that the floor is not of sufficient significance to warrant replicating, that to do so would be unduly expensive and impractical, and in addition, would be inappropriate from the perspective of accepted conservation philosophy.

This being the case, the DAC continued their support for the parish's preferred, and cheapest option, option 4. The practical reasons for supporting this option, and not others, were outlined by the DAC in the memorandum to the Chancellor issued at the time of the Notification of Advice (Dec 2020) and updated in January 2021. The September 2022 floor report by the parish further convinced the DAC that option 4 is the most appropriate, not only for practical reasons, but also to provide a coherent, honest, design for the re-ordered interior.

In November 2022 the DAC also stated that they would, as a compromise, support option 3, and it reiterates that support in the event that option 4 is not felt permissible by the Chancellor.

20. The original note to the Chancellor referenced in this extract was reproduced at paragraph 8 of the original judgment but (for ease of reference) it included the following:

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 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 as Historic England suggest in their latest letter. 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 justification for the present floor proposals was detailed further in the August 2020 consultation documents.

21. The January 2021 update, issued following a further response from the Victorian Society which post-dated the issue of the Notification of Advice, was reproduced at paragraph 12 of the original judgment. It included a further explanation as to why the DAC had resolved to recommend the proposals for faculty permission which, for ease of reference, I repeat as follows:

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 Street throughout the walkways of the nave ... 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 ... 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.

#### *Analysis and conclusions*

22. In approaching this variation application, it is important to bear in mind that the petitioners do not come to this court with a clean sheet of paper, unaffected by my previous judgment. FJR 20.3 (1) provides that:

If it appears to the court just and expedient to do so, it may order that any faculty, judgment, order or decree — (a) be set aside (either in whole or in part); or (b) be amended.

By sub-rule (2)

If the court is considering exercising the power conferred by paragraph (1) (b) in a manner that would constitute a substantial change in the works or proposals already authorised by faculty the court must give such directions as to the giving of notice to the public and to such other persons and bodies as it considers just.

23. At paragraph 40 of my judgment and following, I analysed the petitioner's proposals for the floor by reference to the *Duffield* framework. I concluded that:

(1) 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.

(2) The petitioners (upon whom the burden rests) had not adduced a sufficiently clear and convincing case that a stone, rather than a tiled, floor was the only practicable solution to achieve the demonstrated need of introducing working, and effective, underfloor heating into the church building.

24. It is important to bear in mind the reasoning that led me to the second of these conclusions. At paragraph 46 I referred to the suggestion by the petitioners that the Victorian Society's proposed solution would be more time-consuming and expensive than their preferred solution of a stone floor. I acknowledged that that might well prove to be the case, although I pointed out that there had 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 noted that, according to the petition, this project was already estimated to cost in the order of £750,000, and that the church would need to raise further sums totalling about £407,000 in order to finance the costs of the works which were then proposed. I indicated that it was not clear how much more expenditure a tiled floor would require. I said that:

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.

25. The crux of my decision is at paragraph 47, which I reproduce in full:

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.

As Brocklehurst point out in their report, this paragraph contains a typographical error and the words that I have emphasised in bold type should be taken to refer to the east and west ends of the nave rather than the north and west.

26. In agreement with the further representations from the Victorian Society, I do not consider that it is appropriate for the petitioners, or their professional advisers, to seek to revisit the conclusion set out in the court's judgment that the loss of Street's floor design would cause serious harm to the significance of this listed church building, or to re-engage in discussions over the respective merits of retaining or losing his floor design. In any event, nothing in the further material that the petitioners have placed before the court affects the court's determination that 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. Therefore, the question for the court is whether any of that further material renders it *'just and expedient'* for the court to vary its faculty so as (in summary) to allow the petitioners to proceed with Option 4 (an all new stone floor), as supported by the DAC, rather than Option 2 (replicating Street's floor design at the east and west ends of the nave and in the central and side aisles with reproduction tiles), as advocated by the Victorian Society, and previously determined by the court. Whilst I acknowledge that this will come as a disappointment, perhaps verging on a bitter blow, to the petitioners, to the parish, and even to the DAC, I consider that this question must be answered in the negative.

27. Nothing in Brocklehurst's impressive Floor Options Appraisal leads me to alter my conclusion that the petitioners have failed to demonstrate a sufficiently clear and convincing case that a stone, rather than a tiled, floor is the only practicable solution to achieving the



demonstrated need of introducing working, and effective, underfloor heating into this church building. In terms of practicalities, whilst having different depths of materials would increase the complexity of the construction, Brocklehurst acknowledge that they “*are not able to demonstrate that an entirely stone floor is the only practical solution*” and that “*it is not impossible to combine*” reproduction tiles with a stone floor: see paragraphs 8.4.1 and 9.2.1 of their Floor Options Appraisal. In agreement with the further representations from the Victorian Society, I am not persuaded that there is sufficient merit in Brocklehurst’s practical justification for an all-stone floor, the arguments for which were considered in depth in the court’s earlier judgment.

28. In my judgment, the only substantive new evidence presented by Brocklehurst’s Floor Options Appraisal is: (1) the in-depth survey of each existing floor tile that has been undertaken which (from the information provided at paragraph 4.2) would appear to have resulted in a reduction in the estimated number of salvageable tiles, and (2) the costings for each option, of which the petitioners had provided no details in support of their original petition (as noted at paragraph 46 of my original judgment). I also note: (3) that the cost of the entire project has risen since the date of my original judgment such that the petitioners are looking to identify costs savings; and (4) that the parish lead has informally reported to the Head of Church Buildings that the parishioners are at the point where further delays or increases in cost may result in the project being abandoned.

29. I agree with Brocklehurst’s conclusion that Option 1A (replicating the floor design with original tiles) is not feasible as there are simply insufficient original tiles capable of salvaging. I also agree that Option 1B (replicating the floor design with bespoke replica tiles) is prohibitively expensive because the church would not be able to proceed with their proposals if more than £200,000 were to be added to the construction costs.

30. For the reasons Brocklehurst have given, I would also discount Option C, which would replicate the current central aisle pattern in reproduction tiles, but use diagonally laid stone for the walkways, and square laid stone for the seating areas. Although acceptable in cost terms, this option would not be faithful to Street’s original design concept, and (as Brocklehurst rightly observe) would really amount to no more than a vain attempt “*to accommodate too many stakeholders*” which would almost certainly end up “*satisfying none of them*”. I note that Brocklehurst have not considered the option (tentatively ventilated at paragraph 47 of the court’s original judgment) of limiting any reproduction tiled flooring to the central aisle and the east and west ends of the nave, leaving the north and south aisles to be covered by a stone surface.

31. That leaves Option 2 (replicating Street’s floor design with reproduction tiles) and the petitioners’ (and the DAC’s) preferred Option 4 of an all stone floor, with walkways and seating areas demarcated by using contrasting, but complementary, stone surfaces. The former was estimated to cost some £18,800 more than the latter; and, with cost inflation, this cost difference may well now have risen to approaching £22,000. In the context of the overall costs of this project, this may well not seem a large sum; but I appreciate that any increase in costs, however small, is unwelcome, particularly in times of high costs inflation, and particularly when the reason for the costs increase is attributable to a design option which is contrary to the wishes of the parish. However, as Chancellor Singleton KC (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.

The option now adopted for the flooring of this Grade II\* listed church must be faithful to the glory of God, and to the people of the past, the present, and the future.

32. In my judgment, the petitioners have failed to show a clear and convincing justification for Option 4 in preference to Option 2. Option 4 will cause greater harm to the significance of the church as a Grade II\* listed building than Option 2; and that greater harm cannot be justified by the costs savings which would follow from the adoption of Option 4. I do not agree with Brocklehurst's view that "*it would be more in keeping with Street's original design to simplify the floor layout to suit the proposed furniture layout and use of the church rather than rigidly stick to a design which has lost some of its relevance now that the pew arrangement and overall use of the church is different*". That ignores the importance of Street's original floor layout and design in the context of the interior of the church as a whole. As Historic England pointed out in their written representations (cited within paragraph 19 of the original judgment), the fabric of the tiles themselves is of relatively limited significance; but the simple pattern of the tiles in the nave, together with the affordability of the material, ensured that the chancel appeared as the most special part of the building:

The interior of the church survives largely as [Street] 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.

Without reproducing Street's simpler tiled flooring in the nave walkways, the character, the quality, and the coherence of Street's entire design for the interior of this notable church building will be significantly diminished, and damaged. In my judgment, a stone floor covering the whole of the nave will look seriously at odds with Street's beautifully tiled chancel. The DAC have rightly recognised "*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*". Nevertheless, the DAC "*are of the view that the floor is not of sufficient significance to warrant replicating, that to do so would be unduly expensive and impractical, and in addition, would be inappropriate from the perspective of accepted conservation philosophy*". I am afraid that I cannot agree. In my view, supported by the evidence cited in my original judgment, the floor is

of sufficient significance to warrant replicating; to do so would not be unduly expensive and impractical; and, in circumstances where it is not the original fabric that is of significance, but rather the layout and design of the floor of the nave, I do not accept that the use of reproduction tiles would be inappropriate from the perspective of accepted conservation philosophy.

33. I agree with Brocklehurst that simply replicating the existing tile pattern and layout should not result in any clash with the proposed fitted furniture and pew layout of the church. Brocklehurst also point to a clash with the font location, the welcome area and the community kitchen area. But I agree with the Victorian Society that these are minor design issues which can readily be addressed by adapting Street's original floor layout to the present layout of the furniture within the church. It is not necessary slavishly to follow that layout where this is no longer appropriate in the light of changed circumstances, so long as the coherence of Street's original layout is maintained. Thus, I consider that it would be appropriate: (1) to reduce the western extent of the area of tiled flooring at the east end of the south of the nave now that the pulpit has been moved to the north side of the east end of the nave, but to correspondingly widen the extent of the area of tiled flooring to the north, in front of, and surrounding, the pulpit; (2) to use stone in place of tiled flooring in the area of the two short 'spurs' at the far west end of the north and south aisles (to the west of the porch) in light of the pew removal from these areas; and (3) to extend the area of tiled flooring around the font in light of its relocation a little further to the east (as shown on the floorplans for Options 3 and 4). The precise detail of these changes can be agreed with DAC officers.

34. Subject to the minor modifications indicated at paragraph 33 above, I refuse the variation application. I hope and pray that this decision will not lead the parish to abandon this worthwhile project, and that the work can now proceed apace. I welcome the offer by the Victorian Society to write a letter of support that could accompany any application the parish might make for grant funds for the flooring element of the proposals.

35. In accordance with my usual practice, I will charge no fee for this further written judgment; but the petitioners must pay any additional fees incurred by the Registry in dealing with this variation application.

*David R. Hodge*

The Worshipful Chancellor Hodge KC

Easter Monday, 10 April 2023