



**Neutral Citation Number: [2020] ECC Oxf 3**

*Faculty – Grade II\* listed rural church –North Oxfordshire – Installation of new stained glass window depicting a ‘Tree of Life’ design in the east window of the Lady Chapel - Faculty refused*

**Application Ref: 2018-027087**

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

Date: 8 March 2020

**Before:**

**THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR**

**In the matter of:**

**ST MARY THE VIRGIN, NORTH ASTON**

**BETWEEN:**

**THE REVEREND MARCUS GREEN (Rector)**

Petitioner

And

**KILDARE BOURKE-BORROWES**

Party Opponent

Determined on written representations and without a hearing

The following cases are referred to in the Judgment:

*Re St Alkmund, Duffield* [2013] Fam 158

*Re St Gregory, Offchurch* [2000] 1 WLR 2471

*Re St. John, Out Ramcliffe* [2017] ECC Bla 11

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

*Re St Mary, Longstocke* [2006] 1 WLR 259

*Re St Peter, Shipton Bellinger* [2016] Fam 193

*Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3

## JUDGMENT

### Background facts

1. This is a faculty petition dated 12 October 2018 by the Reverend Marcus Green, the rector of this Grade II\* listed rural church in North Oxfordshire (which is situated several hundred yards from the centre of the village and within the North Aston Conservation Area), seeking authority to install a new, contemporary stained glass window (but incorporating two small original late medieval glass eagles) in the east window of the south chapel (known variously as the Anne Chapel and the Lady Chapel) in place of the existing clear glass window and to carry out repairs to the external stone reveals. Originally, one of the churchwardens, Mr Clive Busby, was also a co-petitioner but because he had lodged a notice of objection to the petition he was removed as a petitioner by an Order made at a Directions Hearing held at the Church on Tuesday 15 October 2019.

2. The existing window is a 15th Century three-light opening, with tracery above, which is plain glazed apart from two small original late medieval glass eagles in the tracery. The Statement of Significance describes the existing window thus:

“The tracery lights of the Lady Chapel east window contain a number of fragments of late medieval glass. Two have eagles with coronets. These are in situ and relate to the adjacent Anne monument. Two other lights have three medieval fragments. One depicts a hand from a large figure, clearly not in situ. The other two fragments are probably not in situ, but a detailed inspection would be required to confirm this.”

Mr Nicholas Kneale, who lived in the parish, wished to donate a new stained glass window for the east end of the south chapel at St Mary’s Church. Mr Kneale died in October 2018 but his widow and family are keen to continue with the proposed commission. There has been much discussion about this proposal within the Parochial Church Council (the PCC) and more generally within the parish. The artist chosen by the donor is Miss Nicola Hopwood, a freelance stained glass artist and tutor in stained glass, whose commissions for public places would appear to date as far back as 1988 and who proposes to make the window in her studio near Hay on Wye. Her chosen theme is the Tree of Life, which appears first in the second chapter of the

Bible (Genesis 2) and appears also in the very final chapter (Revelations 22). The artist's expressed aim is to design a window

“... which explores and develops the theme, to which the viewer can return to find something to reflect upon and enjoy. A window for today and the future, respectful of and sympathetic to the church, but refreshing and uplifting for now and future generations. The chapel is an area of space and light; and I would select and work with the glass sensitively, in order to retain this feeling and enhance the opportunity for peaceful contemplation and prayer. The design is a watercolour; and will be enhanced by the translation into glass.”

An image of the most recent iteration of the design is attached to this judgment. The petitioner has written a very helpful and detailed piece on the iconography of the design; but Ms Hopwood summarises the main symbols as follows:

*Tree of Life:* A vigorous Tree of Life (apple or hawthorn), in blossom, firmly rooted in the rolling Oxfordshire countryside. The primary symbol of the Christian faith is there to be found at the centre of the tree symbolising Christ in this community.

*The Dove:* The Holy Spirit, Peace and Reconciliation

*The Owl:* Wisdom, insight, protection

*The Skylark:* Music - in worship, communication, ministry, pointing towards heaven

*The Deer:* Spiritual authority, piety, devotion, God caring for his children

*The Lamb:* Christ, the Lamb of God

*The Butterfly:* Resurrection

*Text:* The fruit of the spirit (Galatians 5 v22-23) dropping from the tree of life.

The window would be made using the finest handmade mouth blown glass (from England and Germany), with detail acid-etched, painted and fired, assembled with lead. The birds in the upper part of the window would be surrounded by lead, while the deer would be painted and fired and the lamb acid-etched to clear within the glass. The 15th Century eagles would be left in place, incorporated as an appropriate element of the design. The very small early pieces of glass (which are cracked and probably not in their original position) immediately above these eagles would be carefully removed and saved for display within the church. It is proposed that the existing ferramenta to the outside of the window be removed and replaced with horizontal, stainless steel, black-painted bars inserted to the inside of the new glass. Some repairs to the exterior stonework are needed and would be carried out. Ms Hopwood has summarised her intention as being:

“...to make an elegant, appropriate and engaging window for now and the future, a window which allows further exploration of our faith, dedicated to the Glory of God.”

In response to initial reservations expressed by the Diocesan Advisory Committee (the DAC) about the content and style of her original design, Ms Hopwood has revisited three specific areas with a view to producing a more spiritually robust and defined iconography, incorporating a more unified, and less naturalistic and sentimental, style of design for the animals, and including the final Fruit of the Spirit (temperance).

3. The church of St Mary the Virgin was first listed as a Grade II\* building on 8 December 1955. The listing description reads:

“GV II\* Church. C14 and C15; restored and enlarged c.1866 by Sir G.G. Scott. Limestone rubble with marlstone- and limestone-ashlar dressings; lead and concrete plain-tile roofs. Chancel, south-east chapel, north-east vestry, nave, north and south aisles, south porch and west tower. Chancel retains a 2-light traceried C14 window to south but the corresponding window to north is C19 as is the rebuilt east wall and 3-light window. South chapel, extending the aisle eastwards, has two 3-light early-C14 windows with cusped intersecting tracery, but its 3-light east window has a casement moulding and Perpendicular tracery. The plain ashlar parapet is probably also C15 and is continued on the aisle at a lower level. 2-light window to right of porch, lancet to left, and the south door with continuous mouldings and head stops are C14. Porch is probably mostly C19 and has an entrance arch of 2 chamfered orders. North aisle has similar windows plus a simple chamfered arched door. Steep-roofed C19 vestry, to east, has two 2-light windows, possibly incorporating some medieval work, and the 3-light east window is C15 and similar to that on the south chapel. C15/C16 clerestory has 2-light square-headed windows. Slender late-C15 tower, with a crenellated parapet and crocketed pinnacles, is in 3 stages above a high moulded plinth and has diminutive diagonal buttresses; the top stage has transomed 2-light traceried openings and on the south is a niche containing a seated figure above a shield. The 3-light Perpendicular-style west window is probably C19. Interior: chancel has a small C14 piscina, and has 2-bay arcades to north and south, the latter incorporating a C15 arch, the remainder C19 as is the chancel arch. 2-bay nave arcades of 2 chamfered orders with octagonal columns and moulded capitals are C14, but the tall tower arch, breaking forward into the nave, is C15. Arch leading to south chapel from aisle is contemporary with the arcade, and the chapel has a C14 piscina. Chapel roof, with moulded cambered tiebeams and purlins is C15; other roofs are C19, the nave with traceried trusses, and with cusped bracing rising from elaborate wall posts and also supporting the ridge beam. Elaborate oak fittings are all C19 and include return choir stalls, a traceried rood screen, and bench pews with blind-traceried ends. Circular panelled font is probably C17 but may be earlier. Fine C15 alabaster monument in south chapel has 2 recumbent figures on a panelled chest carved with monks holding staves and rosaries. C19 stained glass in chancel windows; fragments of C15 glass in tracery lights of chapel. (*Buildings of England: Oxfordshire*: p718; *Victoria County History: Oxfordshire*: Vol XI, pp18-19)

4. The Statement of Significance notes that the list entry for the church is “relatively comprehensive, drawing attention to the surviving medieval architecture and the alabaster Anne monument and to Scott’s mid-nineteenth Century restoration of the church”. Essentially, the church consists of a three-bay chancel and a two-bay aisled nave. A chantry chapel, now referred to as the Lady Chapel, stands to the east of the south aisle and opens into the chancel with two continuously moulded arches. An organ chamber and vestry were added by George Gilbert Scott in the corresponding position on the north side. The tower intrudes into the nave at the west end. In summary, this is a particularly important 13<sup>th</sup> – 15<sup>th</sup> Century church building (extensively restored in 1866-7) which is of more than special architectural and historic interest and is comprised within the most significant 8.3% (but not within the top 2.5%) of listed buildings. Apart from the western arch through to the chancel, the Lady Chapel was largely untouched by the 19<sup>th</sup> Century restoration and re-ordering.

5. The volume of Pevsner's *Buildings of England for Oxfordshire: North and West* by Alan Brooks and Jennifer Sherwood (2017 ed.) notes (at pp 426-7) that the church of St Mary stands apart from the village, almost overwhelmed by North Aston Hall from which its west tower (partially inset into the nave) is separated by only a few feet. Pevsner describes the south chapel as being contemporary with the nave arcades and as having two three-light south windows with cusped intersecting tracery but a late 15<sup>th</sup> century perpendicular east window and roof. In terms of stained glass, there are said to be four windows, all no doubt by Clayton & Bell: chancel E and S and S aisle SW, all c.1867; chancel N c 1879. In the south chapel the E window traceries have two eagles with crowns round their necks, and the SE four more eagle roundels, plus two larger ones with the Bull of St Luke and Eagle of St John; also remnants of a shield of Anne impaling Giffard, all c.1480-1500.

6. The Statement of Significance was first prepared by Brian O'Callaghan and Diana Coulter of Artemis Heritage in June 2016 and was revised and updated in July 2018. It refers to a contemplated "modest" re-ordering of the interior of the church, "including the possibility of a new stained glass window being donated for installation in the east window of the Lady Chapel". A section headed "Understanding the Site" describes the 14<sup>th</sup> Century south chapel thus:

"On the south side of the chancel stands a large chantry chapel. Two arches open from this chapel into the chancel. The western arch seems to be entirely by Scott. The eastern arch seems to contain substantial amounts of medieval masonry. When viewed from the exterior it is clear that this chapel is larger and more elaborate than the adjacent aisle; the plinth and the large three light windows with cusped intersecting tracery emphasise its status. Internally the piscina has a two-centred gothic arch with trefoil cusping. This and the window tracery suggest a date in the first quarter of the fourteenth century. An arch connects the south aisle to this chantry chapel. The right hand side of this arch is strangely distorted. It seems that the left-hand side of this arch belongs to the original nave and aisle and that this was widened along with the aisle as part of a redevelopment that included the building of the chantry chapel. It is notable that there is no evidence that the chantry chapel was anything other than contemporary with the south nave aisle. There is for example no 'orphaned' corner buttress or evidence of a break in the masonry."

Moving on to the 15<sup>th</sup> Century:

"The next major intervention in the church dates from the late fifteenth century. The most striking element of this date is the Anne monument. It seems likely that many of the other enhancements formed part of an extensive and elaborate scheme linked to this tomb and chantry. The monument itself is made of alabaster and depicts an armed knight and elegantly dressed lady. On each side an angel holding a shield is flanked by six bedesmen. Such bedesmen are unusual but not exclusive to North Aston, other examples can be seen at Tong [Staffs] and Elford [Staffs]. They were undoubtedly intended to represent those upon whom charity had been bestowed (Corporal Acts of Mercy) in return for prayers for the deceased patron. There is no sculpture on the east end of the tomb chest, suggesting that it may have been intended for its current location within an arch. This would be entirely consistent with late medieval practice (see for example Ewelme [Oxfordshire]). There is evidence surviving that the sculptures were originally elaborately painted. On the basis of the style of armour and costume of the lady this tomb must date from the end of the fifteenth century. The consensus is that

the tomb commemorates John Anne and his wife Alice. Heraldry in stained glass recorded in the hall, the surviving glass in the church and on the tomb and tower all link the Anne family with the Giffards and the Ashtons. The monument was conserved in 2012.

The east window of the chapel must be of the same date as the monument and the surviving fragments of stained glass, here and in the chancel, would seem to be contemporary. These show a winged bull, representing St Luke. On a similar scale is an eagle, possibly representing St John (though the eagle has no nimbus). There are also eagles with coronets around their necks, which may be heraldic devices. Additionally, there are several smaller eagles with neither nimbus nor coronet. In the east window there are fragments from a shield depicting Anne impaling Giffard, which was recorded as complete in 1805. A surviving fragment of inscription originally read “dominus noster Ashton et uxor eius MCCCC octogesimo” (see Newton 1979 pp157-8). The profusion of eagles, the symbol of St John the Evangelist, must be a reference to John Anne. It is possible that the chapel was dedicated to St John. The chapel roof has been extensively restored but does contain some late fifteenth-century timbers.”

7. According to the Statement of Significance, the significance of the church rests very largely on its surviving medieval fabric, which is assessed as being of high significance on evidential, historic and aesthetic grounds. The Anne monument on the west side of the Lady Chapel is said to have outstanding historical and aesthetic value and is assessed as being of high significance. The four Victorian stained glass windows in the chancel and the south aisle are said to have communal, and some aesthetic, value; being of local interest, they are assessed as being of low to moderate significance. The Statement of Significance considers the impact of the installation of a new stained glass window in the east window of the Lady Chapel. It expresses the opinion that:

“The installation of a new window would not in itself be harmful to the significance of the listed building. The design seen on 13 June 2018 retained the two eagles in place. The three other fragments were not incorporated and would thus need to be relocated elsewhere in the church. If the three fragments are confirmed not to be in their original location, then relocating them would have **negligible** impact on their significance.”

By way of mitigation, the Statement points out that the

“... medieval glass in the adjacent south windows is of the same period and probably from the same glazing scheme. The opportunity should be taken to have these professionally cleaned and conserved. This would more than compensate for any harm caused by the installation of new stained glass.”

8. Having given the petition their preliminary consideration, the DAC indicated that whilst they were amenable to the principle of the introduction of a stained glass window in the east window of the Lady Chapel, they had reservations about the content and the style of Ms Hopwood’s existing design which (as indicated earlier in this judgment) have led her to revisit three areas of her original design. The Notification of Advice eventually issued by the DAC on 14 March 2019 does not object to the proposal being approved by the court. The DAC do not consider that the proposal is likely to affect the character of the church as a building of special architectural or historic interest. The DAC’s principal reason for advising that they do not object

to the proposal, rather than positively recommending it for the court's approval, is said to be their continuing reservations concerning

“... the congruity of both the style and content of the juxtaposed tree of life and the animal symbols surrounding it. The style of the animals is sentimental, and they appear to be arbitrarily included [in] the design rather than representing living parts of either the Oxfordshire landscape or God's wider creation. The DAC did not feel strongly enough on this issue to object, however.”

The DAC stipulated that an interpretative document, explaining the theology of the window, should be made permanently available in the church. The DAC agreed to the petitioner's proposal for the materials, and the location, of a commemorative plaque, and they expressed a preference for this to utilise the copperplate light (“all capitals”) style of lettering. They also expressed a preference for the smaller medieval fragments of glass to be stored in the secure display case within the church, which already contains a number of historical fragments from the church. Finally, the DAC stipulated that an image of the proposed window design should be displayed next to the corresponding public notice, along with the other submission documents.

9. The DAC required the local planning authority to be consulted about whether planning permission would be needed for the new window. On 28 June 2019 Cherwell District Council granted planning permission for the new window under Application No: 19/00636/F. In the course of considering the planning application, Historic England were consulted but they did not wish to offer any comments. The view of the Council's Design and Conservation Team was that:

“A modern, stained glass window in the proposed design is considered to be an appropriate addition to the building which does not negatively impact on the external visual appearance of the building or the character and appearance of the conservation area and therefore the planning issues are considered to be negligible.”

The DAC did not recommend that the Church Buildings Council (the CBC) should be consulted about the proposal. However rule 9.6 of the Faculty Jurisdiction Rules 2015 (the FJR) requires the Chancellor to seek the advice of the CBC on any proposal that involves the introduction of any article (including a fixture) of special historic or artistic interest. The court therefore required the CBC to be consulted about the proposal. With commendable speed, the CBC responded indicating that they appreciated that the design of the new stained glass window incorporated the medieval eagle glass and they were content for the other medieval fragments of glass to be relocated to the display case providing that was a secure location. On that basis, the CBC were content to defer in this instance to the views of the DAC.

10. The required public notices were duly displayed from 14 March to 13 April 2019. These provoked a number of letters in response, both in support of, and in opposition to, the petition. Three letters of support were received, one from Mr Kneale's widow, one from one of his children, and one from the treasurer of the PCC. The latter spoke of her concern about the “lobbying letter” which she and many others had received from Mr Kildare Bourke-Borrowes against the installation of the proposed new window. She also describes the window as “a modern depiction in praise of life in North Aston, showing scenes of the countryside from the village green and the abundance of wildlife and yet it reflects back to the Psalms”; and she says that, for her, “it is both worshipful and spiritually uplifting”.

11. Letters of objection were received from eight parishioners who then failed to respond to notices from the Registry sent in accordance with rule 10.3 of the FJR. Objections were advanced on the basis that the east window of the Lady Chapel was the wrong location for the proposed window; that the design of the window was poor, inappropriate, and not in keeping with the age or the character of its proposed setting; that the money would be better spent on other, more vital work (such as a much-needed disabled access); and that there had been inadequate consultation, the proposal had been badly mishandled, and the views of those opposed to the window had been cast aside without due consideration. One objector described the design as having a “saccharine, sentimental quality. It is not clearly Christian. It is not clearly anything at all. It would sit as appropriately in the class of a primary school or even in a suburban conservatory, but even they would soon weary of it.” Another objector (a former member of the PCC who had resigned in November 2018 over the window) commented: “This ‘one off’ window will stick out like a sore thumb in our beautiful 14<sup>th</sup> Century church potentially creating an eyesore more suited to a children’s nursery than an historical church.” She concluded with the plea: “Please don’t let our beautiful church be spoiled by a modern eyesore; a controversial unwanted gift forcing a change mistakenly made in the name of progress.” Another objector (a member of the PCC) wrote:

“The current glass, clear except for the existing original eagles, allows for uncluttered simplicity and a serene, prayerful space. The stained glass in the chancel is dense and ‘busy’, and the clarity of the Lady Chapel (as we know it) is especially valued. ... I find it hard to convey in words, but this design limits rather than expands the sense of the Divine in this place. The design is ‘pretty’ rather than beautiful or inspiring, and definitely not suitable for the most obvious window in the church, being more reminiscent of a greetings card.”

12. Letters of objection were received from a further five parishioners who responded to notices from the Registry sent in accordance with rule 10.3 of the FJR by saying that they simply wished for their objections to be left on the record to be taken into account by the chancellor in reaching a decision on the petition pursuant to FJR 10.5(2) (as I do). One of these letters was from Mr Clive Busby, a churchwarden and one of the original petitioners, and another was from Mrs Annabel Bevan, the other churchwarden. A third letter came from a member of the PCC (and a long-serving licensed lay minister in the benefice) who stated that he had only voted for the installation of the window on the basis that it would have been an un-Christian act to reject such a well-intentioned gift and that he now deeply regretted having done so. This objector complained that the new window would “dominate the church far too much in the Lady Chapel”, describing it as “bland in expression and intrusive in its colour and design”. The key issue was said to be its position because “the Lady Chapel is a space much loved for its simplicity and purity of light; it is a holy space and the window would trivialise that.” Another objector welcomed the proposal for a new stained glass window but only elsewhere in the church, commenting that “The Lady Chapel is perfect as it is and would suffer from any further embellishment.” Another objector suggested that the new window should be installed to the west of the main door, describing the proposed design of the window as “anodyne, even insipid”, and commenting that “its installation in the Lady Chapel would be a grave mistake, both spiritually and aesthetically ... This proposed window would not be a fitting addition to the Chapel and would only serve to diminish its peaceful purity.” Mrs Bevan described the design of the window as questionable but her main concern was its position. If a different location were chosen, everyone would be delighted. She commented: “... this window is going to be here for

the rest of everyone's lives. In order to receive a gift, there should not be the feeling that we are losing something precious." Mr Busby criticised the design as being unsuitable for the window in question and compared installing the proposed window with "imposing a set of modern Scandinavian library shelves on the Old Bodleian Library".

13. The only objector to serve particulars of objection under FJR 10.3 is Mr Kildare Bourke-Borrowes who thereby became the sole party opponent. He objects to the installation of the new stained glass window on five grounds (which I have re-ordered and re-numbered for clarity of exposition):

(1) The serious lack of clarity in the procedure and process, which has involved the rector and petitioner in effectively "slipping" the matter through the PCC.

(2) The lack of contact and consultation between the donor family and the PCC which has severely harmed the chance of any consensus being reached concerning the position and/or the content of the window.

(3) The lack of any real choice over the subject-matter and the artist which has reduced the role of the PCC to practically that of a cipher.

(4) The amount of serious dissent and opposition to the proposed window within the church community.

(5) The subject-matter and the position of the proposed window. The party opponent emphasises that the east window of the Lady Chapel is the dominant window of the church. Upon entering the church through the south porch and the door it is seen immediately, through a very large arch. It is very close to the congregation and is the most prominent window light in the building. By contrast, the chancel east window is distant and effectively gloomy. At present, the window is of entirely clear glass with a couple of small heraldic fragments and many people find that its clear light is intensely spiritual and wish it to remain that way. Little could be more inappropriate than the proposal to insert, in this prominent window of a great and ancient Christian building, an image of a tree of life, adorned with some symbolic animals/birds and some vaguely uplifting words.

14. In his reply the petitioner asserts that there are factual errors and misleading statements in the party opponent's objections on matters of process, and misleading statements and personal judgments which lie in contravention to established precedent on matters pertaining to the substance of the petition.

15. Preliminary procedural directions were given by the court on 2 July (and re-issued on 19 July) 2019. At the Directions Hearing held at the church on Tuesday 15 October 2019 the parties consented to the petition being dealt with on consideration of written representations (rather than at an open hearing). Directions were also given for the service of written evidence (in the form of witness statements); and both parties were given permission to rely on the expert evidence of one expert witness (to be given in the form of a written expert's report).

16. Pursuant to these directions, the court has received:

(1) A witness statement dated 11 November 2019 and attachments from the petitioner. This witness statement reviews the events surrounding the donation and the process of the PCC's consideration of the offer of the new window. It provides the artist's CV and details her

experience as evidence of her suitability to execute the project. It focuses on evidence given to support the donation of the window by independent heritage experts, the DAC, Historic England and the local district council's conservation officer. It includes letters of local support for the proposed window (from, amongst others, the patron of the parish and the PCC secretary and treasurer) and a recent letter of continuing support from the family of the original (and now deceased) donor, expressing their fervent hopes that they will see the project finished and that the community will enjoy it and take comfort and inspiration from the 'Tree of Life'.

(2) A witness statement dated 1 December 2019 from the party opponent together with recent letters of continuing support for his opposition to the proposed stained glass window from the two churchwardens and the lay minister who had previously submitted letters of objection, images of the interior and the exterior of the east window of the Lady Chapel and of the proposed design, and a report from an expert architectural historian, Dr Steven Brindle FSA, dated 22 November 2019. In his witness statement the party opponent summarises the grounds of his objections as follows:

- (a) The basis of the design is a myth-tree which does not even correspond to the descriptions of it in the Bible, and nor has it any connection with the Cross of Christ which could lend it Christian acceptability.
- (b) A tree image above a sacred altar is contrary to Christian tradition and culture.
- (c) A tree image in almost the most striking and prominent position in the church does not proclaim the glory of Christianity and our belief – as it should.
- (d) Replacing a clear window in a lady chapel with a symbolism-filled tree image is without precedent in all local parish churches.
- (e) A tree image above an altar cannot be said to be enhancing the role of the church as a local centre of Christian worship and mission, as required by law.
- (f) There is substantial opposition to the proposed window within the PCC and the community; this will endure and the project is unnecessarily divisive among the congregation and beyond.
- (g) The proposed image has not been fully represented as a finished project, it would require theological interpretation to try to understand and appreciate it, it would alter the light and atmosphere in the Chapel adversely and permanently, and it is an uncomfortably unresolved and unfocused design.
- (h) The installation of the tree window would permanently detract from and damage the church's architectural environment and would not stand the test of time.

In Dr Brindle's opinion

"...the design of this window is inappropriate for a place of Christian worship. Its artistic quality is poor: it is not good enough to merit installation in a listed medieval church. Its trivial, generic content and sentimental character would be at odds with the seriousness that a permanent addition to a church ought to have. Its installation would cause material harm to the interior and character of this church by comparison with the existing situation."

On the specific issue of the harm that the proposed location of the window would cause to the church interior, Dr Brindle says this:

“The window’s lack of specifically Christian imagery would seem inappropriate given the proposed location, immediately above an altar. As things are, the lightness of the South Chapel provides an important balance to the relative darkness of the nave and chancel partly caused by the darker Victorian glass in the chancel east window. The existing glazing helps to make the South Chapel a suitable space for gatherings, or private reflection. It also provides a good view of the important 15<sup>th</sup> Century Ann [sic] monument, located between the chancel and the chapel. The installation of this window would impose its colouring in place of the clear light and intrude its tone of saccharine and easy sentimentality into the space. It is difficult to imagine it uplifting many people, and easy to imagine it causing irritation.”

(3) A responsive witness statement dated 2 January 2020 from the petitioner and an expert’s report dated 28 December 2019 from Canon Sandy Elliott, a lay canon of Hereford Cathedral and a teacher, lecturer, designer and illustrator of 50 years’ standing. In her report Canon Elliott states that she visited the church recently in the early afternoon and her first impression was of

“... a rather dark interior space but with a good area of light coming in through the three plain glass windows located in the South Chapel.”

She proceeds to address the subject of the design (noting that the subject of the ‘Tree of Life’ is “a frequently used motif and is welcome in any Christian church”), the design (noting that the theme and symbolism are entirely sound in terms of Christian understanding and that the overall effect is one of “a light sensitive touch, offering visual interest in a calm way, in a much valued light area of the church”), the composition (noting that “the animals and birds have an endearing simplicity which is accessible to young and old alike”), the location (noting that any coloured glass in the east-facing window in the South Chapel will impinge on the Anne monument but that is not necessarily something to worry about on the footing that the monument was once painted in red and gold and black and some gentle colour on it when the sun is up in the east may delicately animate it), and the artist (described as “one of the most respected, talented artists working in her medium in Britain today”). Canon Elliott concludes as follows:

“It is surely right that each age adds something to the fabric of their place of worship. Not only as an expression of ongoing respect and love for that sacred space, but to create Christ in the community it serves in the 21<sup>st</sup> Century. I think that the new window would not damage any fabric or historical aspect of the church. Indeed it would enhance it. I am more than happy to endorse Nicola Hopwood’s design for the above-mentioned project.”

(4) Written representations from the petitioner dated 20 January 2020. The petitioner recalls that at the Directions Hearing on 15 October 2019 the court was clear that there was a presumption against change to a listed building and that the one basic issue to be addressed was whether the proposed new window would harm the church’s historic fabric or significance and, if so, the petitioner should assess that harm and, if possible, seek to justify it. Section 3 of the written representations focusses upon that issue. The petitioner submits that an independent heritage company (Artemis Heritage), the DAC, the local authority conservation officer, and Historic England are all clear that the proposal would not harm the church’s historic fabric or its significance. Indeed, in the careful preservation of the small medieval glass fragments and the

restoration of the external stonework that will be carried out as part of the proposal, the PCC are said to be actively seeking to enhance the church's historic fabric and significance through this project. The language of the "lone voice contesting this professional consensus", that of Dr Steven Brindle, is said to be "careful", talking of harm to the "character" of the church "by comparison with the existing situation" but avoiding any suggestion that the historic fabric and the significance of the church will be damaged. By contrast, Canon Elliott "does not temper her language as she offers her expert opinion for the PCC". Her voice is said to be clear that the new window will not damage any fabric or historical aspect of the church but rather will enhance it. The petitioner notes that the PCC and the party opponent continue to disagree about both the nature of the chosen Tree of Life design and the response of the church and the PCC to the late Nicholas Kneale's gift. These issues are addressed at sections 4 and 5 respectively. The petitioner does not seek to question the genuineness of the party opponent's deep opposition to a Tree of Life design but the PCC's "unswerving commitment to this design in this place over such a lengthy process" is said to deserve more than the party opponent's suggestion that the feelings of others are less "profound" than his own. The petitioner derives comfort and support from an image drawn by The Reverend Dr George Westhaver, the Principal of Pusey House, who, in a sermon, is said to have described Mary, the mother of Jesus, as "the new Eden, in which the tree of life is planted" even though the party opponent cites him in support of his case (for the proposition that "the Tree of Life can only be an appropriate Christian image when it is connected with the Cross of our Saviour"). The petitioner refers to the party opponent's repeated acknowledgment that only a minority support his position, albeit he would portray them as an important minority, both in terms of the strength of feeling and the identity of the people involved. The petitioner relies on the PCC minutes which record what had taken place at each of their meetings and which are agreed at the subsequent meeting as a fair record; these are said to "clearly demonstrate that the PCC has supported the proposal for the new Tree of Life window three times – twice unanimously – and most recently – and unanimously – in September 2019". The petitioner submits that the proposal does no harm to the historic fabric or the significance of the church; and he expresses the PCC's strong support for the design proposed for the east chapel window and its gratitude "for such an offer of thanksgiving which we believe might inspire our whole community for many years to come".

(5) An email dated 22 January 2020 in which the party opponent confirmed that he had no further representations to make in this matter.

17. The court thanks both parties for these various documents and confirms that it has given them all due and proper consideration.

#### The proper approach

18. Since the church of St Clement is a Grade II\* listed building, this faculty application falls to be addressed 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 a 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?

19. The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the listed church as a whole and whether this would be adversely affected overall by the proposed works. The court needs to consider whether the proposed works will adversely affect the appearance, the character, and the setting of this Grade II\* listed church, not in the abstract, but rather as “a building of special architectural or historic interest”. 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; and that serious harm to a church listed as Grade I or Grade II\* should only be permitted in exceptional cases. As this court recently observed in the case of *Re St Peter & St Paul, Aston Rowant* [2019] Oxf 3 (at paragraph 7), when applying the *Duffield* guidelines, the court has to consider whether the same, or substantially the same, benefit could be obtained from other works which would cause less harm to the character and special significance of the church building. If, because the intended benefit could be obtained from other, less harmful, works, the degree of harm to the special significance of the church building which would flow from the proposed works is not necessary to achieve the desired benefit, then that is highly relevant. In such circumstances, it may 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. At all stages when applying the *Duffield* guidelines, the court should bear in mind that the desirability of preserving the listed church building, its setting, and all the features of special architectural or historic interest which it possesses, is a consideration of considerable importance and weight. The court has directed itself by reference to these expanded guidelines, which it has borne very much in mind. Naturally, the court had also paid due regard, as it is enjoined to do by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*, to the role of the church as a local centre of worship and mission.

20. In his discussion of windows at paragraph 13.7.3 of *Changing Churches* (2016), Charles Mynors acknowledges that clear glass windows often have an appeal of their own. He notes that since it cannot be argued that a church “needs” a new window, since all the openings in the walls will presumably already be filled with glass of some kind, in practice almost the only consideration will be the appearance of the proposed window in itself, and its effect on the appearance of the church as a whole. Whilst a beautiful new window may be a magnificent adornment to an otherwise undistinguished church, equally an unremarkable modern window, particularly when designed by an inexperienced artist, can easily detract from the appearance of an historic church. The quality and condition of any existing window to be replaced will

obviously be of relevance. This is obviously a matter of aesthetic judgment; and the views of the DAC, the CBC and (in the case of listed churches) the amenity societies are likely to be of great importance, though not determinative. The author notes that the courts are unenthusiastic about straying into disputes as to the doctrinal significance of particular designs.

21. Recent case law authorities provide only limited assistance. In *Re St Gregory, Offchurch* [2000] 1 WLR 2471 the Coventry Consistory Court had to consider an application for a faculty to replace, as part of a millennium project, an existing Victorian monochrome grisaille window on the south side of the nave, to the west of the door and close to the tower, of an ancient Grade II\* listed church dating from Norman times with a new window of abstract contemporary design by a local stained glass artist. The PCC supported the petition, which also enjoyed the support of the majority of the village and the DAC, but the petition was opposed by 19 parishioners on the grounds that the proposed design was not in keeping with other windows within the church, that the existing window was attractive and did not need repairing, that the church was a listed building, and that the design was neither educational nor inspirational. Granting the faculty, the Chancellor (Sir William Gage) held that in considering a faculty for a millennium window, the court was obliged to have regard to the strong presumption against any change to a listed building which would have a detrimental effect on its character as a building of architectural or historic interest. In the instant case, that presumption had been rebutted. Although the existing windows within the church were all about the same age, and the window to be replaced was one of three windows of a similar type, they were each different to each other, and they bore no specific Christian motive. It was also clear that the church was comprised of additions and alterations from different ages and was not all of one age. Whilst there was undoubtedly opposition to the proposal, it was nevertheless clear from the available evidence that the majority of the villagers were in favour of the proposal. At page 2477 C-E the Chancellor concluded his judgment:

“Opinions about the design will differ. This is inevitable when any project involving people's views about aesthetics is proposed. But this design has a Christian character. I accept that in this church, which is drawn from many different ages, it will add a Christian dimension for the 21st century. That is an entirely worthy aspiration. On the other hand, the window to be replaced has no specific Christian connotation. In addition, I propose to make it a condition that the glass that is taken out from the existing window be preserved. It must be preserved so that if future generations decide that the new window should be removed then the former window can be put back. In that way the effect of this change will not be as serious as if a more radical and irreversible alteration was involved. So far as the condition is concerned, in my view the diocesan advisory committee should decide what is the best way of preserving the glass, whether it should be here in the parish or whether it should be in some other repository. So for the reasons which I have endeavoured to express I propose to grant a faculty in this case.”

22. In *Re St Mary, Longstock* [2006] 1 WLR 259 the vicar and churchwardens of a Grade I listed church, constructed in 1881, sought a faculty for the installation of a stained glass window in memory of the wife of a canon who had served in the parish in his retirement. The canon and his wife had contributed to the pastoral well-being and living out of the Christian gospel within the parish. The petition was “unopposed and largely uncontroversial” and had the support of the Council for the Care of Churches. Deputy Chancellor Mark Hill, in the Winchester

Consistory Court, granted the faculty (subject to conditions) on the basis that the proposed window would not adversely affect the appearance of the church nor its historic, architectural or artistic setting or integrity. The Council had expressed two particular reservations about the design of the window because of the prominence of its proposed location in the west end of the church. At paragraph 15 the Deputy Chancellor said that he had considered the two alternatives of commissioning an alternative design of high artistic quality and long-term spiritual significance or reworking the existing design for a less prominent position in the church but he had not been persuaded that either of those alternatives was appropriate. It was right to defer to the views of the donor and of the parish. The window was not to be assessed simply as a work of art but was to be erected for a particular purpose, to the glory of God, but in memory of an individual well known and much loved in the worshipping community which continued to make use of the church and which supported this particular design in this particular location. Their support, though not determinative, was important. The Deputy Chancellor noted that he was not concerned with a cathedral or a large historic church which attracted a significant number of visitors but an ordinary parish church in an ordinary Hampshire village. The design was perfectly acceptable. At paragraph 16 the Deputy Chancellor acknowledged that:

“It may be that a better quality design could be conceived. However, the best is sometimes the enemy of the good.”

Having noted (at paragraph 7) that ‘necessity’ was

“... a broad concept. It embraces more than merely unavoidable repair work and includes works ‘necessary for the pastoral well-being ... or for some other compelling reason’,”

the Deputy Chancellor concluded (at paragraph 16) that there were strong pastoral reasons why a window should be erected in memory of the canon’s wife; and he noted that, as a matter of principle, the Council for the Care of Churches had no objection to the introduction of stained glass to the window in the west end of the church. He considered that those factors might properly be described as a ‘necessity’, in the broader definition given to this term.

23. In *Re St. John, Out Rawcliffe* [2017] ECC Bla 11 Chancellor Bullimore, in the Blackburn Consistory Court, had to consider a faculty application for the installation of a stained glass window in a Grade II listed church in memory of the late husband of the church organist (and the “rock” who had supported her). (I pause to observe that in the course of his judgment, at paragraph 5, the Chancellor noted that one procedural problem that had emerged was that, in a case like the present, where the introduction of an article of special artistic interest into the church was proposed, FJR 9.6 required the advice of the CBC to be obtained by the Chancellor, if it was not already available. There was said to be no discretion about this: it had to be obtained. It was with this observation in mind that, in the present case, the court required the CBC to be consulted.) The deceased had been a farmer, and the design (recommended by the Diocesan Advisory Committee) had included "two doves and an owl, a small figure in silhouette, possibly sowing in a broadcast fashion, and a donkey and rabbit, with a tree in leaf and on the branches the words: ‘Lord make me an instrument of your peace, where there is hatred let me sow love’". The proposed window would replace the plain glass in what appeared to be the only window without stained glass at ground-floor level. The CBC were of the opinion that this design would not sit well with the other stained glass windows in the church, which depicted single figures in a more traditional design. However, the Chancellor determined to grant a

faculty. At paragraph 23 the Chancellor said that the suggestion of St Francis, would have been appropriate and would have worked well but there was the opportunity to do something different. The window had the clear support of the PCC as a tribute to the deceased; and it embodied themes to reflect his own work and contribution to the community as a farmer, and the contribution he had also made to his own family at home and, through his wife, to the parish, and the example he had thereby set to those who knew him. The window design celebrated both animals and birds as part of the created order, where his daily work had taken him; the theme of peace, and sowing peace, was an important part of the Gospel message, which he had embodied. Although other artists might have dealt with these themes differently, more strongly and coherently, the DAC had recommended that he should approve the proposal; and the Chancellor did not consider that he should “intrude any personal evaluation” because he was not trained or experienced in such matters. At paragraph 25 Chancellor Bullimore noted that:

“All applications for stained glass windows are in my view difficult, and often very sensitive... The views of the PCC and why they hold them are very important.”

24. This court notes that both *Offchurch* and *Longstock* were decided prior to the decision of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 and they must therefore be read subject to the effect of that decision. The authorities cited seem to me to emphasise: (1) the reluctance of Consistory Courts to get drawn into disputes about the fine detail of the design of stained glass windows, (2) the importance of giving due consideration to the views of the PCC and of the DAC and other consultative bodies; and also (3) the importance of the appearance of the proposed window in itself, and its effect on the appearance, and significance, of the church as a whole. This court does not understand why any lower level of protection should be afforded to a Grade II\* listed North Oxfordshire country church than to a large historic Grade II\* listed church which attracts a large number of visitors. This court agrees with Chancellor Bullimore about the difficulty and sensitivity attaching to applications for stained glass windows.

25. The CBC’s web-site contains useful advice and guidance on introducing new art in churches. This guides the reader through the process of commissioning new art for their church. It points out that new art should always be created for a specific place in the church building, and with an understanding of its purpose in supporting people’s faith. Further information is available in the Church Care Guidance Note entitled “New glass for your church” (available for download) which points out that:

“High-quality stained glass can be an appropriate and beautiful addition to a church. However, new stained glass is not necessarily a good idea in every case. Some churches have good-quality plain glass which deserves to be retained, or an extensive scheme of historic glass. The introduction of any new glass needs to be considered carefully, because the alteration will change the character of the church for better or worse.”

The guidance explains that where new glass is decided upon in principle, the first thing is to prepare a brief to the artist. This should explain the purpose and the aims of the commission without holding back the artist’s creativity, including what is wanted, where it is to be put, the material or medium of the artwork, its content or theme (e.g. theological or liturgical), the amount of money available, and the commissioning process. The PCC’s initial brief can then be worked up into a design statement once an artist has been appointed. Once a brief has been drawn up and agreed with the DAC, it is then time to find an artist. When choosing an artist,

the guidance advises those commissioning an artwork for a church to look at the various proposals and ask whether the work of each of the potential artists would look right in the church building, whether they have met the brief, and what do others (such as the DAC, PCC, congregation, local community, etc.) think about their proposals. It suggests visiting other sites displaying the artists' work to see what it is like in real life and to talk to people there about the commissioning process. Only then should one ask whether those commissioning the artwork are still happy to go ahead. There is no evidence that this advice and guidance were ever consulted, or observed, in the process leading up to the commissioning of this proposed new window.

*Findings, decision and reasons*

26. On the evidence, the court is satisfied that the PCC (by a majority) has given its support to the installation of the proposed stained glass window depicting the Tree of Life in the east window of the Lady Chapel. At its meeting on 19 June 2018 seven members voted to support Nicola Hopwood's design, three voted against, and one abstained. However, of those who were present, no less than five have written letters of objection to the petition (including both of the churchwardens); and (apart from the sole remaining petitioner) only one of them (the treasurer of the PCC) has written in support of the petition. Despite this, at a meeting of the PCC held on 10 September 2019, in anticipation of the Directions Hearing scheduled for 15 October, at which the rector expressed his understanding and support for the decision of Mr Busby to step back from being a co-petitioner because he was unable to endorse the rector's reply, a motion was passed by the whole PCC

“... that should the churchwarden be allowed to attend the October 15 meeting, and should he in any way say anything negative about the project, it must be made clear that his words do not reflect the opinion of the PCC which supports the project.”

Again I note that four of those present have written letters of objection to the petition. I also note that the minutes also record that during the discussions

“... it was pointed out [ - it is not recorded by whom - ] that due consideration should be given to the feelings of the grieving family who were being very patient and understanding. [The widow's] generous attitude and support of the church was much appreciated.”

Read as a whole, the PCC minutes give the clear impression of a PCC which is: (a) motivated by the laudable pastoral concerns of not wishing to be seen as rejecting a most generous gift or as letting down the grieving, but patient and understanding, family of the donor, and (b) internally deeply divided, but (c) determined to abide by and honour a collective decision. As Chancellor Bullimore observed, not only are the views of the PCC very important, but so too are the reasons why they hold them.

27. The court entertains concerns about the process which has led to the majority decision of the PCC to support the present proposal for the east window of the Lady Chapel. The PCC was not involved in determining the location of the proposed new window, the selection of the artist or the theme of the design. It was not the PCC that drew up the design brief to the artist. It was at the PCC meeting on 21 February 2017 that the proposed donation of a stained glass window to the church was first mentioned by the petitioner. The minutes record that the petitioner explained that “the proposed window is the one above the altar in the Lady Chapel”.

The petitioner announced the selection of “Nicola Hopwood to produce a design based on the theme of the “Tree of Life”” to the PCC at its meeting on the 13 June 2017. From an email from Mr Nicholas Kneale to the petitioner dated 2 March 2017, Mr Kneale had considered the names of four potential designers, and had interviewed two of them, before selecting Ms Hopwood; but it is clear that the PCC were not involved in this process, nor were they involved in preparing a design brief for submission to the artist selected by the donor. This was a project led by the donor, using the petitioner as an intermediary with the PCC, rather than a collaborative process. Although the PCC met with Ms Hopwood on 12 August 2017 and were involved in discussing the design with her, which led to some changes, this meeting led to a “long, frank, open and very good spirited discussion” on 17 September at which “different opinions were expressed with care and passion on both sides”. The minutes record that:

“Though some wished that they could revisit that moment [the February PCC meeting at which the PCC had given permission for the project to progress], there was an acceptance that the PCC had made a decision, and that reviewing the design was now an integral part of the progression.”

The PCC were not given any opportunity to revisit the “Tree of Life” theme or the decision to progress the project. Ms Hopwood was present at a special meeting of the PCC on 12 May 2018 where “a variety of emotions in the room about the project” were recorded. The PCC were shown the developed design, along with a sheet to further describe the imagery within it, and small pieces of glass, close to that intended for inclusion, were passed around, after which “a wide-ranging discussion followed”. It was at the next PCC meeting on 19 June 2018 that the majority voted to support the design. The minutes record the petitioner saying:

“... that he realised there was some divergence of opinions on the design and its suitability for the east window of the Lady Chapel. He said as far as he was concerned the location had been agreed and the objective of the meeting should be on the suitability of the current design.”

At the PCC meeting held on 10 September 2019, the patron of the church is recorded as expressing “his concern and confusion as to how this project had become such a large issue that appeared to be dividing the PCC”. The foregoing recital seems to the court to supply the answer. Had the sensible advice and guidance of the CBC been followed in the present case, the ensuing divisions within the PCC and the wider parish might have been avoided. Essentially, the donor did not engage directly with the PCC about his proposed donation but left the petitioner to act as his intermediary; and it was the donor, and not the PCC, who took the decisions about the proposed location of the window, the identity of the designer, and the theme of the design. The court does not wish to direct criticism at anyone; it is merely describing what has happened. Whilst the court would not endorse the party opponent’s use of the phrase, it can understand his concerns about the procedure and the process which was adopted, and which has led him to view the rector (and petitioner) as effectively “slipping” the matter through the PCC. The court considers that there is force in the party opponent’s points that a lack of direct contact and consultation between the donor (and later his family) and the PCC has severely harmed the chance of any consensus being reached concerning the location and/or the design of the window; and that the lack of any real choice over the subject-matter of the window, and the artist, has reduced the role of the PCC to practically that of a cipher. There is clearly an amount of serious dissent and opposition to the proposed window within the church community even

though it commands the majority (and reluctant) support of the PCC. Unhappily, rather than sowing love, the donor's generous offer of a gift to the parish has sown dissension.

28. In its initial set of directions (issued last July) the court invited the archdeacon to consider whether any useful purpose might be served by mediation (in particular in relation to any possible alternative location for the stained glass window within the church). The archdeacon's view, after speaking to the petitioner and the party opponent, and exchanging emails with Mr Busby (then a co-petitioner), was that that it would not seem a feasible proposal to consider any alternative location for this design: the position was that it was either the present design in its present proposed location or definitely not this design in this location. Mediation would not change the parties' respective positions at all, and so would not serve any useful purpose, but would merely serve to lengthen an already long process even further and prolong the very difficult pastoral situation locally. The court is satisfied that the archdeacon's perception were entirely correct. Having been provided by the petitioner with a plan of the church, showing all the current clear glass windows, together with colour photographs of each of them, and having viewed the church with the benefit of these forensic aids, it is clear to the court that no other existing clear glass window is suitable for the present 'Tree of Life' design. The use of one of the two three-light windows in the south wall of the Lady Chapel would result in an asymmetrical (and undesirable) juxtaposition of plain and stained glass within the same wall. The east three-light window in the vestry is almost completely hidden from view; whilst the only other existing clear glass three-light window in the tower is high-up and hidden by the ringing chamber, and the light to it is obscured by the close proximity of the immediately neighbouring North Aston Hall. All the other existing clear windows are of one or two lights and would involve a complete redesign of the stained glass window, contrary to the wishes of the donor and his family. It follows that this is not a case where any harm that might result from the installation of this stained glass design in the east window of the Lady Chapel could be mitigated by installing it elsewhere in the church, where it might cause less harm to the character and special significance of the church building.

29. Against this factual background, the court turns to consider the *Duffield* questions. The court must begin by identifying the significance of the church as a building of special architectural or historic interest. As stated earlier in this judgment, this rests very largely on its surviving medieval fabric, which is of high significance. In this context, it is important to bear firmly in mind that the Lady Chapel has survived largely untouched by the 19<sup>th</sup> Century restoration and re-ordering that have affected other areas of the church. The court notes that there is no other contemporary stained glass within the church; but as Canon Elliott points out:

"It is surely right that each age adds something to the fabric of their place of worship."

This is correct; but it is subject to the proviso that the addition must be a worthy addition to the fabric of the church.

30. Having identified the particular significance of the church, the court must then ask whether the installation of this contemporary stained glass window, depicting Ms Hopwood's design of a 'Tree of Life', would result in harm to the significance of this church as a building of special architectural or historic interest. It was the view of the DAC that the installation of the proposed window was not likely to affect the character of the church as a building of special architectural or historic interest (although they had continuing reservations about the congruity of both the style and the content of the juxtaposed tree of life and the animal symbols

surrounding it). That accords with the view expressed by Artemis Heritage that the installation of the proposed new window would not in itself be harmful to the significance of the listed building. However, the court is not bound by these expressions of opinion. Although the local authority's design and conservation team considered a modern, stained glass window of the proposed design to be an appropriate addition to the church building, they were considering the matter from the planning aspect, in terms of whether it would negatively impact on the external visual appearance of the building, or the character and appearance of the conservation area, and not in terms of its potential effect on the internal appearance of the church. The petitioner's expert, Canon Elliott is of the opinion that the new window would not damage any fabric or historical aspect of the church building but rather it would enhance it. By contrast, the party opponent's expert, Dr Steven Brindle, is of the opinion that the installation of the new window would cause material harm to the interior and character of this church by comparison with the existing situation. Having viewed the church, the court prefers Dr Brindle's assessment. The court considers that the installation of the proposed contemporary stained glass window in the prominent east window of the Lady Chapel will cause a degree of harm to the significance of this church. The existing clear glass will be replaced by contemporary stained glass. The court agrees with Dr Brindle's perception that the lightness of the Lady Chapel provides an important balance to the relative darkness of the nave and the chancel, and with his assessment that the existing plain glazing helps to make the Lady Chapel a suitable space for gatherings and for private reflection. The court concurs with the assessment of the objector who wrote of the current glass, clear except for the existing original eagles, allowing for uncluttered simplicity and a serene, prayerful space; and it considers that the plain glazing of the prominent east window deserves to be retained unless something better is to be installed in its place. The court shares the reservations expressed by the DAC and Dr Brindle as to the style, the content and the artistic quality of the proposed design of the new window. The court would not question the propriety of the 'Tree of Life' motif as a suitable subject for depiction in a church window in a far less prominent position within a church; but it shares the reservations of Dr Brindle that the window's lack of overtly Christian imagery (which has led the DAC to stipulate that an interpretative document, explaining the theology of the window, should be made permanently available in the church) would seem inappropriate in its proposed prominent location, immediately above an altar. For these reasons, the court considers that harm would be caused to the significance of this church as a building of special architectural or historic interest by the installation of this particular design of stained glass window in the prominent east window of the Lady Chapel of this church. The court would assess that level of harm as moderate.

31. The court is not satisfied that any clear and convincing justification for carrying out the proposal to install this proposed window has been demonstrated. Like the PCC, the court is rightly sensitive to the the laudable pastoral concerns of not wishing to be seen as rejecting a most generous gift, or as letting down the grieving, but patient and understanding, family of the donor. However, a different location, a different theme, and a better quality design could all have been adopted for their generous gift; and direct contact and consultation between the donor and the PCC might well have facilitated this. Given the Grade II\* listing of this church, the prominent location of this window, and the effect of the new window on the existing character, atmosphere and ambience of the Lady Chapel, the court does not consider that this is a case where pastoral concerns should be allowed to outweigh the harm, albeit moderate, that will be done to the church by the introduction of this new window. As the CBC guidance points out, the introduction of any new glass into a church needs to be considered carefully because the

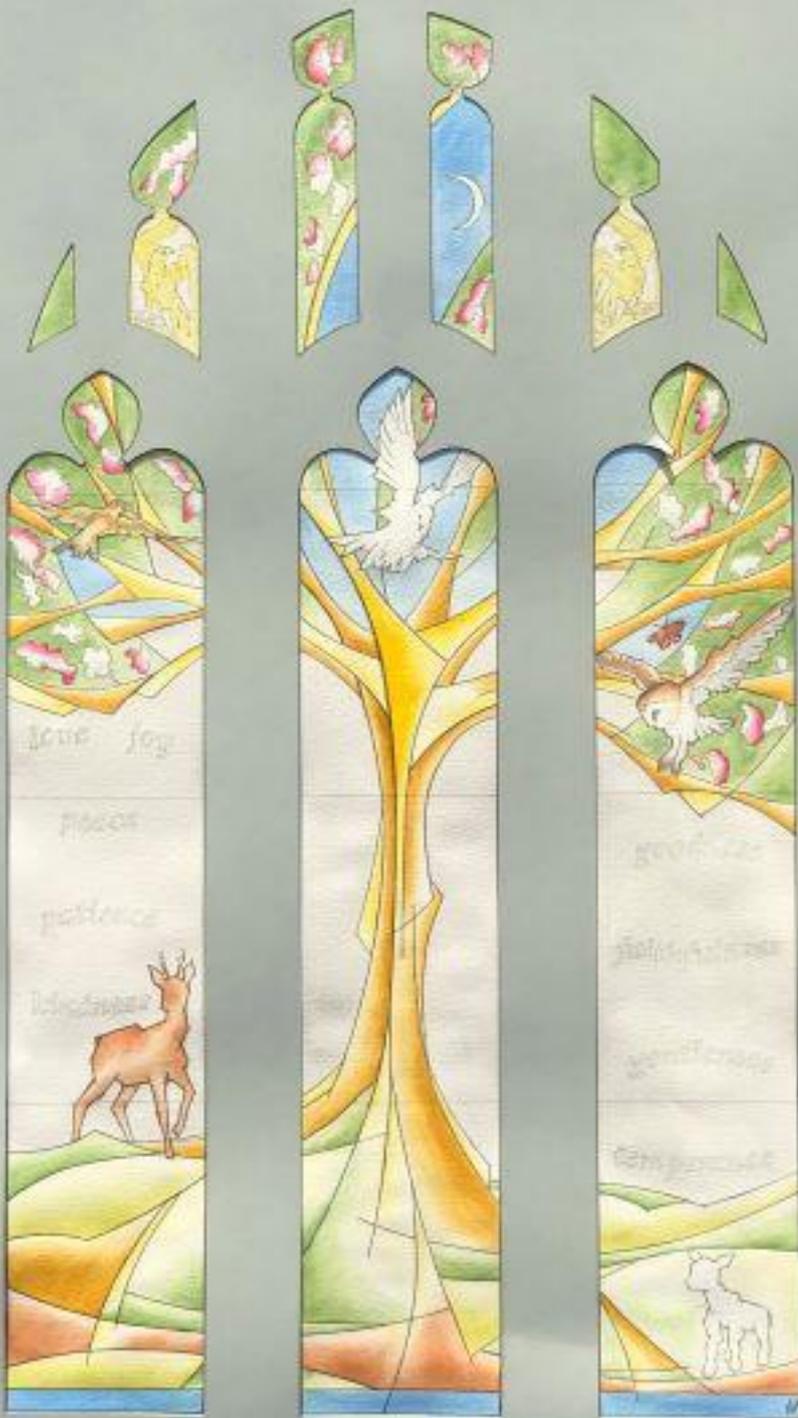
alteration will change the character of the church for better or worse. Even though the refusal of the present faculty application means that it is unlikely that any new window will be introduced into the church, that is no reason for approving the new window that is presently proposed. The court is satisfied that no sufficient public benefit would result from the installation of the new window to outweigh the moderate harm that its installation would inflict upon the church building. The cleaning and conservation of the existing medieval glass fragments would be insufficient to outweigh the harm that the introduction of the new window would cause. The court is not satisfied that the rejection of this faculty application will result in the church failing to carry out, in due course, any necessary works of repair and conservation to the external stonework surrounding the east window of the Lady Chapel, in the same way that similar works have already been carried out to the windows in the south wall of this chapel. The introduction of the new window will not promote the church's mission or worship, nor will it bring any benefits in terms of its outreach to the local community. The introduction of the new window, far from bringing joy to the whole parish, will be resented by a significant, and vocal, minority of considered, and well-intentioned, parishioners.

32. Had the court been satisfied that the installation of this contemporary stained glass window depicting Ms Hopwood's design of a 'Tree of Life' would result in no harm to the significance of this church as a building of special architectural or historic interest, the considerations outlined in the previous two paragraphs of this judgment would have led the court to conclude that the petitioner had not shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of good reason, change should not be permitted.

33. For these reasons, the court refuses the faculty application. The petitioner will pay the costs of and occasioned by the petition (including reserved costs) in the usual way.

The Worshipful Chancellor Hodge QC

The Second Sunday in Advent 2020



**STARKY THE VIRGIN - NORTH AUSTON, GLOUCESTERSHIRE**  
 Revised design for a new Stained Glass Window: East end, South Niche Chancel  
 SCALE 1:1 Artist: Nicola Hopwood January 2018