

In the Consistory Court of the Diocese of Salisbury

In the Matter of Tisbury, St John the Baptist

Judgment

1. The Churchwarden of this parish has petitioned for a faculty permitting various masonry repairs to the chancel East window ('the Clutterbuck window') and the replacement of the existing East window glass with a new window designed by Thomas Denny ('the Denny window'). The Clutterbuck window is a memorial. It is intended that the Denny window would also be a memorial.
2. The proposed masonry repairs are urgent, uncontentious and necessary. The proposed replacement of the East window is more contentious. This proposal has been the subject of much planning, consultation and discussion within the parish for the best part of a decade. Initially the parish proposed the replacement of the East window with a modern window designed by a local artist. Since then, on the basis of concerns raised by the Diocesan Advisory Committee amongst others, a formal brief was created, submissions sought and a new replacement window was commissioned from Thomas Denny. It is accepted by all concerned that Mr Denny is an artist of national and international reputation and skill and that this commission is one of high quality.
3. On 8 July 2021 the PCC voted unanimously to support this proposal. The Diocesan Advisory Committee has recommended the works for approval. The Church Buildings Council is content with the proposal. Historic England does not object to the proposal, but has indicated that it is of the view that the loss of the current window will cause harm to the significance of the building which must be weighed against any public benefit achieved by the change. The Victorian Society objects to the proposal but has chosen not to take party status in the proceedings. The Society for the Protection of Ancient Buildings and the Local Planning Authority have no comment to make.
4. The catalyst for the proposal at this point in time has been the serious deterioration in the East window tracery caused by associated ironwork. The repair of this stonework requires the removal of the glass. Nevertheless, this current pressing need has emerged in the context of the deterioration of the condition of the Clutterbuck window which has long prompted the parish to consider changes in relation to the window itself. Upon a simple inspection of the window it is apparent that a substantial

proportion of the paintwork on the glass has seriously degraded, and in some significant areas almost disappeared. This has been noted as having an adverse impact on the appearance of the window and its role as a focal point for worship in the building. After careful investigation into the condition and provenance of the Clutterbuck window the parish has decided that the preferred means of remedying these issues is the replacement of the East window with the Denny window, with the retention of parts of the Clutterbuck window in other parts of the church.

5. In determining petitions involving changes to listed buildings I must address what have become known as the *Duffield* Guidelines. These guidelines were first set down in the decision of the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158 where take the form of a list of questions:

“1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

2. If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.

3. If the answer to question (1) is “yes”, how serious would the harm be?

4. How clear and convincing is the justification for carrying out the proposals?

5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.” [para 87]

The decision of the Court of Arches in *Re St John the Baptist, Penshurst* (9 March 2015) made clear that the answering of these questions sequentially should be preceded by an enquiry to establish the special architectural and/or historic interest of the building.

6. The church of St John the Baptist, Tisbury is Grade I listed and located within the Tisbury Conservation Area. It is an ancient building which has developed from the 12th century onwards. The chancel, where the East window is located, was rebuilt in the late 13th/early 14th century. The Clutterbuck window was installed in the 1860s and comes from the workshop of Charles Clutterbuck, although there is some uncertainty over whether the window is the work of Charles Clutterbuck or his son, Charles Edmund Clutterbuck. In the 1970s the chancel was dedicated as St Andrew’s Chapel and a glazed partition was inserted in the chancel arch separating the chancel from the main body of the church. St Andrew’s Chapel is used for services and meetings where attendance is unlikely to

exceed 45. Along with other useful documents, I have been provided with a detailed 27-page Statement of Significance which addresses both the wider significance of the church and the specific significance of the chancel and East window. In order to establish the special significance of this building I have taken careful account of all of this information.

7. It has, of course, also been important to assess the particular importance of the Clutterbuck window. Such was the concern about the loss of this example of Clutterbuck's work that Historic England requested that this petition was not determined before it was able to commission an investigation and report into the importance of this window in the context of Clutterbuck's surviving glass. The Victorian Society supported this request. I readily agreed to the delay and am grateful to Historic England for the detailed information provided addressing this issue which was produced after careful research.
8. The history of the work produced by the Clutterbuck workshop is set out in detail in the information provided. Suffice it to say, Clutterbuck was a well-respected Victorian artist whose workshop produced high quality stained glass in the pictorial tradition. There is undoubtedly interest in the work of the workshop, but relatively little research seems to have taken place to date. There are 72 Clutterbuck windows known to still be in existence, with 68 of them still in situ. Six Clutterbuck windows are in Wiltshire, including the one at Tisbury church. The Tisbury Clutterbuck window has particular interest as a rare, or possibly unique, example of a Clutterbuck window containing notable amounts of 'grisaille' work (non-figurative monochrome painting on clear glass), although as will be apparent below, much of that work has deteriorated significantly.
9. I must ask myself whether the proposals, if implemented, would result in harm to the significance of the church as a building of special architectural or historic interest? All who have been concerned with the progress of these proposals accept that the removal of the Clutterbuck window would result in harm to the significance of the building. On the evidence provided, I am quite satisfied that that must be right.
10. Given that conclusion, the next question which must be answered is how serious that harm would be? The loss of this significant and prominent window is an important change. The window has been subject to close and careful expert inspection. It is in poor condition with much the detail of its most prominent figurative painting no longer discernible and most of the rare grisaille work deteriorated to such an extent that the glass now simply looks dirty. The evidence suggests that this deterioration is due in large part to poor firing at the time of creation and to an unsympathetic restoration around 60 years ago which involved a significant amount of overpainting and caused scratching and further deterioration to the paint. Whatever the cause, the fact remains that important parts of many of the key panels are no longer legible and much of Clutterbuck's painting is lost.

There is no detailed record of the original Clutterbuck artwork such that any re-painting would, of necessity, be speculative.

11. Historic England twice describes the harm caused by the proposed changes as “less than substantial” and once as “significant”. The Victorian Society argues that the loss of this important window and the severing of its links to the building for which it was designed would be too harmful to the significance of the building. It suggests that a less harmful solution would be to “creatively reimagine” the Clutterbuck window, which I take to mean commission the design of an East window which incorporates most of or at least substantial parts of the Clutterbuck window. It is argued that the loss of this example from the surviving Clutterbuck portfolio before any substantial scholarly study has been done of their work is not justified.
12. The Petitioners argue that it is intended to retain the link between this window and the building for which it was designed by the re-glazing of the eastern most window in the north wall of the north aisle to incorporate four of the best preserved panels of the Clutterbuck window, together with an explanatory plaque nearby, and by displaying the very best preserved panel (the central tracery panel containing IHS iconography) in a custom made light box within the church. This, they say, will mitigate the level of harm caused by the removal of the Clutterbuck window from the East end by maintaining some links between the window and the church and therefore ensuring that the narrative of its history is maintained within the building. This proposal to retain part of the window within the church does not form part of the proposals for this petition.
13. I agree with the advice of Historic England that this proposal would cause significant but not substantial harm to the importance of this listed building. That harm would be in part aesthetic and architectural and in part historical. The particularly poor condition of the glass, the fact that much of the figurative work is no longer readable and/or has been overpainted, and the damage caused by the earlier ‘restoration’ means that the loss of this window will cause less harm than it otherwise would do in aesthetic and architectural terms. I am particularly mindful of the importance of the principal East window in a church (at least one that is conventionally orientated, like Tisbury). It is naturally a key liturgical focus in worship and draws the eye and the mind in moments of private contemplation. The serious deterioration of the imagery in the Clutterbuck window has a really and obvious aesthetic impact. Consequently the aesthetic and architectural harm caused by its loss from the East window is diminished.
14. Nevertheless, there is some real historic harm caused to the significance of the building by its loss. I am mindful of the fact that this window was designed for this location and has been in place for over 150 years. The window represents an important and unusual example of the work of the Clutterbuck workshop which will, in large part, be lost before serious academic research has been undertaken into that firm. The retention of

some of the principal panels from the window, together with an explanatory plaque, will go some way to mitigating the loss to the significance of the building as a whole, but significant harm will still be caused.

15. I am mindful that the Petitioners have sought to mitigate the historic loss further by seeking museums which would be prepared to safeguard the Clutterbuck glass for future display and/or research. Those institutions approached have been unwilling to take the glass. On that basis, only that glass retained within the building is likely to remain available in the future. The Victorian Society has raised concern that the proposal to retain some of the panels within another window and a purpose-made light box does not form part of this petition. It is argued that that means that there is no guarantee that such work would ultimately take place and as such it cannot be considered relevant in the determination of this petition. I disagree. Careful conditions can be attached to any faculty granted requiring the safe storage of all of the Clutterbuck glass and requiring the submission of a further petition within a specified period in relation to the retained panels. I have no reason to question the Petitioners' intentions and good faith in relation to this part of the proposal; their careful and lengthy engagement with the Court and the advisory bodies has been exemplary. Nevertheless, in the unlikely event that they are needed, the Court has enforcement powers if such conditions are not complied with, including the power to make an injunction and referral to the High Court for contempt. Rather than ignoring the intention to retain some of the Clutterbuck glass in the church, I must take account of that intention as part of the assessment of the harm which will be caused to the significance of the building.
16. The *Duffield* guidelines make clear that it is the harm to the significance of the building as a whole that I must consider under guideline number 3. Having carefully considered the advice received and the helpful expert opinion provided through the consultation process I have concluded that the harm caused to the significance of the church of St John the Baptist, Tisbury would be, to use the words of Historic England, significant, but not substantial.
17. And so I turn to the question of how clear and convincing the justification is for the works.
18. It has been suggested that the proposal is not justified as the same purposes could be achieved by the retention (and, by implication, restoration) of the Clutterbuck window in situ and the installation of the Denny window as the intended memorial (suitably adapted for the relevant space) elsewhere within the church. Although there are windows with the potential to accept such an installation, not least the north aisle window which it is intended would hold the retained Clutterbuck panels, I am mindful of the importance of the principal East window as a key focus in the building as set out above. The Petitioner's intention is to replace a window which they consider has deteriorated so significantly that it has

begun to fail to fulfil its role as a focus for worship and prayer in this church, with a window which will fulfil that important role. The alternative proposal of installing the Denny window elsewhere in the building would not fulfil what is the Petitioner's primary purpose. I do not find that such an alternative would meet the needs of the parish, even without considering the implications of the significantly increased cost of such an alternative.

19. I have emphasized above the importance of the principal East window in the life and liturgy of this building. Given the impact of the poor condition of the Clutterbuck window and the substantial loss of or damage to the original Clutterbuck painting on that importance, I consider that the justification provided by the Petitioner for the replacement of the Clutterbuck window with the Denny window to be clear and convincing (to use the language of *Duffield*). When that justification is weighed against the harm caused, and considering the mitigation to that harm provided by the retention of parts of the window within the building, I am satisfied that benefit of this change will outweigh the harm. This is subject to the imposition of careful conditions upon the faculty to ensure the appropriate safeguarding of the historic interest of the Clutterbuck window and its links with this building. Accordingly, I direct that a faculty shall pass the seal on the following conditions:

- a. The works shall be executed under the direction of the Inspecting Architect;
- b. No works shall commence until the Petitioner has uploaded to the Online Faculty System written confirmation that:
 - i. 80% of the funding for the works is promised or in place;
 - ii. Planning permission for the works has been granted, or alternatively, written confirmation from the local planning authority that such permission is not needed;
 - iii. Appropriate insurance will be in place for the duration of the works;
- c. Prior to its removal, there shall be a full recording of the Clutterbuck window in line with the guidance laid out at Level 4 of the Historic England document entitled 'Understanding Historic Buildings: a Guide to Good Recording Practice';
- d. All of the glass removed from the Clutterbuck window shall be retained and safely stored by the Petitioner at Salisbury Cathedral Glass or such other location as may be agreed with the Diocesan Advisory Committee until a further faculty has been granted for the works involving the retention of parts of the Clutterbuck window in the east window of the north aisle of the church;
- e. The incumbent and churchwarden of the parish shall, within 30 months of the date of this faculty, petition for a faculty approving works for the retention of parts of the Clutterbuck window within the building, including within the eastern most window of the north wall of the north aisle of the church. Such proposals shall include the retention of the better elements of the important grisaille work;

- f. The works shall be completed within 48 months or such further time as may be allowed.

The Worshipful Canon Ruth Arlow
Diocesan Chancellor

21 March 2022