

# IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

## Re: St John the Baptist, Penshurst

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### J U D G M E N T

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1. By a petition filed on 14 August 2013, the petitioners, Derek David Dennard, and Thomas Edmund Holme, respectively Churchwarden and Rector of the Church of St. John the Baptist, Penshurst, Kent, sought a faculty to carry out substantial works to the church.
2. Some of the works were uncontentious and, with the agreement of all involved, at a preliminary hearing held on 18 December 2013, I directed that a Faculty issue in respect of those works. They are now all but complete. Thus, I am no longer concerned with them.
3. **The works in dispute and concerning which the Consistory Court sat for four days in July 2014, relate to the:**
  - (i) removal of the Bodley and Garner screen between the chancel and the nave of the church (“the chancel screen”);
  - (ii) re-ordering of the chancel, to include the removal of the choir stalls, and the platform on which those stalls stand;
  - (iii) relocation of six ledger stones in the chancel (choir);
  - (iv) laying of a new Clipsham stone floor to the chancel (choir);

- (v) re-ordering of the sanctuary, to include the extension of the sanctuary westwards.
4. In the event, permission for the works referred to at paragraph 3(v) was not pursued, for financial reasons. The works referred to in paragraph 3(iii) and 3(iv) were not of themselves contentious, but depended on whether the works referred to in paragraph 3(ii) were allowed. Furthermore, although there was a dispute whether the re-ordering of the chancel should be permitted, the reality was that the principal issue in dispute involved the chancel screen, and that if permission is granted to remove that, no further issues arise on the other works.
5. The P.C.C. supported a resolution relating to the proposed works, which was passed unanimously at a meeting on 29 July 2013. There were no objections received as a result of the public notices. Thus, it is clear that the proposals are supported by the church members and local community.
6. The Statement of Significance dated October 2011 drew attention to the fact that the church is Grade I Listed, with the reasons given for such designation, in the list entry, being that:
- (i) the church is a parish church with a 13<sup>th</sup> century north arcade and a 14<sup>th</sup> century south arcade;
  - (ii) the church has a 15<sup>th</sup> century tower;
  - (iii) the south aisle and south porch were rebuilt in 1631;
  - (iv) the church was heavily restored and partially rebuilt in 1864-5 by George Gilbert Scott;

- (v) there was fine reworking of the Sidney Chapel in 1820, by JB Rebecca;
  - (vi) there are excellent monuments of the 13<sup>th</sup>-19<sup>th</sup> centuries.
7. The choir stalls are described as of moderate significance, of one period and as not matching the pews. Even a cursory inspection confirms this to be the case. Moreover, the floor on which they sit is of more than one level.
  8. The chancel screen, too, is described as being of moderate significance, and is dated 1897. It is a memorial to Charles Stewart, the 2<sup>nd</sup> Viscount Hardinge. It is flanked by a similar screen in the north aisle in memory of members of the Hardinge family, who lost their lives in the First World War. It is not proposed to move this screen. The 2<sup>nd</sup> Viscount Hardinge is not a particularly significant historical figure, nor is he buried in the church or churchyard.
  9. The chancel screen was designed by Bodley and Garner, and may have been made of local oak from the Penshurst Estate. That is the local tradition, but there is no hard evidence to support it.
  10. In the Statement of Need, under the heading: "Choir Stalls" is provided: "Remove present choir stalls to enable Chancel to be used in different configurations. Make provision for robed choir. Make provision for use by music group and for concerts. Consider rationalisation of floor finishes following removal of choir stalls and platforms". Under the heading; "Chancel" is provided: "Remove visual barrier between Nave and Chancel. Improve sight lines for congregation for all services".

11. Under the heading; "Reasons for Requirements" is provided: "The present Chancel and Sanctuary are visually separated from the Nave. .... Removing the Chancel screen would undo the 19<sup>th</sup> (century) introduced division between Nave and Chancel. The earlier architectural form of the building saw these spaces as one. The Chancel arch is tall and there is no obvious evidence within the north or south walls of the Chancel of access up to a Rood screen. The scale of the overall building is intimate and the screen is a division of the main spaces which is a positive hindrance to modern worship. Having the ability to re-order the Chancel extends the form of worship that can take place. The traditional layout of the Chancel will be the default layout, but using moveable seating, of high quality, will allow mid-week and smaller services to use the Chancel. The Chancel can also be re-configured for work with children and performances".
12. The Diocesan Advisory Committee ("the DAC") support the proposals, and the Society for the Protection of Ancient Buildings "SPAB") have raised no objection to what is proposed. The Victorian Society, however, objects to the removal of the chancel screen, and has been added to the petition as a party opponent. The Church Buildings Council ("the CBC"), by letter dated 2 October 2013, made clear that it; "did not wish to raise any concern with its (the screen's) disposal".
13. I heard evidence from the Rector, the Revd. Thomas Holme. I was impressed by the words of his statement which he confirmed in oral evidence, where he described first setting foot in the church on a dark and wet December afternoon in 1994, and, initially, having no desire to linger in such a darkly wooded space. He described the chancel as being a; "fixed inflexible rather dour

environment, echoing the woodenness elsewhere...”, and described the screen as; “impressive but misplaced”. He opined that the removal of the screen would open up the church’s plans to enhance and simplify the chancel area.

14. Mr Holme went on to say, and I accept, that the P.C.C. had discussed at length how best to enhance the ministry and mission of the church. There was a desire to use the building for more musical events, such as concerts, which was not practicable with the presence of the chancel screen. “Messy Church” and “Fresh Expressions of Church” would likewise be impracticable, with the chancel screen being daunting, and providing a physical and psychological barrier between the chancel and the nave.
15. It is easy to understand the points made by Mr Holme. Sitting, as I was, at a bench, temporarily installed, just above the chancel step, and hearing witnesses who were at a table slightly on my right, but below the step and the other side of the chancel screen, it was very clear that there was indeed a physical divide which made communication and eye contact difficult, and, for want of a better term, a psychological divide which caused someone sitting above the step, i.e. behind, or to the east of the screen, to feel detached and separated from those in the body of the church, i.e. in the nave.
16. The church has found a potential recipient of the screen, were a faculty to be granted namely St Michael and all Angels Church, Hallaton in the Diocese of Leicester (“Hallaton”).
17. The Victorian Society has attempted to reach some form of compromise with the petitioners, but all their proposals are predicated upon the chancel screen remaining in situ. The

Society cannot contemplate it being moved, describing it as being by a nationally important architect, and designed and executed to a very high standard. The Society suggests that an altar table, as wanted by the church, can be accommodated below the chancel step and screen by removing some four or five rows of pews. This, I have to say, seems to be the worst of all options: the pews would be starting half way down the church, and there would be little room to move around the altar table. Moreover, the altar and Rector would be cut off from the chancel.

18. Mr Holme, whom I found to be an impressive witness, emphasised that: “there is a barrier between clergy and congregation,” and that he felt a long way from people in the nave. He pointed out, to use his words; “visibility space and openness of worship” were needed, and he went on to say that it was not just a matter of visibility, but about; “interaction with the people”, which he said was compromised or made difficult by the present arrangement. He spoke of the fact that; “the visual plays a strong part,” and that this was more than; “just sight lines”. He said; “I have to peer round the corner of the screen from my seat,” which, indeed, is exactly what I had to do, seated, as I was on the chancel step, in order to see and make eye contact with those to my right and left, below the step.

19. Mr Holme’s desire, and the church’s need, he said, was for greater flexibility, and for those providing music to be more visible and involved. He spoke of the desire to use a musical group, or band, which is impossible with the chancel screen in situ, of the choir being more involved, and for the church to be used more often for concerts and the like. Removal of the chancel screen and choir stalls would permit all of this, and would make the

church more user friendly, particularly for children. If, on the other hand, an altar below the chancel screen was used, with the screen still in place, the whole effect would be of a cluttered church, up to two-thirds of the pews would be lost, and the capacity of the church would be reduced. Moreover, the chancel screen would become a backdrop to the altar, which was not what was wanted. I understand and accept these arguments.

20. Mr Lough, the church Treasurer, who gave evidence before the Rector, also impressed me with his thoughtful approach. He made it clear that the church had been pondering long and hard since 2009 about what was required. The building was not being used enough, and there was a need “to make the building more open and useable”, both for worship and civic use.
21. Mr Dennard, the Churchwarden, in his first statement, had this to say: “When my wife and I first worshipped at (the church) we were painfully aware of the division created by the chancel screen. ... We could do nothing about the sense of detachment that the screen creates.... (it) fails to fulfil any worthwhile purpose in the context of the forms of worship that people want today. In particular, it blocks off what is happening in the chancel from the view of those in the nave, and vice versa”. As to the chancel, he said: “The existing choir stalls that fill the chancel have little intrinsic merit, are mismatched, fixed to platforms and difficult to move. The existing floor has been poorly repaired and is uneven. The Chancel space therefore lacks credibility”.
22. As I stated above, a cursory inspection of the chancel reveals Mr Dennard’s criticisms to be accurate and fair. The chancel floor is on three levels; the pews do not match, and cannot be said to be

of any great interest. They are also very heavy and difficult to move.

23. The next witness was Mrs Franklin, a member of and Secretary to the P.C.C., and one concerned to expand the mission of the church generally, and to children in particular. In support of the petition, she spoke in her statement in these terms: "The removal of the Chancel screen would provide a much more versatile worship space. It would permit the Christian community (church) here to build upon the established congregation of adults and children... providing the opportunity to look to alternative forms of worship... such as (i) Messy Church ... (ii) All Age Worship". As with other witnesses supporting the petition, she said: "Currently the Chancel screen acts as a barrier between the congregation and the celebrant. It can and does impact on our worship of God".
24. It was Mrs Franklin who highlighted the desire to be able to use modern technology, such as projectors and screens to enhance worship. Those are not practicable with the chancel screen in place.
25. Mrs Caroline Thorp, a former Churchwarden, and a church member of some 35 years standing as a member of the choir, specifically stated the current arrangement, i.e. the presence of the chancel screen, to be a; "huge hindrance" to worship, and that it can be like being in two buildings. Sitting in the choir stalls, for her, it is hard to hear what is said or sung in the nave, and she also referred to the difficulty in moving the choir stalls when open space in the chancel is required.



26. I have read and also taken into account the statements of Messrs Quirk and Waggett and of Miss Armstrong. Mr Quirk pithily stated: "Together with the pews (the screen) has created a space that freezes the Victorian era in aspic ... forcing church goes to use the building according to the Victorian dictates of worship". In my judgement, his point is well made.
27. I have set out in more length than I would ordinarily do, the evidence in support of the petition coming from the parish. This is because so many people are essentially saying the same thing. The witnesses were all thoughtful intelligent, and clear minded honest people, who had thought hard about what was best for their church, and church community over a long period of time. They each of them impressed me in the manner in which they gave evidence and by what they said. I accept their evidence.
28. Mr Ashley gave evidence for the Victorian Society. He too impressed me as a witness who wanted to reach a compromise, but, as he said, he was not giving expert evidence, nor could he give evidence to counter the church's needs. He appeared, in reality, to concede the removal of the choir stalls when he stated: "Removing choir stalls would give the parish what it wants ...." Earlier, he had stated: "I fail to see how the removal of the screen would bring people together": and he went on to say: "We (the Victorian Society) felt the degree of flexibility that will undoubtedly occur by removing the screen, should be foregone".
29. The Archdeacon, the Venerable Clive Mansell, assisted the Court by pointing out that there is nothing in the New Testament on the importance or sanctity of the chancel in a church, and that in more modern times a sense of "corporate togetherness" in worship has developed. This can be assisted by having the

president at Holy Communion facing west (possibly from behind the altar), and/or by moving the altar further down the church, i.e. moving it out of the sanctuary.

30. There followed expert evidence. Mr Hall, who gave evidence for the Victorian Society, undoubtedly knows a considerable amount about Bodley and Garner screens. His evidence was, in my judgement, highly partisan, although he did expressly state that he made no comment on the parish's needs. It was, however, clear from the thrust of his evidence, and the manner in which it was given, that he had no interest in the wants or needs of the church. Effectively, the only consideration for him was the preservation of the chancel screen. This led him to the surprising assertion: "My aesthetic opinion is that (the church) called out for a screen", albeit he conceded that; "one's view might be influenced by one's churchmanship". The further assertion that the chancel screen is; "the Church's most exclusive fitting" is an example of his partisanship, the more so when one bears in mind that the screen gets no mention, in the church's Grade I listing. The extremity of his position was further exemplified when he said that the relatively minor reduction in size of the screen required if it went to Hallaton would be "mutilation". Courts these days expect and require experts to be free of bias and to be unaffected by the effect upon their clients of the exigencies of litigation. This, I regret, could not be said of Mr Hall.
  
31. At this juncture, it is appropriate to point out that expert evidence is there to assist the Court. It is not there to make the decision, nor should an expert witness seek to do so. Further, the Court is free to accept or reject expert evidence, as with any other form of evidence.

32. Finally, there falls to be considered the evidence of Mr Paul Shorrocks, the church architect. He told the Court that almost certainly there would have been a screen in place in pre-Reformation times, but that it is likely to have been removed thereafter. There is no archaeological evidence to show that there was, in fact, a chancel screen, or, if there was, its size, or as to when it was removed, or indeed as to its precise location. Mr Shorrocks postulated an approximate removal date as being before 1600. He based this on the fact that ordinances for the removal of screens in churches in the south east of England passed into practice easily and quickly after the 1540s. I see no reason not to accept this.
33. There was an 1897 photograph of the church produced, which was taken before the current screen was installed, and which shows a low, stone screen wall about three feet high.
34. Mr Shorrocks described the Bodley and Garner screen as representing “a fine piece of work by Bodley who is (was) a leading church architect and it represents a particular response to a particular development to the liturgy”. He went on to say: “a removal of the screen would make a huge difference to the way the building was used for worship, and the way people who feel involved in the centre of worship use the building..” and: “visually and architecturally, it does what it was supposed to do: to put a barrier between church and nave”, and; “Opening up the building would make a significant difference to how the building feels as a place of worship”. I accept this.
35. Mr Shorrocks described the screen as being “a kit of parts”, and said that it can be taken down relatively easily by skilled

craftsmen. He pointed out the pegs used to join the major elements or sections together.

36. Insofar as placing an altar in front i.e. below the screen was concerned, the pews would have to be removed to the extent that, as he put it: "The congregation would be pushed too far back: the whole purpose (of the changes) is to bring people together, but in fact you would be pushing them away".
37. The DAC support the removal of the screen, subject to certain provisos, and, as I have already mentioned, the CBC and SPAB have not objected.
38. As has been correctly argued before me, I have to carry out a balancing exercise and ask the question; "Does the benefit of moving the chancel screen outweigh the harm caused by its removal?"
39. The benefit of removing the screen cannot, in my judgement, be gainsaid. I accept the evidence given by and on behalf of the petitioners and by the church architect, Mr Shorrocks. The proposals would make the church more open and viable for worship, less dark and gloomy, more flexible and acceptable for modern worship needs and practices, so that, for example, projection screens could be introduced, subject, of course, to further Faculty permission, and groups/bands and the like could help lead the music, Messy Church and the like could be started, and there could and would be better communication or togetherness between Rector and choir and communication. Those arguments cannot be denied. None of the counter-proposals put forward by the Victorian Society can be said to be remotely practicable. They would, as the thrust of Mr Shorrocks's

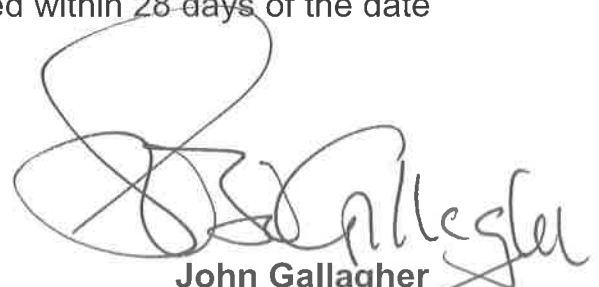
evidence quoted above reveals, have the effect of deflecting the purpose of the parish's proposals, wants, and needs.

40. Not all change is bad: far from it, and whilst there is a rebuttable presumption in all faculty proceedings in favour of a status quo, such can be rebutted more or less readily, depending on the nature of the proposals, as was made clear by the Court of Arches in In re St Alkmund, Duffield [2013] Fam 158 at para. 87. There the Court of Arches stressed the need for the Consistory Courts to be; "freed from the constraints of the Bishopsgate questions" previously applied. Where, as in the instant case, a listed church is involved, the benefits need to be greater.
41. In passing, it is relevant, in my judgement, that what is sought is merely the undoing of what was done about 130 years ago, relatively recently in the life of this church, so as to restore things as they had stood for several hundred years insofar as the nave's separation (or lack of it) from the chancel, is concerned.
42. As the decision in In Re Duffield (supra) makes clear, I am required to 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. The church undoubtedly falls into the above-mentioned category, but I am not persuaded that significant harm would arise by the removal of the screen, which was not mentioned as being of significance, or indeed at all, in the Grade I listing Reasons for Designation.
43. Accordingly, the presumption in favour of the status quo is rebuttable, and in my judgement is rebutted by the evidence put forward by, and on behalf of, the petitioners as to the parish's needs.

44. If I am wrong here, then I have to address how serious the harm would be. To this the answer must be: "Not much", for the arguments advanced, namely the status quo ante circa. 1890 is being restored, and the screen, whilst very visible, was clearly not deemed worthy even of a mention in the Grade I listing Reasons for Designation.
45. The justification for carrying out the proposals is overwhelming. I am wholly satisfied that the church needs them for its requirements of worship and mission. There will be public benefit, including liturgical freedom, in that an altar can be placed below the chancel, bands/groups used to lead the music, Messy Church and the like introduced, and projector screens potentially used, all of which the church requires. Additionally, the building can be used more often for concerts and the like.
46. The balancing exercise, as must be clear from the above, comes down firmly in favour of the petitioners. Whatever harm there may be to the building is slight, and most certainly not substantial or significant; and the removal of the screen takes away what is a dominating, intrusive, not to say off-putting and gloomy presence.
47. That is not to say that the chancel screen is of no value, and should be cast aside onto the scrap heap: the petitioners concede this. The screen is not integral to the church or to its architecture; quite the reverse, and it can be removed relatively easily. If installed at Hallaton, it will require to be shortened at either end, so as to fit the church there. Ideally, this is what should occur, but of course much depends on whether the Hallaton PCC approves the scheme, and can raise the appropriate funding, and then on the Chancellor of Leicester Diocese granting the

appropriate Faculty. I do not seek to make any comment on these matters.

48. Mr Mynors, Counsel for the petitioners, advanced proposed conditions to deal with this aspect of the matter, which I propose to adopt. In short, the chancel screen may be dismantled and transported to Hallaton if what I term the Hallaton scheme goes through. If the scheme does not, and the screen has not been erected at Hallaton within two years from the date of issue of this Faculty (and permission to extend time can, of course, be sought if the Hallaton scheme is to go ahead but has been delayed), the screen may be removed from Penshurst and put into appropriate storage as approved by the Rochester DAC, or, in default of such approval, this Court. Thereafter, an alternative home can be sought for the screen, subject to the appropriate consents being obtained, including from this Court.
49. Permission to apply is given in respect of the removal and storage conditions, any cutting down of the screen and its ultimate destination
50. Accordingly, I direct that a Faculty is to issue for all the works set out in paragraphs 3(i) to 3(iv) of this Judgment. Issues of costs, and any ancillary matters, are to be dealt with by way of written submissions, to be filed and exchanged within 28 days of the date hereof.



**John Gallagher**  
**Chancellor**  
**1 October 2014**