

*Faculty – Grade I listed medieval village church (restored by George Edmund Street in 1864-6) – Proposed internal re-ordering – Installation of toilets and kitchen across the west end of the church behind curved screens – ‘Not Object’ Notification of Advice - Objection by Victorian Society to curved rather than rectilinear screens – Faculty granted*

**Application Ref: 2019-033906**

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

Date: Sunday, 5 December 2021

**Before:**

**THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR**

**In the matter of:**

**St Mary, Bloxham (Our Lady of Bloxham)**

**BETWEEN:**

**THE REVEREND DALE GINGRICH (Vicar)**

**ELIZABETH FARMER (Churchwarden)**

**JON CARLTON (PCC Member)**

Petitioners

- and -

**THE VICTORIAN SOCIETY**

Party Opponent

Opposed petition determined on written representations and without a hearing.

The following cases are referred to in the Judgment:

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

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

*Re St Chad, Longsdon* [2019] ECC Lic 5

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

*Re St Mary the Virgin, Wheatley* [2021] ECC Oxf 8

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

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

## JUDGMENT

### Introduction and background

1. This is an online faculty application, dated 22 April 2021, by the vicar, the churchwarden and an authorised PCC member (who is leading the proposed church re-ordering) of this exceptional, Grade I listed medieval church (re-ordered by George Edmund Street between 1864 and 1866) to introduce two pods with curved wooden screens connected by a curved step to form a continuous arc across the west end of the church which will accommodate toilet and kitchen facilities, all in accordance with designs by JBKS Architects. These architects were appointed by the Parochial Church Council (the **PCC**) following a competitive exercise; and these proposals have the full support of the PCC. The court has already (on 13 May 2021) granted a separate faculty authorising the replacement of the heating installation serving the church building. I understand that a further faculty application for repairs to Street's tiled floor is presently awaiting completion of the petition form.

### The church building

2. The village (or small township) of Bloxham lies in the north of Oxfordshire, a little to the south-west of Banbury, in the Archdeaconry of Dorchester. The church of St Mary, Bloxham (Our Lady of Bloxham) was first listed on 8 December 1955. The listing entry reads as follows:

GV I Parish Church. C12 fragments. C13. Chancel, nave, north and south aisles, and nave arcades. C14: North and south aisles widened; shallow north transept constructed; north and south porches; west tower and spire. C15: Milcombe Chapel; clerestory of the nave. Roofs of north and south aisles reconstructed 1686. Spire repaired several times in C18. 1864 restoration by G. E. Street. 1956: Major repairs.

Regular coursed ironstone rubble. Lead roofs. Nave, north and south aisles, south chapel, chancel, north and south vestries, north and south porches, west tower.

Chancel: four-light Gothic revival east window, other windows two-light with intersecting Y- or geometrical tracery. North vestry 1866; south vestry C20. North aisle: four-light west window has unusual tracery with carved figures; three-light window west of porch has a form of reticulated tracery; east of porch two three-light windows have reticulated and geometrical tracery; five-light Perpendicular east window. North porch and doorway early C14 with wave mouldings. South aisle: four-light geometrical west window with a six-sided star to head; three-light geometrical window to left of porch; C14 porch is vaulted with room over and third storey added in C15. Milcombe Chapel has four-, five-, and seven-light rectilinear windows externally divided by buttresses with pinnacles; straight parapet has gargoyles; mutilated niches flank the east windows of south aisle and chapel.

West tower: west doorway has three orders of wave moulding, hollows filled with ballflower, leaves and birds and large carved heads in place of capitals. Hood has seated figures. Tower of five stages has angle buttresses with niches, string courses to all stages and louvred lights to bell stage. At fifth stage the tower forms an octagon under the spire; broaches are marked by corner pinnacles. Octagon has cornice of blind tracery; spire has canopied lucarnes.

Interior: chancel: C12 responds of chancel arch re-used in C14 rebuilding; re-set C12 doorway in north wall has tympanum with fish scale pattern; re-used Romanesque carvings to rere-arches of south windows; four bay nave arcades: double chamfered arches; north piers are round with moulded capitals; south piers of quatrefoil section, one has a stiff leaf capital. North transept entered through two arches on diamond shaped piers. Capital has band of heads. Between the south aisle and the Milcombe Chapel are two delicately moulded four-centred arches and a slender pier. North aisle roof and most of south aisle roof C14; chancel and nave roofs renewed 1866; font C15 with Jacobean cover; rood screen C15; reredos and choir stalls 1866 by Street.

Wall paintings: Fragments of C15 over north doorway; in the Milcombe Chapel a series of narrative scenes probably C16. Fragments of C14 glass in central window of north aisle. Chancel east window by Morris and Co. 1869; chancel south window by Charles Kempe; Chancel low south window by Morris and Co, inserted 1920.

Monuments: To Sir John Thornycroft (d.1725) in Milcombe Chapel, and other monuments to this family including Elizabeth, Lady Thornycroft (1704), John Thornycroft (1687) and his wife Dorothy (d.1717/18). There are memorials to C19 members of the Holloway family and to the vicars: Robert Pargiter, John Davis, Harry Davis, George Bell, James Hodgson.

The Church of St. Mary is noted as one of the finest in the country. It was indirectly under royal patronage until 1541 when the living passed to Eton College. The C14 and C15 tracery and lively sculpture was carried out by a school of C14 masons who worked on other churches locally. The Milcombe chapel may have been built by the mason Richard Winchcombe who was responsible for Adderbury chancel 1418.

3. The entry for the church at pages 172 to 175 of the current (2017) edition of the volume of *Pevsner's Buildings of England* for *Oxfordshire: North and West* (by Alan Brooks and Jennifer Sherwood) extends to some four pages of text.

4. The illustrated Statement of Significance extends to some 76 pages and was prepared in February 2019 by Dr Kirsten Claiden Yardley and Ms Natalie Merry of the Oxford Heritage Partnership. The executive summary reads:

The church of St Mary is an exceptional grade one listed medieval church and iconic Banburyshire landmark. Despite being situated on a busy arterial route the large churchyard, with dense trees to the south of the building, creates a peaceful rural setting for the building and links the village to the open fields beyond. The current building dates back to the 13th century but fragments of an earlier, 12th-century church are preserved within the chancel. It was enlarged in both the 14th and 15th centuries. The 14th century features provide important evidence for the work of a local school of stonemasons also responsible for contemporary work at Adderbury. The Perpendicular fenestration and superb Milcombe Chapel are the work of Richard Winchcombe, an early-15th century master mason who is best known for his work for William of Wykeham on New College, Oxford. The interior was reordered by G E Street between 1864 and 1866, with the floor lowered and finished with tiles, uniform rows of oak pews filling the nave, and a fine set of fittings and furnishings installed in the chancel - including a large pipe organ by Walker and a reredos by Thomas Earp.

The interiors of the nave, aisles and transept are largely medieval in character, dominated by the 13th-century arcades, 14th and 15th-century fenestration and 15th-century nave clerestory. The impact of the Street works on these interiors has been compromised by later losses and alterations that have removed the uniformity and formality characteristic of 19th-century schemes. The opposite is true in the chancel, which essentially remains as G E Street left it in 1866. Here the muscularity and completeness of the Victorian scheme defines the character of the space, and is of particular value.

**Overall, the church and setting are of high significance.**

5. The nave is assessed as being of “moderate to high significance”. It preserves the footprint of the 12th century (or possibly earlier) nave despite the loss of most of the 12th century fabric beyond that reused in the chancel arch, and the 15th century work to the roof and clerestory is a fine part of the 15th century Perpendicular scheme of work undertaken by the master mason Richard Winchcombe. However, the nave is said to lack coherence on the basis that the compromised Street restoration does not balance the medieval structure as it once did and the authors therefore consider that the nave is not as significant as a complete or sympathetically altered G. E. Street scheme would be.

6. The Statement of Needs was prepared by the PCC and Oxford Heritage Partnership in May 2019 and extends to 39 pages. The executive summary reads:

St Mary's is a large and historically significant church situated within a community that is undergoing dramatic population growth and demographic change, due largely to local housing developments. The largest public building in the area, it has great potential for a sustainable future, both as a place for all types of worship and as a community resource. However, current use of the building is actively limited by the inflexibility of the interior,

poor lighting and heating, and a lack of ancillary facilities. Whilst there is a parish room on an adjacent site that can provide meeting space and facilities, it is too far from the church, along a busy road, to serve events at the church directly. The small size of the room also limits the extent to which groups using it can grow.

The last reordering of the interior was in 1990, and much of the seating was laid out in 1864 for a village and style of worship radically different to that emerging today. We need a space that can accommodate large community events and a varied programme of worship. We need heating and lighting systems that are efficient and protect the fabric of the building from damage. We need to ensure that whenever someone needs somewhere to pray, they can find a welcome in our church. Most importantly, we need a space that is accessible and hospitable to all in the village including children, the elderly, and the disabled.

The PCC believes that the expansion of the village is a crucial moment for the future of the church in Bloxham, presenting an opportunity to engage with the growing local community at a time of remarkable change. However, to take advantage of this opportunity the church building needs to be adapted as sensitively as possible to serve this community as it will be, not as it has been.

7. The section headed “Justification” reads as follows:

The current interior arrangement of St Mary’s is still substantially that resulting from the Street re-ordering of the second half of the 19<sup>th</sup> century. The liturgical needs of our worshipping community are now very different from those of the late 19<sup>th</sup> century, and the opportunities for wider use of the building present rich areas of outreach. We need to facilitate the growth of the Church by broader and more flexible use of the Church’s building for worship, mission and outreach into the community.

The building as it is currently laid out and furnished does not easily allow for use of the space in any configuration other than formal eastward-facing, mass seating. Though well suited to the Ecclesiology of the late-Victorian period, this layout is quite contrary to the informal and communal layouts required of the more modern types of worship that are most popular with our community. It also prevents the use of the building for other purposes by community groups. When the pews are moved, with extreme difficulty, they have to be placed in a different part of the church and the resulting loss of space renders these areas essentially unusable. Functions other than worship are crammed into the small, flexible areas that we do have access to. This has resulted in a proliferation of clutter and donated furniture.

The interior of the church is dark and often cold as a result of inadequate heating and lighting installations. These installations are inefficient and costly to run and maintain, and the heating system does little to prevent the heating/drying and cooling/wetting cycles that are damaging to the friable local ironstone.

As we have stated throughout this document, the demographic of our community is changing and the population is growing at a dramatic rate - not just at some point in the future, but now. Between 1991 and 2030 there is predicted to be 70% increase in population. The result is a village transforming into one quite unlike that of the 19<sup>th</sup> century or even the 20<sup>th</sup>. The bulk of the population is already made up either of young

families or the retired, a trend that will only increase as development continues. Our church building does not cater to the needs of these groups at present and it must if we are to maintain and grow our links with the village. Specifically, these groups need an accessible, warm building with modern facilities and worship that meets them where they are rather than requiring them to participate in forms of service which may feel unfamiliar and alien. We need to engage with these people now, at this moment of transformation, if we are to form meaningful and long lasting connections.

The final element of our justification is that of stewardship and sustainability. The costs of maintaining and running a historic building as large and complex as St Mary's are substantial. In common with most other parochial churches, our regular giving only meets a small proportion of this cost leaving us reliant on one-off grants and donations and the admirable fundraising efforts of the Friends of St Mary's. We do not consider that is responsible or sustainable to expect these sources alone to provide for the building in the long term and, therefore, believe it is vital that the building itself can be used to generate revenue.

#### *The consultation process leading to the Notification of Advice*

8. The present proposals are the product of extensive discussions between the parish, and their professional advisers, and the Diocesan Advisory Committee (the **DAC**) and their officers, in consultation with the Church Buildings Council (the **CBC**), Historic England, the Society for the Protection of Ancient Buildings (**SPAB**), and the Victorian Society over the course of several years. Since April 2019 over 50 supporting documents and images have been uploaded to the online faculty system (the **OFS**).

9. In a letter dated 19 November 2019, the CBC expressed their

... continuing concerns about the proposed curved screen in this strongly rectilinear building. As well as being out of keeping it will also limit some options for the future use of the building. If a rectilinear seating layout is needed in the future the screen will curtail how far it can be extended. The Council recalled that the statement of significance draw attention to the unsatisfactory effect of the circular form of the dais in a rectilinear building. It would be strongly preferable for both these curved elements to be removed.

10. In a letter dated 7 June 2019, Mr James Hughes, the Senior Conservation Adviser to the Victorian Society, expressed the Society's objections to the proposals which were then being promoted for a comprehensive re-ordering of the church, including the removal of pews, the installation of a new floor and west-end screen and facilities and the extension of the vestry. Expressing a note of disappointment that this scheme was fundamentally unchanged from that on which the Society had commented more than six years earlier, the Society reiterated their view that "... what is proposed would cause serious and unjustified harm to the significance of the building by sweeping away much of the church's Victorian interior". In considering any works of alteration and reordering, the appreciation of G. E. Street's restoration as a coherent and complete phase of work – and the preservation of it – were of paramount importance. In conjunction with the other works then proposed, it was said that the expansive, incongruously concave screen at the west end would detrimentally transform the interior. The letter continues:

The principle of facilities at the west end of the church is one we have accepted previously. We acknowledge the understandable attachment the parish has to its

millennium screen, but there is no reason why it should inform the detailed design of the new western screen. Indeed, there are compelling reasons why it should not. There is also no reason why the western screen should adopt a form so contrasting and at odds with the inherent orthogonal, axial and rhythmical tendencies of the historic building and its design ....

Of the specific elements of the proposals, the loss of the floor and the seating, and the form, configuration and design of the western screen are the most objectionable elements of the scheme. However, there is a seeming disregard in the design solution proposed here that is equally as concerning. The interior of St Mary's is not beyond alteration: this we accepted in 2012. But it is essential that any changes proposed respond both to clear, demonstrable needs and to the special historic and architectural interest of the Grade I-listed building. The present scheme does neither and requires a fundamental change of approach. Improved access, heating, AV, lighting, fabric repairs, enhanced storage, kitchen and lavatory facilities and a certain amount of flexible space could all be realised here without causing undue harm to the significance of the building. I'm afraid there can be no justification for so sweeping and destructive proposals as those now proposed. The Victorian Society is keen to support the parish's aims of enhancing its facilities and engaging more actively with the local community. However, without a profound shift in approach, and without designs that demonstrate a genuine sensitivity for the significance of this magnificent Victorian interior, we are likely to remain robustly opposed to any significant interventions in this building.

11. In a further letter dated 20 December 2019, Mr Hughes reported that the Victorian Society's Southern Buildings Committee remained firmly opposed to the cycloramic screen, which they considered would be inappropriate and jarring given the retention of the strongly axial historic floor. The Society could see no compelling justification why these elements should take the form that was proposed for them.

#### *The Architects' Curved Form Justification*

12. In a document prepared in March 2021, JBKS Architects set out to justify their curved form proposal. They note that after an extended period of consultation and discussion, it had generally been agreed that the provision of toilets, a choir vestry and kitchen facilities to serve refreshments would be of substantial benefit to the church. Not only would the congregation be better served, but it would enable community events and activities to take place within the church. The spin-off would be that a wider network of people would become connected to the church, which would then lead to the development of their Christian faith, and the growth in numbers of the congregation. Now that the principle of the provision of the facilities had been broadly agreed upon, attention focused upon how this should best be done.

13. The architects first addressed the space and its proportions. The interior of the nave and side aisles of the church combined, on plan, is wider than it is long. It measures 21.80m wide from north to south across the full width, and 19.24m long from east to west. The gothic arches of the four-bay colonnades are beautifully tall, reaching up to 6.0m to the undersides of the arch apexes. The central nave ceiling extends upwards with clerestory windows to a high wooden ceiling which measures 12.42m at its midpoint. (This is the equivalent of a four-storey domestic scaled building). The side aisles also have high ceilings. The north aisle is 8.46m high and the south aisle is 9.11m high. As one stands in the nave, it is said to be pleasing to trace the clean

lines of the perimeter and then to follow the rhythm of the two rows of arches. There is a lovely interplay between straight lines and curved forms. This is best done at high level, because of the interruption of the curtained-off choir vestry in the north-west corner. The challenge is said to be to insert what will, in effect, be enclosed, or semi-enclosed, rooms into this space, which is all of a piece, without disturbing its beauty. The most-often used solution is to box in the westernmost bays of each side aisle. One of these has already been closed in – to create a choir vestry. The architects consider this to be a pity. The necessity is appreciated, but the visual result has been to interrupt the way in which the eye flows around the lines of the building. The cubic form of the box is said to protrude uncomfortably.

14. What is said to be required by the design is to insert the enclosures for the facilities in such a way as to integrate, rather than impose, the structures within the space. This is one of the main reasons for the choice of a gently curving footprint rather than rectilinear. There are said to be other benefits: (1) The structures will be less bulky – they will recede towards the central line of the nave. (2) They will occupy less space and impose themselves less. The perceived line of imposition of the curved pods will be significantly further back (west) than that of the pods rectangular on plan. (3) The curved pods will be visually linked together by the curved line of two shallow steps at the change of level from the nave floor to the west tower. (4) The whole curved line creates a graceful linear connection across the width of the church from side wall to side wall, thereby helping to unite the three spaces into one. (5) The curved dais installed by Robert Maguire in 1990 lends itself to the option of seating arranged in concentric curved rows. This too would bring those seated in the side aisles into a more inclusive position. The default position of straight row seating in this church is that the nave and chancel feel like preferential space, with the side aisles relegated to a less important role. (6) The line of the curve formed by the two pods and their linking west end platform would work well with a curved seating layout, although this is by no means the only seating arrangement possible. Absolutely nothing precludes a formal seating arrangement when desired.

15. JBKS Architects conclude as follows:

Much of the feedback on the curved line in the design of the toilet, choir vestry and kitchen pods has been very positive. Some have said it is an ingenious idea. Looked at purely architecturally it does solve the problem of accommodating the facilities in a way that is complementary to the gothic curves which are such an integral part of defining the character of this beautiful church.

The *St Alkmund's, Duffield* tests steer design decisions clearly towards the minimum of harm to the significance of historic buildings. In this case the beauty of the space enclosed by the nave and side aisles is of high importance on the scale of significance in this Grade 1 listed church of St Mary's Bloxham.

The curved form of the two inserted pods will impose far less harm on the space and is far more pleasing to the eye than cubic forms of box pods would be.

The modern facilities are required, in a very practical sense, to permit the church to continue to serve the community and to further its worship and mission. Inserting pods is a necessity. The curved forms make something out of the necessity and integrates them well into the building. Frankly, they are more stylish too, which is a quality that stands the tests of time far better than the purely functional.



16. The architects have produced sketches purporting to show the proposed curved screens viewed from the body of the church and (by way of comparison) a view of how rectilinear screens would look from the body of church; although from what was said during the meeting that took place remotely between the parties' representatives on 18 August 2021 (to which I shall refer later in this judgement), these sketches may not be entirely accurate insofar as they would appear to show the screens protruding slightly into the architectural nave of the church. The project architects have also produced floor plans of the church showing the area bounded by the proposed curved screens and (by way of comparison) the area bounded by rectilinear screens. Copies of these two sketches and of the two plans are reproduced at the end of this judgment.

#### *The Notification of Advice*

17. The DAC issued their Notification of Advice on 19 April 2021. They do not object to the proposals being approved by the court, subject to conditions which essentially require the proposals for the design of the curved screens, and also detailed plans, elevations and specification of and for the new facilities, to be submitted to, and agreed by, the DAC prior to any works commencing on site.

18. The DAC advise that the proposals are likely to affect the character of the church as a building of special architectural or historic interest and also to affect archaeological remains existing within the church or its curtilage. As a result, notice of the proposals has been published on the diocesan web-site pursuant to rule 9.9 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**). No objections have been received in response to either the rule 9.9 notice or the usual public notices (which were displayed on the church web-site as well as physically on notice boards inside and outside the church building).

19. The DAC's reasons for resolving not to object to the proposals were explained in a separate report which was sent directly to the Diocesan Registry. By way of overview, this report explains that this is a project which has been in progress for almost ten years. Initial proposals were submitted in October 2012. Delegation site visits were held in June 2013 and April 2019. Early stage proposals were presented to the DAC in November 2012 and again in July 2013. The feedback letter sent in December 2012 stated that the Committee had raised no objection to the curved screen. Following a hiatus during an interregnum, the parish approached the DAC in November 2018 to restart discussions, after which the application was brought to the May 2019, November 2019 and November 2020 meetings. At their meeting in November 2020, the DAC resolved to issue a 'Not Object' Notification of Advice for the proposed pods and facilities at the west end. During the spring 2020 lockdown, the parish continued to work on the proposals, and they reviewed the overall project, restructuring it as eight sequential, prioritised elements. The first phase consists of the new heating (for which a faculty has now been granted), floor repairs (for which a faculty application is in the course of preparation following the issue of a 'Recommend' Notification of Advice), and the present proposal for facilities within curved pods at the west end of the church, which the parish consider to be key to making better use of the church building. The following elements of the proposals will make up later phases of the project: (1) Seating: the retention of 26 shortened pews has been agreed with the DAC and the consultees. (2) Lighting/audio-visual proposal. (3) The west door/glazed entrance lobby. (4) A raised ringing platform. (5) A vestry extension – a positive pre-application response has been received from Cherwell District Council for revised proposals for the extension which would not extend across the elevation of the Milcombe Chapel.

20. The DAC report records that Historic England, the Victorian Society, SPAB, and the CBC had all been consulted on the initial proposals in 2012 and subsequently. All had consistently expressed their concerns over the cycloramic screen, commenting that the curve would be at odds with the predominantly rectangular architecture of the building. At their meeting in November 2019, the DAC accepted, as they had in 2012, the principle of pods placed on an arc at the west end of the nave. Following that meeting, the Church Buildings Officer (the **CBO**) again consulted the CBC, Historic England and SPAB regarding this proposal, explaining that the DAC had accepted the principle for the heating, the floor repair and the facilities proposals, including the curve, which they believed looked more strident in plan than it would in situ. The officer asked, in particular, whether the consultees would accept the introduction of the curve. All reiterated their specific concerns regarding this element of the proposals.

21. Following the April 2019 site visit, the DAC sub-committee expressed the view that those element of the proposals which involved the almost complete removal of G. E. Street's 19th C reordering of the nave were highly destructive. The CBO and the sub-committee had been working collaboratively with the parish to revise the scheme and mitigate those elements, which were considered to result in an unacceptable level of harm to the Grade I listed church. Consequently, a heating feasibility study was commissioned which resulted in the withdrawal of proposals to provide underfloor heating across the nave and the Milcombe Chapel by covering over the Street tiled floor scheme and raising the floor level. The floor would instead be repaired, and a new modular boiler system would be installed, with additional heat emitters to boost the heating provision. In addition, the parish had agreed to reinstate the Street altar rails and other elements of the chancel as part of the proposals. The DAC, in conjunction with Historic England, the amenity societies and the CBC, had agreed to the retention of 26 of the 39 pews currently in the building in a later phase of the project. It was against this background that the DAC had resolved that the application should proceed to a 'Not Object' Notification of Advice, so as to allow the parish to progress the proposals and to determine whether any of the consultees should be minded to make a formal objection to the proceedings. This would allow the parish to go forward to petition without incurring further consultancy fees for detailed design before knowing whether consent would be forthcoming. The report explains that:

The DAC have accepted that the facilities are needed to further the mission and ministry of the parish and, had the parish not insisted on the original design based on curved elements, they would probably already have the much-needed WCs and kitchen. At their meeting in November 2020, the DAC agreed that the most damaging elements of the proposal had been mitigated and that the harm to the tiled floor associated with inserting the pods at the west end of the church would be the same whether they are straight or curved. In an effort to reach a compromise for pastoral reasons, the DAC resolved to not object to the principle of the curved elements contrary to the advice of Historic England, the Church Buildings Council and amenity societies. As the harm is now mainly considered to be aesthetic, design of screens which act more like pieces of fine furniture and do not draw undue attention to themselves is paramount. One option, for example, would be to make reference to G.E. Street's woodwork in the church and elsewhere, or to the many examples of English church woodwork in Howard and Crossley's book on the subject. Alternatively, a modern design language could be used as a counterpoint to the medieval architecture.

*The progress of the petition*

22. Despite the lack of any objections in response to the formal notices, after my initial review of the documents on the OFS I considered it appropriate to direct that special notice of the proposals should be given to the CBC (under FJR 9.1) and to Historic England, SPAB, the local planning authority and the Victorian Society (under FJR 9.3).

23. The CBC responded on 29 June 2021 stating that they did not wish to pursue any objection and were content for the matter to be considered on the basis of their existing advice (within their letter dated 19 November 2019). They invited me to be mindful "... of whether the parish has demonstrated to [my] satisfaction that the curved form of the screens is necessary, and has demonstrated why a rectilinear design cannot serve the purpose".

24. SPAB responded on 14 July 2021 stating that they had no objections to the revised proposals (which retained the historic floor in full and preserved a number of benches which were to be adapted so as to be made moveable).

25. Mr Richard Peats of Historic England responded on 14 July 2021. So far as material to the application presently before the court, Historic England noted that the parish and their architect remain committed to a curved screen at the west end which would hide the proposed new toilets, a kitchenette and other services. While accepting that these facilities were needed, and that the west end of the building was a suitable place for them, Historic England had

... consistently advised against a curved form here. The reason for this is that the architecture of the building is firmly rectilinear. A curved element would fight the architectural logic of the building and is likely to look uncomfortable. This is such a fine building that any new work needs to be of the highest quality that enhances the beauty and dignity of the nave. We remain of the view that accommodating the services in rectilinear pods ... is practical and would be a better way of accommodating these services.

Having made the court aware of their views, Historic England are content for me to determine this faculty application without recourse to a court hearing and thus they do not raise any formal objection.

26. The local planning authority responded on 15 July merely acknowledging that they had received an "application for Miscellaneous Enquiries" on 29 June 2021.

27. The Victorian Society submitted particulars of objection (in Form 5) to all aspects of the proposed works on 28 July 2021, thereby becoming a party opponent to the petition. They state that they have approached the petitioners' proposals constructively and reasonably. They welcome the concessions that have been made in light of the concerns raised by the Society and other consultees to the original application; and they accept the splitting of the original application into several separate faculty applications, so as to allow uncontroversial aspects of the originally proposed works to progress. However, objections remain, particularly concerning the proposed works which form the focus of this petition. The Society's grounds of objection were arranged under three headings as follows:

*(1) The proposed works would cause substantial harm to the significance of a Grade I listed building.*

28. Bloxham is a building of the highest national significance, as evidenced by its Grade I listing. It is an impressive medieval church, but it is also highly significant due to the substantial nineteenth-century restoration of the building carried out by G. E. Street, one of the most distinguished and important ecclesiastical architects of the Victorian period. As stated in James Hughes's letters, Street's work at Bloxham is "of a quality, richness, ambition and extent that is rare and impressive, resulting in an interior that is substantially of Street's conception and critical to an appreciation of the significance of this Grade I-listed building".. This significance is enhanced by the fact that "Street's restoration remains largely intact. The interior is not, in other words, a compromised, semi-legible, fragmentary Victorian interior, but one which remains essentially as Street intended it". Not only is the work significant because it is Street's, but also because of its quality and state of preservation. This view is supported by Richard Peats, who wrote, "the Victorian reordering in this church is one of George Edmund Street's best works in the diocese and survives remarkably intact and therefore makes an important contribution to the architectural and historical interest of the church". Richard Peats is a recognised authority on Street and has written extensively on his work in the Diocese of Oxford.

29. The building, especially its interior, is characterised by a rectilinear quality. First, through its plan whereby its aisles and associated chapels are all arranged in a parallel on an east-west axis. The axuality of the space is also evident on the north-south axis, especially in the vistas created between the north and south porches, and the Milcombe and Memorial chapels. Secondly, the rectilinear and axial qualities of the space were reinforced by Street through the tiled floors he created. Their design is fundamentally rectilinear, especially in the nave, where the space is divided into walkways and areas for seating. In terms of detailed design, the tiled scheme is wholly rectilinear, with no substantial curved elements, apart from some small designs found on encaustic tiles in the Chancel. In this context the proposed curved screens would introduce an alien architectural form into the building, wholly at odds with its character as expressed through its surviving medieval fabric and the highly significant work of Street. While the proposed facilities would cause harm to the significance of the building irrespective of their form or design, the curved design in particular would cause significant harm, creating an unnecessary visual conflict between the historic fabric of the building and the proposed facilities the petitioners require.

*(2) The proposed works contained in this petition now form a separate faculty from proposals to the dais and nave seating. However, they cannot be treated separately as each will have a combined effect on the remarkably holistic design of Street's restoration. The Victorian Society believe that the current petition could be seen to offer a precedent to support the related alterations proposed to the nave seating and dais, alterations which would cause substantial harm to the significance of a Grade I listed building.*

30. Two important aspects of Street's work at Bloxham are the nave benches and the unusually wide dais in front of the chancel screen. The Victorian Society realises that the alterations to these parts of the fabric and fittings now constitute separate faculty applications. However, the current petition, and these further proposed works, both seek to introduce curved design elements into the building. This is expressed in the retention of the jarring curved extension to Street's dais (installed 1990 by Robert Maguire), and the proposed curved arrangement of seating expressed in the plans accompanying this petition, and cited as a justification for the proposed curved screens in the architects' document 'BLX Curved Form Justification' (referenced above). These curved elements conflict with the highly rectilinear

character of the space, and their introduction would harm the building's significance. The Society fears that if the petition were successful it would provide a precedent to support these further harmful proposals, which are inevitably inextricably associated with one another.

*(3) The petitioners' aims could be achieved in a manner that would lessen the harm to the building's significance.*

31. Since they were first consulted in 2012, the Victorian Society have accepted the petitioners' need for kitchen and WC facilities, and that the west end of the nave and aisles would be the most suitable position for them. However, they have been equally consistent in their objection to the curved design of the screens, a position shared with all of the other consultees, including, until recently, the DAC. With the other consultees, the Victorian Society have maintained that the curved design would unnecessarily harm the significance of the building, and that the petitioners' needs could be addressed by a kitchen and WCs contained within or behind rectilinear screens. These could still provide the required space without extending into the centre of the nave. More importantly, they would respect the particular qualities of the space and Street's significant tiled floor.

32. The Victorian Society find the architect's justification for the curved design unconvincing. It is claimed that the curved design would be less imposing on the interior. However, any installation of any form is likely to be highly imposing and, in the view of the Society, the question is more how it would react to the existing characteristics of the space. The architects also state that the curved design would encourage a curved seating plan, something which is considered undesirable due to the building's design and spatial qualities. Also, the proposed free-standing servery unit increases the harm of the proposals by causing them to intrude further into the nave space. This is unnecessary when a servery could be formed by an opening in the screen surrounding any proposed kitchen. Given that harm to significance should be avoided whenever possible, the Victorian Society object to the curved design of the screen when a more suitable – and crucially less harmful – rectilinear screen, without a separate servery unit, is surely possible.

33. The Victorian Society invite the court to direct that the case be determined by written representations.

34. The petitioners replied to the particulars of objection (in Form 6) on 16 August 2021. They address each of the Victorian Society's grounds of objection in turn, as follows:

*(1) Harm*

35. In the context of the parish's scheme to make the building more flexible for the congregation, and more usable by the community, thereby increasing St Mary's sustainability and resilience as a living Christian community, the parish have sought to minimise the harm to the building's significance resulting from the proposals; indeed, to enhance and showcase significance where possible. The proposals, taken as a whole, honour and enhance Street's Victorian works in various ways: the parish have committed to a complete restoration of the tiled floor; to the retention of 26 shortened/moveable pews (out of 39 surviving pews from the Street scheme); and to restore the Victorian features of the Chancel by exposing Victorian tiles around the High Altar which are currently hidden under carpet, the restoration of the tiled floor in the Chancel generally, and the reinstatement of the Victorian altar rails. Proposed changes to lighting will better showcase Street's features, including the walls, where his works saw the removal of previous plaster.

36. The parish point out that they have been developing guided tours of the church and the churchyard, with trial runs taking place during August and September 2021. These seek to engage a wide visitor audience with the glories of the building, including Street's work, as well as profiling Street himself and his extraordinary industry and achievements as one of the more significant individuals associated with the building's history.

37. The Victorian Society's assertion that "Street's restoration remains largely intact" and "essentially as Street intended it" needs to be qualified since there have been significant changes (such as a reduction in pew numbers, mixing with chairs, and detaching remaining pews from the grid pattern in the tiled floor, as well as the replacement of altar rails); there has also been significant degradation, especially of the tiled floor, in terms of loss of colour and definition, and damage to its integrity, with significant areas in an advanced state of decay, as evidenced by the comprehensive floor survey work that the parish have commissioned. The proposed works to the floor are intended to address this.

38. The Victorian Society assert that the slight curve to the two screens, behind which the proposed new facilities are to be located, introduces "an alien architectural form" into the building. They argue that it is "alien" because it is not "rectilinear". This ignores the fact that the building is full of curves, arches and other non-rectilinear forms: in the windows, the interior arches, the Chancel barrel-shaped roof (the work of Street), the font, some pillars, memorials, lighting coronas etc, as well as the previously installed nave dais to which the Victorian Society refer. The slight curve also serves to enhance the character of the screens as reversible "furniture", whereas further rectilinear blocks at the back of the church, along the lines of the current choir vestry in the north-west corner, would be far more "structural" - intrusive and harmful to the building's significance. The powerful block-like interior of the upper nave and side aisles, which the eye traces around the perimeter, and which looks like the inside of castle walls, cannot possibly be said to be compromised or harmed by what are really reversible, relatively transient, elements of furniture. There is no harm to the original rectangular form, either in reality or in perception.

39. As for the axially of the space, as the project architect has argued, the slight curve of the two screens, hinting at a MS form across the width of the building, unifies the building across the north/south axis; this is important also because the building is broadly as wide as it is long. In addition, the proposed opening up of the West Door as a main entrance to the building (with consequent insertion of a raised ringing chamber in the tower area), greatly contributes to the sense of the west/east axis. In fact, with glass doors at the west end of the building, a view is opened up from the street outside, stretching all the way to the Chancel High Altar, which reinforces the west/east axis. The subtle curved line of the screens acts almost like a drawn bow, accentuating the thrust of the drive from the proposed new glass doors in the west through the rood screen and up to the High Altar.

## *(2) Precedent*

40. The Victorian Society's comments reflect a misunderstanding since the parish have no proposals regarding the nave dais. This, combined with the incorrect implication in paragraph (3) of their objection that the proposals for the screens and facilities intrude on the nave (when they are in fact limited to the rear of the church in the north and south aisles), suggest that the Victorian Society may not be basing their arguments upon the current proposals. To assist with this, since receiving the notice of objection, the parish have been in contact with Mr Connor

McNeill of the Victorian Society and they have proposed a site visit to clear up any misapprehensions of this nature. An online meeting, proposed in response by the Victorian Society as a possible preliminary to any site visit, is due to take place on 18 August. The parish do not believe that it can be a valid objection to their proposals that they are retaining an existing feature of the building's interior, duly authorised and approved at the time, namely the 1990 Maguire nave dais; nor that can it be appropriate to characterise the fact that this are not proposing to change this at all as "to introduce curved design elements into the building". The parish also contend that the fact that the seating layout shown in submitted drawings shows moveable seating arranged in an arc is not material to their application. This is simply one way in which the intended moveable seating (including the proposed shortened, moveable pews) could be arranged in the building, depending upon the particular use to which it is being put at the time. It is one of many likely seating configurations in support of flexible worship and community use. Even the current pews are, from time to time, arranged radially — at great effort and inconvenience - facing the nave altar for the simple reason that it makes sense to face the focus of activity when that is at the nave altar or in the area around it. The notion that the current seating is static, and all in rows facing forwards, is not correct. The parish consider that the characterisation of the "highly rectilinear character of the space" is incorrect. The building's plan is certainly strongly influenced by straight lines; but the space as a whole, which is what concerns the parish in seeking to develop it to meet current and future needs, and what is experienced by people using it, is not.

### *(3) Alternative means*

41. The parish contend that their proposals for the screens and facilities do less harm to the building's significance than the Victorian Society's proposal to insert two right-angled structures in each of the south-west and north-west corners. Again, the Victorian Society seem not to have adjusted their position to the very substantial changes which the parish have made to their proposals over the last two or three years. To invoke previous positions of other consultees in support of the Society's objections when these positions have in some cases (such as the DAC and Historic England) been adjusted to reflect the evolution of the proposals, seems unreasonably to ignore the journey that the proposals have undertaken since 2012. The intrusiveness, or otherwise, of the screens has already been covered. In addition, it is worth pointing out that in a nave that is 12m high, the screens and facilities are 3m high, and that none of the sightlines in the building to the corners of the building or the windows are affected.

42. As for the free-standing, reversible, 1m high servery unit, again this does not in fact intrude upon the nave space, being located entirely within the north aisle. It also meets a very practical need to have multiple display points for catering (for large-scale events such as concerts and talks, and the parish's Christmas Tree Festival, for example). A hatch in the screen to the kitchen would not be able to accommodate these needs. The parish are planning a community café in the upgraded interior; this would also need a separate servery. They would further argue that the servery, intended as a fine piece of furniture, represents a big improvement aesthetically over the trestle tables currently used for dispensing refreshments.

43. In conclusion, given the need to make significant changes to the interior to upgrade the building's facilities and to introduce flexibility, the parish have sought to do this well, with a holistic scheme that balances protection of the building's significance — especially the Victorian elements — against the practical benefits they are seeking to deliver in terms of ensuring the health and sustainability of worship and mission, and the scale and the quality of community

engagement. In this, the parish have been guided by the principle - not relevant to the Victorian Society because of its more limited purpose - that is expressed in the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s. 35, namely the primacy of “due regard to the role of a church as a local centre of worship and mission”. The parish have sought to balance proper regard for the significance of the building, reflected in sympathetic adjustments and enhancements, with the needs of the church as a community engaged in worship, mission and outreach.

44. Following the service of the reply, two representatives of the Victorian Society (Mr James Hughes, who had previously visited the church, and Mr Connor McNeill, who had not) met remotely (via Zoom) with two representatives of the parish and their architect on the afternoon of 18 August. The meeting lasted just over an hour and both parties felt that it had been useful in helping to clarify, and to resolve, misunderstandings of fact, whilst differences of opinion still remained. With the agreement of both parties, I was given access to the recording of this meeting, which I have viewed before preparing this judgment. I have treated the recording, not by way of evidence, but essentially by way of preface to the parties’ written representations. What was apparent from this meeting was the genuine respect and affection that both sides to this dispute clearly feel for this church building, and also the civilised and respectful manner in which they have each sought to advance their differing, but equally sincerely held, views and opinions. Subsequently, by email dated 25 August, the Victorian Society invited the court to determine the case on written representations; and they confirmed that they had no wish to adduce any witness statements. On the same day, the petitioners confirmed that they, too, wished the case to be determined on written representations, and that they did not wish to adduce any witness statements. Since both parties agree to this course, I am satisfied, having regard to the overriding objective of enabling the court to deal with this faculty application justly, that it is expedient to order (pursuant to FJR 14.1) that these proceedings shall be determined on consideration of written representations, instead of by way of a hearing. Since the Statement of Significance contains photographs of the church’s interior, and a number of three-dimensional visual representations have been uploaded to the supporting documents and images page of the OFS, I have not considered it necessary to visit the church. Unfortunately, due to the pressure of work in this Diocese, this judgment has taken much longer to produce than I had either anticipated or would have wished. For this, I offer my sincere apologies to the parties.

45. Before I proceed to summarise the parties’ written representations, it is convenient for me to set out the legal framework by reference to which this faculty petition falls to be determined.

#### The legal framework

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

“... churches, particularly listed churches, constitute a tangible and spiritual history which touches everyone including the people of the past, the present and the future



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

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

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

48. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed. I recognise that these questions provide a structure and not a strait-jacket. To adopt a well-worn phrase, these are guidelines and not tramlines. Nevertheless, they provide a convenient formula for navigating the considerations which lie at the core of adjudicating upon alterations to listed places of worship, namely a heavy presumption against change, and a burden of proof which lies upon the petitioners, with its exacting evidential threshold. Since the judgment of Chancellor Eyre QC (in the Diocese of Lichfield) in *Re St Chad, Longsdon* [2019] ECC Lic 5 (at paragraph 11) and my judgment in *Re St Peter & St Paul, Aston Rowant* [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265, a practice has also developed of inquiring whether the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of the particular church building concerned. At paragraph 7 of my judgment in the latter case I said the following (with reference to the fifth of the *Duffield* questions):

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

49. It is this issue which has given rise to the key question in the present case. All are agreed both that this church needs suitable kitchen and WC facilities, and also that the west end of the church is the most suitable place for them. The real questions are whether a curved design would unnecessarily harm the significance of the building and whether the needs of the church could be addressed more satisfactorily by installing a kitchen and WCs contained within or behind rectilinear screens.

*The written representations*

50. The Victorian Society’s written representations are dated 8 September 2021 and are signed on its behalf by Mr McNeill, the Society’s Interim Churches Conservation Adviser. The Victorian Society welcome and appreciate the works which are proposed to preserve and improve appreciation of the significance of this church building and of Street’s work within it, not least the restoration of the floor and the Chancel and the improved lighting. They also accept both the principle of providing the facilities which form the subject of this petition and that the best location for these is at the west end of the building. However, the basis of the Society’s objection is the curved form of the proposed screens, which they say would cause harm to the character, appearance and significance of this highly significant church building, most clearly through the unwelcome, and jarring, conflict that these would create with the highly rectilinear design of the tiled floor and the similarly fundamentally rectilinear plan of the building. Although the Victorian Society is the only party opponent to this petition, this case is said to be unusual in witnessing all the other statutory consultees expressing similar concerns in respect of the partitions’ proposed curved form. Notably, serious concern has been expressed by Mr Richard Peats of Historic England, who is an accepted authority on Street and his extensive work within the Diocese of Oxford. The DAC also expressed concern with the partitions’ curved form throughout the development of the proposals. The DAC, also perhaps unusually, are unable in this case to issue a recommendation for the works in their Notification of Advice, instead issuing a ‘Not Object’ Notice. The Victorian Society have consistently maintained that the harm that would be caused by the proposals could be mitigated if the west-end partitions were redesigned so as to respond better to the rectilinear architectural qualities and significance of the interior of this church building.

51. The petitioners’ written representations are dated 20 September 2021 and are signed on their behalf by Mr Jonathan Carlton, one of the petitioners and the joint project lead for the church reordering which is the subject of this faculty application. Mr Carlton highlights the fact that the petitioners and the Victorian Society have very different objectives. The Victorian

Society's primary focus is, wherever possible, to avoid changes to Victorian fabric, whereas the petitioners, as well as being custodians of a Grade 1 listed building - a duty which they take very seriously - have a primary focus on the church as a local centre of worship and mission. The petitioners are concerned with the sustainability and resilience of St Mary's as a living Christian community; something which does not feature in the Victorian Society's world-view. The petitioners are said to have real and practical judgments to make in reconciling different, and sometimes conflicting, objectives. As a result, the fact that the parties are not in total agreement on the significant changes proposed to the building is, realistically, not so surprising. Indeed, there is some satisfaction in the fact that constructive engagement has narrowed down the area of disagreement to the slight curve in two pieces of reversible furniture, namely the curved screens behind which the proposed facilities are to be located.

52. The petitioners are also concerned with the whole building and space, and its significance and character, and not just with one slice of it arising in a particular historical period, or one dimension of it (plan, elevation etc). The petitioners' proposed scheme, taken as a whole, does no harm to the exterior of the building; does no harm to the fundamentally medieval structure and fabric of the interior; and, critically, the Victorian interior features will, overall, be in very significantly better condition after the scheme than before it. The Victorian tiled floor is to be totally restored, two-thirds of the pews are being retained (with Street's original pews already having been significantly reduced in number in the century and a half since the completion of the Victorian scheme, and detached from the grid pattern in the floor tiles). In addition, the Chancel (arguably the gem of the Victorian works) will be restored to a state much closer to its original condition, with the restoration of tiles, the removal of modern carpeting, cleaning of the Street-restored Rood Screen, and the intended reinstatement of the original Victorian altar rails. And for the first time, all of these features will be properly lit, with the showcasing of architectural features in mind as well as purely functional requirements. The parish's proposed enhancement of the interior is very much in keeping with the spirit of the Street/Hodgson Victorian scheme in improving the interior for the benefit of everyone (as with their democratisation of pews, and so forth).

53. It seems to the petitioners that the Victorian Society have a "wood and trees" problem. They object comprehensively to a scheme that will greatly improve the condition of the Victorian interior for the sake of a slight curve in two reversible screens, which are part of a holistic solution and which do nothing to impact adversely upon the rectilinear character of the massive "block" that is the nave and aisles, or the strong north/south and west/east axes of the building. The petitioners repeat that the slight curve enhances the character of the screens as furniture, rather than structure. Also, a slight curve unifies and pulls together the nave/aisles space across the width of the building in a way that straight-line intervention would not. The Victorian Society do not have any sort of worked-through proposals for an alternative configuration of the proposed facilities at the back of the church; and the petitioners believe that the general principle that the Victorian Society propose, of mirroring the sort of arrangement that currently exists with the choir vestry in the north-west corner of the church building, would be much more intrusive and harmful to the building's significance.

54. The Victorian Society's case, on their own admission, boils down to an objection to the fact that the screens are slightly curved rather than straight (or rectilinear). The Victorian Society have consistently not engaged with the petitioners' argument that the Society's characterisation of the building as "rectilinear" is not the whole story, and therefore cannot be used as an a priori

argument that anything non-rectilinear in the building is to be avoided. The building, in terms of the space as a whole, is full of curves. The petitioners have listed some of these many features - from arches to Chancel ceiling - in their Form 6 and in previous correspondence. The proposed screens are part of the space as a whole; they will not be experienced by anyone in a two-dimensional plan drawing (though it is perhaps understandable that such a plan drawing could bulk large in the imagination of someone who has not visited the church, as the Victorian Society's caseworker, Mr Connor McNeill, has not). No quantification or measurement of the alleged harm caused by the curved screens is offered, even at a high/medium/low level. The objection is very much opinion only.

55. The Victorian Society refer to the views of other statutory consultees and the DAC, although none have formally objected to the application. It has to be remembered that the proposed overall scheme for the interior has evolved considerably, and it is reasonable to observe that the views of other statutory consultees have changed as the scheme proposals have changed. The petitioners' understanding, from discussions between Richard Peats and the DAC, is that he has ultimately been prepared to take a pragmatic view of the screens in light of the evolution of the scheme proposals as a whole.

56. In conclusion, the petitioners contend that the slightly curved screens are a small part of a holistic solution to making the church more practical for the congregation, and more usable by the community; and they have been designed to enhance the significance of the building and the beauty of the space, as part of an overall scheme which greatly improves the condition of the significant Victorian features of this exceptional church building.

#### Analysis

57. This case is unusual in that both parties agree how the petitioners' proposals should fall to be assessed in terms of the framework provided by the *Duffield* guidelines. It is common ground - and I find - that these proposals will cause some degree of harm to the significance of this exceptional Grade I listed church building, although there is a measure of disagreement as to the degree of harm, with the Victorian Society assessing the level of harm as substantial whilst the petitioners contend that this would be more moderate. However, it is also common ground that, whatever the degree of harm to the church building, the petitioners have demonstrated a clear and convincing justification for their proposals, provided that such harm is minimised. As I have previously made clear, there is agreement both that this church needs suitable kitchen and WC facilities, and also that the west end of the church is the most suitable place for them. The battleground between the parties turns upon the questions whether a curved design would unnecessarily harm the significance of the church building, and whether the needs of the church can be addressed more satisfactorily by installing a kitchen and WCs contained within or behind rectilinear screens. Essentially, this raises an issue of aesthetics, on which there is a profound difference of opinion between the parties.

58. As Chancellor, I profess no particular or special expertise in matters of aesthetics. I therefore recognise that I should exercise care in making my own assessment of such matters, and should be cautious in attaching any weight to my own subjective views or impressions on questions of aesthetics. Rather, I should have particular regard to the advice of the Diocesan Advisory Committee and other appropriate experts on such matters. Unfortunately, the opinions of the experts are divided on this issue. On the one hand, the Victorian Society have formed the clear opinion that the curved form of the proposed screens would cause harm to the character,

appearance and significance of this highly significant church building, most clearly through the unwelcome, and jarring, conflict that they say that these curved screens would create with the highly rectilinear design of the tiled floor and the similarly fundamentally rectilinear plan of the building. That opinion is shared by Historic England, whose views have been expressed by Mr Richard Peats, an acknowledged expert on Street's work in general and in the Diocese of Oxford in particular. Historic England are said to have consistently advised against a curved form of screen on the grounds that the architecture of the building is firmly rectilinear, and that a curved element would fight the architectural logic of the building, and would be likely to look uncomfortable. They remain of the view that accommodating the necessary facilities in rectilinear pods is both practical, and would be a better way of accommodating these services, although they have not pressed their opposition to the point of objecting to the present proposals, leaving it instead to the Victorian Society to make the running in terms of opposing the petition (as was the case with the petition I recently had to determine involving proposals for the replacement of a tiled floor by Street in the nave of the Grade II\* listed village church of St Mary the Virgin, Wheatley: see [2021] ECC Oxf 8). The CBC have also invited me to be mindful of whether the parish have satisfied me that the curved form of the screens is necessary, and have demonstrated why a rectilinear design cannot serve their purpose. I fear that the petitioners have rather tended to downplay the strength of the expert opposition that their proposals for curved screens have provoked.

59. As against these views, however, there is the expert view of the architects who have prepared these proposals. They point to a lovely interplay between straight lines and curved forms within the church building. They speak of the need to insert the enclosures for the facilities in such a way as to integrate, rather than to impose upon, the structures within the space; and they point to the other benefits that a gently curving, rather than a rectilinear, design will bring to the church building. There is also the enthusiasm shown by the parish for the curved design, borne out of their love for their church building and their belief that this will afford a better solution than a rectilinear design approach. Although the DAC have not positively recommended the petitioners' design proposal to the court, neither have they positively objected to it. The clear inference from their approach, in the face of the known objections from Historic England and the Victorian Society, and the reservations expressed by the CBC, is that the DAC do not consider that the curved design, as opposed to its rectilinear alternative, would result in an unacceptable level of harm to this exceptional Grade I listed church. Had the DAC expressed clear, reasoned reservations about the petitioners' proposed course of action, then I would have been likely to have attached considerable weight to their views, unless the petitioners had been able to demonstrate some significant flaw in the DAC's approach and their underlying reasoning. In that event, the DAC's advice would have been likely to have prevailed. However, that is not the situation that pertains in the present case.

60. The result of this divergence of view on what is essentially a matter of aesthetics is to leave me in an unfortunate position of some difficulty in determining this petition. Both parties were alive to this during the course of their virtual meeting last August: the Victorian Society expressly acknowledged that this was a difficult case for the Chancellor to decide whilst the petitioners recognised that this was not an entirely straightforward decision for me to reach.

61. Having weighed up, and balanced, all of the evidence, and having borne firmly in mind that the burden in this case rests with the petitioners, I am satisfied that I should grant this faculty application. I do so for two reasons which, viewed cumulatively, I find to be

determinative of this application. First, insofar as this is a matter of subjective, aesthetic preference, I prefer the curved, rather than the rectilinear, design of the screens which are to enclose these much-needed facilities. I accept the views and reasoning of the petitioners and their architect. I consider that there is indeed a graceful interplay between straight lines and curved forms within this church building, and that the curved design will be in conformity with this. I reject the Victorian Society's contention that curved screens would "fight against" the architecture of this Grade I listed church building, or that they would have any adverse impact upon its internal appearance. I am satisfied that a curved design would be less visually intrusive, and would cause less harm to the significance of this church building, than a rectilinear design. This is not a case where the same, or similar, benefits could be achieved in a manner less harmful to the heritage value of this particular church building. In my judgment, the petitioners have established a sufficiently clear and convincing justification for their preferred curved design.

62. Second, in a case, such as the present, where there is clearly a legitimate difference of expert opinion about the varying degrees of harm that two alternative designs would cause to a listed church building, and where the issue is essentially a matter of aesthetics, I consider that considerable, if not decisive weight, should be accorded to the views of the PCC, as the democratically elected body entrusted with the task of making decisions for the parish. It is the parishioners who will have to live with the consequences of my decision. Where issues of aesthetics are involved, and where the DAC have not objected to the parish's proposed solution, I consider that it is only in a clear case that the Court should refuse to defer to the informed, and reasoned, preference of the parish, as expressed by the PCC. In my judgment, this remains the case even though others have raised reasoned concerns about this specific aspect of the parish's proposals, and there is no evidence that any lack of enthusiasm, or financial support, which might endanger, or compromise, this re-ordering proposal might result from the rejection of the parish's preferred design approach.

63. On the evidence, and for the reasons set out above, weighing and balancing the resulting harm to this exceptional Grade I listed church building against the benefits of the proposals, in my judgment the balance comes down in favour of approving the proposals and granting the petition.

#### Disposal

64. For these reasons, the court will grant a faculty for the proposed works as sought. The faculty will be subject to the following conditions:

(1) Proposals for the design of the curved screens to the facilities are to be submitted to and agreed by the DAC in conjunction with Historic England, the Church Buildings Council, the Society for Protection of Ancient Buildings and the Victorian Society prior to the production of detailed plans, elevations and specifications for the screens and facilities. In the event of any disagreement, the petitioners may apply to the court.

(2) Detailed plans, elevations and specification for the new facilities are to be submitted to and agreed by the DAC subcommittee prior to any works commencing on site. In the event of any disagreement, the petitioners may apply to the court.

(3) Before commencing any works, the petitioners must notify the church's insurers and comply with any recommendations or requirements they may make or impose.

(4) A photographic and graphic survey of the existing church interior is to be deposited with the DAC, in any local study archive, and in the church records for future reference by scholars and the local community. In order to comply with this, reference should be made to Historic England's Understanding Historic Buildings: A Guide to Good Recording Practice (May 2016).

(5) Should the terms of any grant funding require the parish to display a plaque recognising the funder's contribution, the parish are to seek the approval of a DAC officer to the proposed location, design and fixing method of the plaque.

(6) The petitioners are to follow the DAC's April 2018 guidelines on electrical installations.

I give the petitioners permission to apply to the Court, by letter to the Registry (which is to be copied to the Victorian Society, as party opponent), for further directions as to the carrying-out of this Order, or for the variation of this faculty in the event of any difficulties presenting themselves.

65. In the first instance, the period allowed for the proposals to be implemented will be two (2) years from the date of the grant of the faculty to allow further time for any further necessary fund-raising and grant applications.

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

67. In conclusion, I must thank the petitioners, the Victorian Society, and the other consultees for the care and attention that they have devoted to this faculty application. Their work has not made my task any the easier; but it has certainly contributed to a more fully informed analysis and decision. The court is particularly grateful to the Victorian Society for the lead they have taken in expressing the grounds of opposition to this petition (for which the other consultees have every reason to be thankful).

*David R. Hodge*

The Worshipful Chancellor Hodge QC

The Second Sunday in Advent 2021





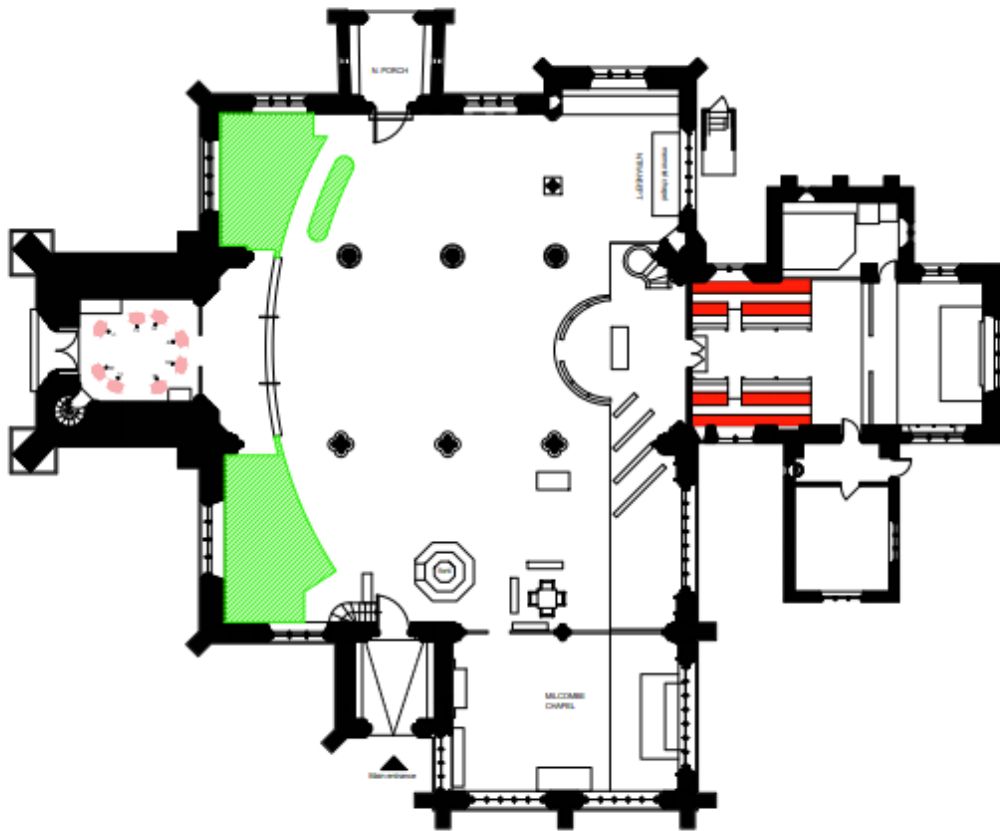
Sketch view of curved screens from body of the church



Sketch view of how rectilinear screen would look from body of church (for comparison)



Church Plan showing area bounded by curved screen



Church Plan showing area bounded by rectilinear screen (for comparison)

