

Neutral Citation Number: [2022] ECC Swk 4

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF HOLY TRINITY, CLAPHAM

AND IN THE MATTER OF A PETITION BY REVD JAGO WYNNE, MR JOHN FLETCHER
AND MS EMILY HELLEWELL

JUDGMENT

I. Introduction

1. This is the petition dated 2 December 2021 of Revd Jago Wynne, Mr John Fletcher and Ms Emily Hellewell, the Rector and Churchwardens respectively of the church of Holy Trinity, Clapham. By it they seek permission for the following works:

Two-storey side extensions of the North and South vestry/chapel wings at the East end of the church, with a basement level within the South extension (including lightwells), and a roof room on the North side;

Internal alterations to North and South vestry/chapel wings at the East end;

Internal alterations to Narthex and West end;

Installation of new accessible WC cubicle at West end;

Installation of replacement tea point at West end;

Removal of nave (but not gallery) pews and laying of a new timber floor (re-using and repairing existing stone flooring);

Reuse of some pews elsewhere in the building (e.g. in first-floor gallery at West end);

Alterations in Chancel including relocation of altar, reredos, and pulpit, and making Choir Stalls moveable; New internal ramps; New heating and lighting systems; Additional audio-visual System works including new gallery retractable projection screens and projectors together with new window-blinds, and various other ancillary building works;

New church garden and other external landscaping works.

To confirm interim faculties granted previously in respect of: an audio-visual System upgrade to enable live-streaming, and various investigation works to the building.

The petition was accompanied by a Statement of Significance and a Statement of Needs which had been prepared for the DAC¹.

2. The architects are Hanslip and Co, who have considerable experience of heritage projects of this kind.
3. In short, the proposals are to facilitate and enhance the use of the “worship area” within a Georgian church and to expand the ancillary accommodation, currently contained within two Edwardian extensions. It is necessary either to have seen the plans or to know the church to appreciate exactly

¹ See rule 4.3 of the Faculty Jurisdiction Rules 2015.

what is planned by way of the extensions but it is essentially simple: largely to take down the existing extensions and extend them to the north and south. Subject to this, their general form will broadly remain the same. The amount of usable ancillary accommodation would be more than doubled. The worship area is currently pewed; the pews would be removed. Some of the pews would be retained within the building. Ten would be relocated within the new chapel and west gallery (where they would attractively fill the gap left by the removal of the organ case in the 1950s²) and 25 would be repurposed as wainscoting within the Fellowship Area.

4. The pews are proposed to be replaced by chairs of the “Theo M” design. This is a high quality design and the chairs can readily be moved and stacked. It is widely used in churches throughout England.
5. The description of the proposals specifically refers to a new WC at the west end. At the moment there are five ground floor WCs (including one accessible by those whose mobility is impaired). They are old and cramped and insufficient in number for the size of the congregation. The proposals will increase the number to eleven (with six accessible by those whose mobility is impaired)³, which will, in the words of the Rector, be *modern, efficient and spacious*.
6. Planning permission for the works was granted by Lambeth LBC on 1 November 2021⁴.
7. The church is listed, Grade II*. The listing description (dating from 2007) states:

The church of Holy Trinity, Clapham, is located to the south of Clapham Common North Side. 1774-6 by Kenton Couse. West porch built in 1812 by Francis Hurlbatt. Apse replaced by chancel, with Lady Chapel to south and vestry and offices to north, 1902-3, by Beresford Pite. Restoration following damage suffered during Second World War. Further internal adaptations by Purcell, Miller, Tritton in 1991-4: the west end screened beneath the gallery, a central platform created, and the Lady Chapel converted into the William Wilberforce Centre.

EXTERIOR: Stock brick classical church with stone quoins, window surrounds and cornice. Hurlbatt's single-storey Doric porch across west end. Two storeys. Arched windows. West front of five bays, the central three bays contained within a pedimented projection at first-floor level. These three bays consist of a window flanked by two niches; the niches are echoed at ground-floor level by a pair of war memorials (First World War) in the form of arched stone wall-tablets. Low stone tower with octagonal, domed, belfry at west end. Return walls of six bays, with similar c.1902-3 extensions flanking the chancel: to south, the former Lady Chapel, to north, the vestry and offices. In each extension a door, and windows including a Venetian window, and a round window. The original east window of the church was re-used as the Venetian window in the south wall of the Lady Chapel. At the east end, the chancel projects from the extensions: a brick podium above which three arched windows are separated by four stone pilasters surmounted by a pediment in which is a cross. The elements of the upper part of the facade in three different stones. At the centre of the podium, a stone plaque reads 'To the Glory of God MCMII'.

² There is currently a fine organ set in an arched recess on the north side of the chancel. This dates from the time of the works by Beresford Pite. At that time, the previous organ was installed in the gallery at the west end of the church. This was removed when the church was restored after bombing in the Second World War, leaving a gap which was filled with wooden benches from another church.

³ i.e. 10 WCs will be located within the extensions.

⁴ Note that this was for the external works: planning permission was not required for the internal works. Note also that works to listed churches do not require listed building consent. This is by virtue of what is called “the ecclesiastical exemption”: the faculty process takes the place of the listed building process. See further paragraphs 30 and 39 below.

INTERIOR: Galleries on three sides on fluted wooden Doric columns, reached by staircases to north and south. Coved ceiling with simple decorative plasterwork (restored 1981). Across the west end, a glazed screen of 1992. Panelled dado. At east end the 1776 reredos stands behind the high altar of the 1902-3 chancel. In north part of chancel, early-C20 organ by Alfred Hunter, a local organ-builder and one of the churchwardens of Holy Trinity. Stained glass of 1952 in east windows commemorates members of the Clapham Sect and their work

Monuments include wall tablet to Bishop John Jebb, d.1833, with medallion bust, by E. H. Baily; wall tablet to John Venn, d.1813; and at the east ends of the north and south galleries, a striking pair of wall tablets, each in the form of a column, one to John Castell, d. 1804, the other to John Thornton, d. 1790 (the monument erected 1816), by J. Bacon Jun. Original box pews replaced in 1875. Original benches remain, steeply banked, in galleries. Simple carved pulpit of 1776; originally three-decker, reduced by A. W. Blomfield. Communion table of 1776.

8. The list explains the reasons for its designation as follows:

The list entry for the church of Holy Trinity, Clapham, which is already designated at Grade II, has been amended for the following principal reasons: * Plain classical church of 1774-6, exemplifying the characteristics of the 'preaching box', with original galleries * Original building by little-known architect Kenton Couse modified effectively in the C19 and early C20 * Strong connection with the Clapham Sect, a group active in campaigning for the abolition of the slave trade, adds to historical interest of building. This amendment is written in 2007, the bicentenary year of the 1807 Abolition Act⁵.*

9. At a meeting on 12 October 2021, the DAC recommended the works for approval by the Court⁶.
10. At a meeting on 22 November 2021, the PCC resolved to seek a petition for the works. The vote was unanimous.
11. The petition was publicised in the usual way by public notices and by being advertised on the Diocesan website. No representations were received in response.
12. Before submitting their petition, the Petitioners had consulted Historic England, Lambeth LBC (the local planning authority), the Church Buildings Council, the Georgian Group, the Victorian Society, the Twentieth Century Society and the Clapham Society.
13. The Georgian Society and the Victorian Society objected to the removal of the pews. The Victorian Society also objected to the new side extensions. Save as regards the removal of the pews and the construction of the new side extensions, no reason is now suggested or has emerged by reference to which a faculty should not issue for the works identified in the petition; their general utility will be obvious. Accordingly this judgment will focus on these two aspects of the matter, recognising, of course, that both aspects are viewed as fundamental to the scheme as a whole.
14. The concerns of the Victorian Society originally went wider than as to the pews and the extensions. I am grateful to the Petitioners and to the Society for engaging in constructive discussions which narrowed the area of disagreement. I have been assisted in my consideration of the petition by the

⁵ The listing also adds a helpful history of the church but I do not set this out here.

⁶ Its recommendation was despite objections that had been made by the Georgian group and the Victorian Society (see below). In these circumstances, it set out its principal reasons for recommending the works (see rule 4.9 of the Faculty Jurisdiction Rules 2015 (as amended)). I set out the DAC's principal reasons below (see paragraph 84). The DAC's recommendation was also subject to a number of provisos (in effect, proposed conditions). These are not controversial and will be found at paragraph 134 below.

answers to questions which I have raised from both the Petitioners and the Victorian Society; I am grateful for this also. Determining a petition on the basis of written representations is necessarily a somewhat drawn out process but it is a process quicker than if matters are considered at a hearing; and it will certainly be significantly cheaper.

15. Neither the Georgian Group nor the Victorian Society wished to become parties opponent to the petition.
16. I note that the parish's original proposals included glazing in the external western portico of the building. This was particularly controversial and was dropped in the light of adverse comment as to its impact from a listed building point of view. Alone of all the proposals, it was described by Historic England as causing substantial harm⁷.
17. I visited the Church on 3 May 2022.

II. The justification for the proposals

18. The Rector and Re-ordering Committee have produced a thorough and comprehensive *Statement of Needs*.

Since 2012 Holy Trinity has experienced significant growth. There are now four services each Sunday, as follows:

8am - Communion Service: A traditional service of Holy Communion.

9.30/11.15 am - Morning Service: these are lively contemporary services with band-led worship. There are groups for children and young people every week. The service is also live streamed.

5.30 pm - Evening service: an informal service with extended time for worship, applied biblical teaching and prayer ministry.

19. Before lockdown the average attendance each Sunday was 600, divided between the four services as follows: 15/118/275/192. Since lockdown, numbers have increased, so that the attendance on Sunday, 18 September was in total 778, divided as follows: 6/191/304/277. There were also 120 online participants in the livestream. Unlike the demography of many churches, that of the composition of the congregation of Holy Trinity closely mirrors that of the surrounding population. This means that there are many families and young people; 60% of all adult members of the church are in their 20s and 30s.
20. This is remarkable and greatly to be welcomed but, unsurprisingly, has presented the church with challenges. There are limited church hall/meeting room facilities on site and it would like more. This would enable the young people who attend to 10.30 am service to be better accommodated (at present the 7 – 14 olds go to Trinity House) but would also allow the church building itself better to be the centre of church activity in the community. At the moment a lot of these activities take place in Trinity House (at the corner of Venn Street and Bromells Road). This is about 5 minutes' walk away (the walk involving the crossing of a busy road). It would be better for the church itself to be the focus of activities such as prayer groups, bible studies and marriage preparation. This would free up Trinity House for social work within the community. There would be significant benefit from the provision of more and better WCs in the church. First class catering facilities enabling more extensive

⁷ As to the significance of whether or not harm is substantial or serious and relevance of this, see the discussion below at paragraphs 36 to 39, 114 to 120 and 132.

refreshments than just coffee to be provided will be of huge value both to the congregation and to support mission and pastoral activity. The pews generally prevent the flexible use of main area within the church. In particular, with a main Sunday congregation of this size, they get in the way of the provision of coffee after the service; and there are activities which could best take place within this larger area for which Trinity House is not suitable.

21. The petitioners place some weight on the fact that Holy Trinity has been designated by the Bishop as a resourcing church. What this means is that, from time to time, a number of members of the congregation (with an appropriate leader) will leave and go to another church in order to lead it into growth. Members of the congregation have already provided a church renewal team (an ordinand and 10 people) to All Saints', Clapham Park and full "church plant" (an ordained leader and 30 people) to St Peter's, Vauxhall. The church has the ambition that its congregation should grow to about 800 – 1000 to facilitate this.

III. The church building

22. We know from the Domesday Book that Clapham existed at the time of the Norman Conquest. The first mention of a church is in 1285. This was called Holy Trinity and was situated where St Paul's, Clapham now is (in the northern part of the then parish). When Clapham began to grow in the latter half of the eighteenth century, it was to the south in elegant houses around the Common, some of which survive. Holy Trinity having fallen into disrepair, a church dedicated to the Holy Trinity was built on a new site and consecrated in 1776⁸.
23. The church was designed by Kenton Couse, best known for his remodelling of 10 Downing Street. As the listing indicates, it was a fine Georgian "preaching box." i.e. a church focused on a central pulpit. Although the architect's ground plan does survive, it does not show the pewing arrangements. These are apparently shown in a drawing which seems to date from the time of the first re-ordering in 1842. What this shows is not the regular box pews that one might have expected. There are indeed box pews to either side of a central aisle but on the north side of this aisle are a series of benches (directly in front of the three decker pulpit, which is slightly off set from the centre to the north). I imagine that because these benches were of simpler design that they were for the poor (or at least, poorer); although the galleries also would have accommodated these.
24. These would have been the arrangements which the Clapham Sect knew. The Clapham Sect was a body of people who came to live in the elegant houses during the ministry of John Venn, the Rector between 1792 and his death in 1813. They worshipped at Holy Trinity. Most famously, they included William Wilberforce, Henry Thornton and Zachary Macaulay. They led an evangelical revival within the Church of England, concerned not just with the spreading the gospel but with the reform of society and its institutions; they were among the leaders of the campaign to abolish slavery.
25. The subsequent history of the ordering of the church is not entirely clear. It seems that the original arrangements were modified by JB Papworth in 1842 with the church being pewed more conventionally with two blocks on either side of a central aisle and the three-decker pulpit being moved slightly to the south to a completely central position. To achieve this, the existing pews would have been re-used and added to. However times were changing. When Thomas Macaulay visited the church in 1849 he heard a sermon he described as Puseyite – a marked contrast to the sermons he had heard as a boy. The church was re-ordered again in 1875 by AW Blomfield bringing about what, to modern eyes, would be a more conventional arrangement. The focus of worship became the Holy

⁸ St Paul's was built in 1815 on the site of the old Holy Trinity church. It is itself a fine Georgian Church, listed Grade II*.

Table at the east end of the church, a chancel being established within the body of the church. The pulpit was cut down and moved to a position on the north side of the church, between the chancel and the nave. The existing pews were all cut down in size.

26. By the end of the nineteenth century, the east end of the church was experiencing structural problems (a photograph of the interior c1900 shows the chancel arch being propped) and repairs were generally necessary to the chancel. Thus in 1901 the opportunity was taken to provide additional accommodation within the building at the east end. A new chancel and sanctuary were built, extending the church further to the east and alongside this a new vestry to the north and a chapel to the south. The latter incorporated the former east window, re-orientated so that it faced south. The architect was A Beresford Pite. The pewing in the nave remained broadly the same as before.
27. There was a re-ordering carried out in the early 1990s under the supervision of Purcell Miller Tritton, Architects. This provided a Holy Table at the East end of the Nave upon a raised dais; a meeting area was provided beneath the western gallery to provide a meeting area; and, at the East end, the Lady Chapel was horizontally converted to create the William Wilberforce Centre, with a ground floor meeting room, kitchen and WCs and a new staircase leading up to a large first floor meeting room.

IV. Law and policy

28. From the earliest times the Church has had a system regulating alterations to its buildings. It became established that all such alterations save the most minor required the permission of the Chancellor. This was known as a faculty, which issued out of the consistory court of the diocese. Originally it seems that this was largely an administrative arrangement - at any rate not concerned with any architectural or historic value that the church may have had - but in the nineteenth century it was recognised that many churches did have such value and it came to be seen as a matter relevant to the exercise of the Chancellor's discretion. Thus in 1881 *Peek v Trower*⁹ concerned a petition by Rector and Churchwardens of the Wren church of St Mary-at-Hill in London to remove the box pews. One of the objections by parishioners was based on the architectural value of the pews; in the event, they were retained.
29. In 1913, Parliament enacted comprehensive legislation protecting ancient monuments¹⁰. The Church of England was exempt but clearly this had implications for the way the faculty system was operated. A committee established by the Archbishops recommended that advisory committees be established in each diocese *for the assistance of the [consistory] court in architectural, archaeological, historical and artistic matters relating to churches as to which faculties are sought*. This was originally on a voluntary basis; such a Committee was in place in the Diocese of Southwark by 1935¹¹. DACs were put on a statutory basis in 1938¹².
30. Limited protection of buildings of special architectural or historic interest was introduced in 1932 and in 1944 legislation was passed empowering the Minister to prepare lists of buildings of architectural and historic interest (hence "listing" and "listed building")¹³. The system was strengthened in 1947 and 1968. However, the Church of England was exempt from the controls which applied generally to listed buildings and, by virtue of this exemption, government policy in respect of listed buildings did

⁹ (1881) 7 PD 21.

¹⁰ See the Ancient Monuments Consolidation and Amendment Act 1913. There had been earlier legislation in 1882, 1900 and 1910.

¹¹ See the Church of England Yearbook for that year. The earliest minutes of DAC meetings date from 1941.

¹² See the Faculty Jurisdiction Measure 1938.

¹³ See section 42 of the Town and Country Planning Act 1944.

not apply to them. The exemption was, of course, granted on the basis that the Church of England already had in place a rigorous system for the examination of applications to alter churches.

31. After 1944 the faculty system operated at first without reference to the secular system now in place. However in 1986 in *In re St Mary's, Banbury*¹⁴ (which was another case concerning the loss of pews), Sir John Owen, Dean of the Arches said

*... a listing does indicate that a faculty which might affect the special nature of the architectural or historic interest – and certainly the removal of all the pews from this historic church would do this – should only be allowed in cases of clearly proved necessity*¹⁵.

32. Whether clearly proved or not, necessity is an ambiguous concept because by itself it encompasses both absolute and reasonable necessity. In *In re St Stephen's, Walbrook*¹⁶ the matter was further considered by the Court of Ecclesiastical Causes Reserved and in *In re All Saints, Melbourn* by the Court of Arches once again. In the light of this guidance, in *In re St Helen's, Bishopsgate*¹⁷ (a case in the Consistory Court of London), Cameron QC Ch articulated what became known as the *Bishopsgate* questions. Namely the questions considered to be relevant in assessing a petition involving works to a listed building:

(1) Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral wellbeing of St. Helen's or for some other compelling reason? (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historic interest? (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

33. These were approved by Sir John Owen sitting in Court of Arches in *In re St Luke Maidstone*¹⁸, where he identified a *strong presumption against proposals which will adversely affect the special character of a listed building*. It seems to me that this reflects section 16(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which makes provision for secular decision makers as follows:

*In considering whether to grant listed building consent for any works, the local authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*¹⁹.

34. Between 1993 and 2012, questions concerning alterations to historic churches were invariably decided by Chancellors by applying the *Bishopsgate* questions. However the issue of necessity continued to give rise to difficulty²⁰. In *In re St Alkmund, Duffield*²¹, the Court of Arches decided that Chancellors should be freed from the constraints of the *Bishopsgate* questions. Instead the Court of Arches proposed the following sequence of questions:

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

¹⁴ [1987] Fam 136.

¹⁵ See p 139E.

¹⁶ [1987] Fam 146.

¹⁷ (1993) 12 Consistory and Commissary Court Cases 12.

¹⁸ [1995] Fam 1.

¹⁹ See p 8.

²⁰ See the discussion in *In re St Alkmund, Duffield* [2013] Fam 158 at paras 82 – 86.

²¹ [2013] Fam 158.

2. *If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see Peek v Trower (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in In re St Mary’s, White Waltham (No 2) [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.*
 3. *If the answer to question (1) is “yes”, how serious would the harm be?*
 4. *How clear and convincing is the justification for carrying out the proposals?*
 5. *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see St Luke, Maidstone at p 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.*
35. Any requirement for necessity to be shown to justify a change disappeared. The Court addressed any possible question that by virtue of the doctrine of *stare decisis*, it could revisit the Bishopsgate questions by noting that the Court of Arches in *St Luke’s, Maidstone* had categorised them as guidelines and not statements of law²². Thus the new approach was commended to “those chancellors who would be assisted by a new framework or guidelines”.
 36. Since their promulgation, the “Duffield questions” have without exception been applied by Chancellors. Whatever the generality, the potential *strong presumption* identified in question 5 does appear to be a matter of law and, on the face of it, the requirement that serious harm to a Grade 1 or II* building should only exceptionally be allowed; although one may see that it could be argued that this is a factual observation by the Court and not a policy statement.
 37. In seeking to understand the meaning and effect of this last requirement of the Duffield questions, the question arises as to its origin. I think that the answer is not in fact far to seek. At paragraph 41 of its judgment, the Court of Arches explains the guidance given by Government in listed building cases that are not subject to the ecclesiastical exemption. This was contained in paragraphs 132 and 134 of the then extant National Planning Policy Framework (NPPF). The NPPF draws a distinction between cases where there would be “less than substantial harm to the significance of a designated heritage asset” (where “this harm should be weighed against the public benefits of the proposal”) and cases where there would be “substantial harm or loss” (where a proposal should only be allowed exceptionally, or in the case of Grade I and Grade II* listed buildings, wholly exceptionally). It is clear that the substantial harm of the NPPF has become the serious harm of question 5; substantial and serious are evidently in this context essentially synonyms. Since the judgment in *Duffield*, the NPPF has been re-issued but the guidance remains the same²³. I here note that the Duffield questions do not maintain the distinction made by the NPPF between exceptional and wholly exceptional circumstances.
 38. There was not in 2012 any further guidance by Government as to what *substantial harm* meant; the NPPF was designed to do away with supplementary guidance²⁴. This ideal, however, was rapidly lost

²² See paragraph 65 of the judgment.

²³ See now paragraph 200 of the NPPF (2021).

²⁴ The guidance in the NPPF on heritage matters superseded that contained in *Planning Policy Statement 5 (Planning for the Historic Environment)* (2010). Note that the specific guidance that substantial harm to a Grade

sight of, and there is now relevant additional guidance in paragraph 018 of National Planning Guidance²⁵. This provides as follows:

Whether a proposal causes substantial harm will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later additions to historic buildings where those additions are inappropriate and harm the buildings' significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting.

39. It seems to me that, interpreting what *serious harm* means in the Duffield questions, it is legitimate to look at what Government means by *substantial harm* in the NPPF both because the concept of serious harm is derived from the NPPF and also because although the approach of the ecclesiastical courts is not the same as that of the secular planning system, the former is informed by the latter. The State is content that the ecclesiastical exemption should continue to exist on the basis of the “principle of equivalence”²⁶.
40. Section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provides that:
- A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.*
41. This provision does not apply to Chancellors but, it has also been held that, if it did, it would have added nothing to the existing duty and practice of Chancellors²⁷. In reaching my decision I have had due regard to the role of the church as a local centre of worship and mission, a matter which must be highly relevant to a case of this kind.

I or Grade II* building should be wholly exceptional formed part of PPS 9 (see Policy HE 9) but the meaning of substantial harm was not further elaborated.

²⁵ Paragraph: 018 Reference ID: 18a-018-20190723.

²⁶ See paragraph 30 of *The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England* (DCMS) (July 2010). Note however that in *In re St Alkmund, Duffield*, George QC, Dean, said ... *the concept of “equivalence” does not necessarily require that the same result will be achieved as if the proposal were being determined through the secular system, nor that listed building considerations should necessarily prevail. What is essential, however, is that these considerations should be specifically taken into account, and in as informed and fair a manner as reasonably possible* (see paragraph 39).

²⁷ See *In re St Luke, Maidstone* [1995] Fam 1 at p7 (referencing the same provision, then being section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991).

V. The assessment of significance and harm

42. It is implicit in the *Duffield* questions that the process of their application begins with an assessment of the significance of the building. It is for this reason, of course, that the rules provide that every faculty petition should be accompanied by a Statement of Significance. As the guidance provided by the Church Buildings Council states:

*A Statement of Significance is an important tool to help everyone understand the significance of the church building and its fabric and fittings*²⁸.

43. The Church Buildings Council has also given guidance as to the approach to assessing significance:

*In assessing significance you may wish to use the following customary terminology: **High** – important at national to international levels **Moderate-High** – important at regional or sometimes higher **Moderate** – usually of local value but of regional significance for group or other value (e.g. vernacular architecture) **Low-Moderate** – of local value **Low** – adds little or nothing to the value of a site or detracts from it.*

44. As to what gives a listed building significance, it is evidently its special architectural and/or historic interest. Historic England give this further explanation:

- **architectural and artistic interest:** *These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skill, like sculpture.*
- **historic interest:** *An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity*²⁹.

45. A lawyer might feel that the matter is best left there, but one may see that the reason why a building has special architectural and historic interest is capable of further analysis. Thus in *Conservation Principles, Policies and Guidance* (2008) published by Historic England identifies the following aspects of significance:

Evidential value: *the potential of a place to yield evidence about past human activity.*

Historical value: *the ways in which past people, events and aspects of life can be connected through a place to the present - it tends to be illustrative or associative.*

Aesthetic value: *the ways in which people draw sensory and intellectual stimulation from a place.*

Communal value: *the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory.*

²⁸ See *Statements of Significance and Statements of Needs: Major Projects* (January 2014). As one would expect, secular guidance is to the same effect: see paragraph 194 of the NPPF (2021).

²⁹ See *Statements of Heritage Significance: Analysing Significance in Heritage Assets (Advice Note 12)* (October 2019).

46. It will be seen that the expert instructed by the Petitioners to prepare a Statement of Significance employed this terminology.
47. For its part the Church Buildings Council also asks that a Statement of Significance should set out the significance of the church for mission although this does not seem to have anything directly to do with its special architectural and historic interest.
48. The CBC do not give any guidance on assessing harm. What it does do is to advise that the Statement of Significance should assess impact, which it suggests is done on a three-point scale: *high, moderate or low*.
49. In terms of harm, following UNESCO, experts in this field use the following, nine-point scale, with neutral as its centre point:
- Major beneficial
 Moderate beneficial
 Minor beneficial
 Negligible beneficial
 Neutral
 Negligible adverse
 Minor adverse
 Moderate adverse
 Major adverse³⁰.
50. UNESCO also emphasise the distinction between impact and harm – impact which may be large, but not harmful. It will be seen that the UNESCO terminology has also been employed by the expert instructed by the Petitioners.
51. The scale or severity of impact can be ranked without regard to the value of the asset as follows:
- No change
 - Negligible change
 - Minor change
 - Moderate change
 - Major change³¹

VI. The Statement of Significance and the Petitioners’ Assessment of Harm

52. The Statement of Significance was prepared by Andrew Derrick AA Dipl Cons IHBC who is a Director of Architectural History Practice Limited. He has extensive experience in the field of listed buildings. He began his professional career as a caseworker for the Georgian Group and for fifteen years he was an Inspector of Historic Buildings for English Heritage. For three years he was Assistant Regional Director at English Heritage’s Cambridge office also holding a national responsibility for policy on places of worship. He co-ordinated a new edition of English Heritage’s guidance leaflet *New Work in Historic Places of Worship*³².
53. Mr Derrick’s Statement of Significance made assessments of the building as a whole as follows:

³⁰ UNESCO, *Guidance on Heritage Impact Assessments for Cultural World Heritage Properties*, 2011, 5.7.
³¹ Ibid, paragraph 5.7.
³² It is to Mr Derrick that I am indebted for information about the UNESCO guidance referred to above.

Architectural Significance
Historical Significance
Communal Significance.

54. It reached the following conclusions:

Architectural Significance *High*
Historical Significance *High*
Communal Significance *High*³³.

55. It also set out the following conclusions as to the architectural significance of parts of the building:

The original eighteenth century church *High*
The Beresford Pite additions *Moderate-high*
1950s alterations to the south chapel *Moderate*
1990s alterations *Low* (while externally well detailed)

56. It did not attempt formally to express a cumulative assessment (i.e. architectural plus historical plus communal) of the building as a whole (no doubt because it would obviously have been High); nor, more significantly, of the parts of the building which identified for separate comment.

57. The Statement itself did not refer to the pews; but at the beginning it had said that it should be read in conjunction with the Gazetteer. This separately assessed the significance of all the fixtures and fittings.

58. The section on the pews begins by describing the pews and their history as summarised above. As regards their significance it concludes:

Moderate-High: The pews incorporate material from 1776, but were cut down and altered in 1875, and further reduced in number in the twentieth century. Nevertheless they contribute to the character of a Georgian preaching box.

59. The Statement of Significance also said that it should be read in conjunction with the Heritage Impact Assessment.

60. As regards the removal of the pews, the remodelling of the Beresford Pite extensions, the Heritage Impact Assessment said that the impact would be *high*.

61. Since the proposal was for the complete removal of the pews and remodelling and reconstruction of the Beresford Pite extensions, these conclusions are not surprising but they do not express a view about the level of harm. The impact assessment begs the question, so to speak, of the level of harm arising from a high impact on elements of the building which are of *Moderate-High* significance.

62. In a supplementary statement dated 25 May 2022 which Mr Derrick prepared in response to Directions which I gave on 3 May 2022, he helpfully spelled out the following views, namely that:

- the pews were of *moderate-to-high* evidential, historical and aesthetic value;

³³ It also expressed a view about its archaeological significance but archaeology is not an issue that gives rise to concern in the present petition and I shall not refer to it further.

- the Beresford Pite extensions were of *moderate-to-high* aesthetic and historical value and moderate evidential value.

63. He regarded any harm arising from reconstruction of the Beresford Pite extension as justified and less than substantial.
64. In an earlier Addendum to the Statement of Significance (February 2022), he had expressed his view that despite the high impact of the change, in terms of harm, overall the removal of the pews was *moderate adverse*. In terms of the purely visual harm, he considered that it could be argued that it was *minor adverse*, because reversible.

VII. The views of consultees and of the DAC

65. Although only the Georgian Group and the Victorian Society objected to the proposals, all the consultees engaged with the proposals to remove the pews and to provide new extensions and what they have said has assisted me in reaching a decision. Accordingly I set out the pith of the responses of consultees have said.

The pews

66. When initially consulted, Historic England said:

The existing nave pews are currently of a consistent (if not absolutely uniform) character and contribute to the overall aesthetic and historic significance of this Georgian church's interior. They are thought to date to Blomfield's reordering, however remain largely in their original plan configuration and contain a high degree of recycled elements of Couse's earlier joinery. As items of furniture they are not 'exceptional', and have been subject to some inexpert reconstruction, however do retain elegant bench ends. As features of the building's architectural and historic interest they do much to tell the story of the church, and to enrich its character. They are also aesthetically in keeping with the panelling and other historic joinery in the church.

In our view, given the very high significance of this church, and the fact that the pews relate to two especially noteworthy phases in the building's history (the Couse and Blomfield reorderings), their loss would have a harmful impact on the historic and architectural quality of the interior as a whole, eroding both the formal liturgical arrangement and an important element of the church's character and evolution. This amounts to a high level of harm, and therefore a comprehensive and extremely compelling case will need to be presented to justify such extensive removal³⁴.

67. Consulted a year later with more detailed proposals, Historic England emphasised that a strong case would have to be shown to justify removal of the pews. It did not object to the proposals, leaving it to me to decide whether a sufficiently strong case had been made for their removal³⁵.
68. Formally, Lambeth LBC offered no objection to the proposals³⁶. However Douglas Black, BSc MSc MRTPI IHBC who is the Team Leader, Conservation and Urban design at Lambeth LBC was able to express the following view:

³⁴ See a letter dated 15 April 2020.

³⁵ See a letter dated 25 March 2021.

³⁶ See an e mail dated 25 March 2021.

The removal of the historic pews from the nave is regrettable but their limitations have been clearly explained and the fact that they have already been subject to past unsympathetic alteration helps the case.

69. In its initial comments, the Church Buildings Council said:

The Council accepts that the church has made a good case for the removal of pews. While they have been moved and altered in the past, the pews retain some original Georgian fabric and lend a formality and geometric regularity to this Georgian church. Their removal will have a significant impact on the appearance of the building. Their removal is harmful to the significance of the church and this will need to be explored and robustly justified in the statement of significance. It will also be necessary to show that alternative options have been explored, for example, shortening the pews and removing the welcome area to improve access. No replacement chairs have yet been proposed. The PCC will find the Council's guidance on seating useful when looking at options. The proposed replacement seating should seek to replicate the geometry of the current seating and its quality should be commensurate with that of the architecture of this fine church³⁷.

70. In its final comments, it said:

It is now proposed to retain the gallery pews and to relocate some of the nave pews to the west end of the gallery. The Council appreciates the PCC taking up this suggestion and welcomes this alteration to the proposals, as well as the retention of additional nave pews in the new chapel. The proposed chairs shown in the drawings are in line with the Council's seating guidance and it has no objection to the chairs pictured³⁸.

71. The Georgian Group said:

The Group maintains its opposition to the removal of the pews, due to the significant harm that their removal would cause to the internal character of the church and therefore significance. Despite the alterations to the pews, they still possess considerable fabric dating to their original installation³⁹.

72. The Victorian Society said in its initial submissions:

The removal of any significant number of pews from the main body of the church, let alone all of them, would seriously erode the sense of a holistic ensemble of joinery and galleries, and detract from, or even remove any sense of, a coherent interior. That coherence is all the more interesting and impressive given that it is the result of a number of adaptations through the nineteenth and early twentieth centuries, with significant work by Arthur Blomfield and Arthur Beresford Pite, both highly distinguished architects. In undertaking major changes to the building, both architects identified and worked in harmony with the spirit and the style of the C18 building. Blomfield reworked the seating whilst maintaining the character and coherence imparted by the extensive ensemble of joinery; and, for his part, Beresford Pite extended the building eastward in a wholly consistent manner, and to a characteristically very high quality. Not only is the historic bench seating vital to an appreciation of the interior as a coherent whole, it is also of course central to the building's original conception. This church, like most of the period, was designed as a preaching house. While the way in which the building functioned changed through the nineteenth century, and continues to do so today, it is telling

³⁷ See its letter dated 22 May 2020.

³⁸ See its letter dated 6 May 2021.

³⁹ See an e mail dated 13 July 2020. Consulted in 2021, it maintained its objection without adding to it.

that subsequent interventions have been sympathetic to the history and spirit of the original building, a fact that is manifest in the church's present interior, and certainly in the pews. We therefore object to the clearance of the benches from the nave⁴⁰.

73. In its final submission it said:

Unusually for a Georgian church which underwent two 19th century/early 20th century restorations, the church's original seating was preserved in an altered format. It is important to consider that first Blomfield then Pite felt that the seating was integral to the church's 18th century atmosphere, which both architects strove to preserve and respond to. That same sensitivity to the building's special character should be manifest in any modern-day reordering, of which the retention of the historic seating will be an essential component. The removal of all the historic seating on the ground floor of the nave would irreparably damage the historic character and significance of the interior, especially when considered alongside the other far ranging works that are proposed for the structure, exterior and interior of the building. This would not be mitigated sufficiently by the retention of pews in the galleries and relocation of some to other spaces within the church. After much consideration the Society must maintain its objection to the pews' removal⁴¹.

The extensions

74. In its initial comments, Historic England said:

In our view the dismantling of Pite's north and south extensions and reconstructing them on a larger footprint would harm the significance of the listed building. Whilst we appreciate the intention is to limit the visual impact from Clapham Common, we note that the enlargement would add sizeable bulk to these wings and have an adverse impact on the appreciation of the architectural composition and proportions of this highly important heritage asset. Apart from the loss of fabric of some significance, successfully blending the extensions to match the existing Georgian and Edwardian brickwork would be difficult to achieve, and may result in a patchwork appearance that would be highly detrimental to the church's aesthetic appeal, exacerbating the degree of harm to the building's significance...

The resulting sacrifice of significance to this highly protected heritage asset is not to be underestimated. For the reasons set out above, we believe that the proposals would harm the significance of the Grade II listed building⁴².*

75. In its final comments, it said:

The structural report and revised statement of significance indicate there would be limited loss of internal historic fabric. Whilst this does help to limit the overall impact, the integrity and authenticity of Beresford Pite's high quality extensions would continue to be compromised, particularly as we understand the south extension would now not be rebuilt as existing but include new window openings. This element therefore remains harmful to the significance of the church as a key phase in the church's evolution by a prominent and talented architect.

We understand there are congregational public benefits that are attached to this element of the scheme, so the Chancellor will need to be convinced the harm to the building's significance has been minimised and alternative less impactful options have been fully explored. Should the current

⁴⁰ See an e mail dated 29 March 2021.

⁴¹ See an e mail dated 29 March 2021.

⁴² See its letter dated 15 April 2020.

approach find favour, rebuilding the extensions exactly as per existing would further help to better preserve the integrity of this important phase in the church's history.

This element of the scheme seems to have been developed with a view to limiting change to the church's envelope and the potential impact on the Clapham Common Conservation Area. The success of this is entirely dependent on sourcing a brick that is a perfect match to Pite's existing extensions.

To safeguard this should Faculty for these works be granted, we recommend a stringent set of conditions are imposed, including:

- *a requirement for a detailed programme of recording to be submitted prior to the relevant works beginning.*
- *a condition requiring on-site approval of sample panels of the new brickwork and mortar⁴³.*

76. As has been noted, the local planning authority has granted planning permission for the extensions. The Officer's Report to the Planning Committee took the view that the extensions would not harm the existing building.

77. In its initial comments, the Victorian Society said:

*The enlargement of Beresford Pite's eastern extension is in some ways the most complex aspect of the scheme. It needs to be stressed not just that Beresford Pite was an extremely gifted and important architect, but that his work is characterised by a very particular attention to detail. This is certainly the case in respect of his brickwork, as is demonstrated at Holy Trinity. After careful consideration we feel that extending to the north and south could be acceptable in principle. However, it could only be so if Beresford Pite's brickwork was rebuilt **absolutely precisely**, brick for brick, with additional sections of wall constructed to match exactly. This would require brickwork of the very highest order, and no doubt the employment of conditions, set by both the LPA and the DAC, to ensure it was accomplished (**emphasis in original**)⁴⁴.*

The Society continues to have concerns over the external design of the extensions. On the south elevation ground floor window below the venetian window is out of place and unsympathetic to Pite's carefully considered and proportioned façade. The justification that this new opening would communicate that this was not in fact an Edwardian construction is unconvincing when part of the Society's acceptance of the proposed extension was that Pite's elevations are recreated faithfully to the north and the south. The new entrance to the Wilberforce Centre on the west elevation and the alteration of the 1990s window on the south elevation to a fire door are enough to make it clear that this is not Pite's original construction.

The eastern elevations of the extensions and original vestries also continue to remain unbalanced and unresolved. In its discussion the Committee felt that this was caused somewhat by the design of the roof, which gives emphasis to neither Pite's original vestry, nor the proposed extension, and instead encompasses both under a single roof. The roof should be articulated in a way that emphasises one part⁴⁵.

⁴³ See its letter dated 25 March 2021.

⁴⁴ See an e mail dated 13 July 2020,

⁴⁵ See an e mail dated 29 March 2021.

78. In its initial comments, the Church Building Council made helpful comments as to the detailed design but raised no objection in principle. In its subsequent comments, it deferred on this aspect of the proposal to the DAC.

Views as to whole scheme

79. In its representations, the Clapham Society raised questions and concerns common to the other consultees and which will be considered in this judgment.
80. Offered the opportunity to do so, the Victorian Society (James Hughes) helpfully have elaborated their earlier submissions⁴⁶. It says:

Much of the submissions from both the parish and Mr Derrick focuses on matters of the pews' fabric and intrinsic quality: their age, the extent to which they survive, the extent of their adaptation, and the quality of their surviving fabric, and any alterations to them. For his part Mr Derrick considers the only reason the removal of the nave and aisles pews would not cause serious harm is that they have been cut down (from their C18 form), their doors removed and their number reduced by subsequent re-orderings. Our view is that by concentrating on fabric and issues of intrinsic quality (which are nonetheless relevant), the primary significance of the benches and the contribution that they make to the significance of the interior and the building as a whole has been overlooked. The precise motivation for the resulting seating scheme as implemented by Blomfield is also irrelevant. What matters is the result, and there is no doubt in our minds, as we stated in our previous letter, that the pews as they exist contribute to every important aspect of the interior's (and the building's) significance, and that their loss would have a major impact on that significance.

Our previous letter highlighted the building's list description and its helpful summary of the principal reasons for the building's lofty II designation. Three are listed and their relevance to the discussion makes them very much worth recounting again here:*

Plain classical church of 1774-6, exemplifying the characteristics of the 'preaching box', with original galleries * Original building by little-known architect Kenton Couse modified effectively in the C19 and early C20 * Strong connection with the Clapham Sect, a group active in campaigning for the abolition of the slave trade, adds to historical interest of building.

We wish to reiterate the critical point we made in our last letter, which is that the church's historic bench seating contributes to each of these fundamental aspects of the building's significance.

81. Addressing the question of substantial or serious harm, Mr Hughes said:

It is clear from what I have written above that we consider the loss of the pews would indeed seriously affect a key element of the building's special historic and architectural interest.

82. As regards the extensions, the Society maintained its position that its suggested alternative would cause a much lower level of harm to the significance of the Pite east end, and to the character and appearance of the exterior of the building.

⁴⁶ See an e mail dated 26 May 2022.

83. I should add that although generally leaving the assessment of public benefit to me, the Victorian Society did take one point with reference to it, querying the appropriateness and relevance of the designation of Holy Trinity as a resourcing church.

Views of the DAC

84. The DAC recommendation took into account the objections of the Georgian Group and the Victorian Society. Its principal reasons for its recommendation, despite those objections, were as follows:
- This parish and its church building project is central to the vision of the Diocese as a Resourcing Church.
 - The applicants have made a compelling case for the removal of the Nave pews, which would support parish worship and other missional uses whereas these are being hindered and constrained at present. As partial mitigation, some pews will be re-used (intact or by reclaiming the timber) elsewhere in the building. The choice of congregational chair is appropriate. If the pews are removed, an underfloor heating system can be installed. The Statement of Significance is thorough and well-researched, helping to give a nuanced understanding of the pews' significance, and there are good photographic and drawn records.
 - Plans to extend the West end portico and to glaze it in have been removed from the scope of works, as have other 'harmful' proposals (such as some alterations to the Crypt vaulting to enable a baptistery to have been installed).
 - The East end proposals will provide a suite of much-needed accommodation (catering, WCs, meeting-rooms, entrance lobby and circulating space) for this parish's mission. The Statement of Needs for this is strong. Other ways of providing this accommodation were considered but ruled out (see Design & Access Statement). The latest proposals for extensions are considered sympathetic and feasible, and have received planning permission.
 - The DAC acknowledges where there will be 'harm' to the significance of the listed building (particularly the pews removal) but considers that the parish have articulated compelling public benefit and other needs to justify these changes. The current proposals are a significant improvement on earlier designs. This scheme represents an acceptable compromise, reached through extensive iterative dialogue. The DAC appreciates how the parish had responded to areas of the proposals which had originally caused the most harm to historic fabric and had rethought the project designs in various ways.
 - An extensive list of provisos will ensure that further details of the project are still subject to DAC scrutiny to help ensure a satisfactory final outcome.
85. At a meeting on 14 June 2022, the DAC considered a number of matters on which I had indicated that I would be assisted by further advice. A sub-committee further considered those matters and prepared a letter of further advice (dated 12 July 2022) which was shared with all the members of the DAC before being submitted to me.
86. I am very grateful for this further advice which I have taken into account (and referred to, as appropriate) in forming my views and writing this judgment.

VIII. Consideration

Assessment of the degree of harm

87. It seems to me that in this case the assessment of the degree of harm that arises is essentially a matter of direct judgment for me; it is not one where my role is that of choosing between the differing views of experts. In other cases the position may be different.
88. Let me explain what I mean. Obviously there are some cases where there is disagreement as to the facts e.g. what is the date of some feature; whether it was designed by a particular architect; whether it has been restored. These may be matters which are determined by reference to expertise relating to listed buildings. If there is a disagreement between experts, one expert will be right and another wrong. The present is not such a case. The history of the pews is not in dispute nor are any of the facts relating to the Beresford Pite extensions. I entirely accept that those who advise about listed buildings are professionally qualified and, further, that in the course of their work they will acquire enormous experience. The fruits of that expertise and experience must be of great value to a Chancellor. But it can only take him or her so far. In a case such as the present, I consider that my task is forming my own judgment in a case where different views as to the significance of harm are capable of being held by experts and others. It is not a case where the views of Mr Derrick are “right” and the views of the Victorian Society are “wrong” but one where each from their different perspective emphasises different aspects of what is involved: as regards the pews, one emphasises the fact that they are compromised, the other that despite being compromised they retain significant integrity⁴⁷. Moreover where buildings are or both architectural and historic interest the two elements cannot neatly be separated (particularly when it is recalled that interest may reflect evidential and communal value also) so that reaching an overall conclusion seems (save perhaps in clear cases) to involve a judgment which is not a matter of pure expertise. The DAC agree with my view that the assessment of harm is a matter for the judgment of the decision maker.⁴⁸
89. None of what I have said above means that in forming my conclusions in this case, I have not been greatly assisted by the views of experts - which is why I have set out their various views at length in this judgment. My reasoning process will of course be apparent from the judgment.

Weighing public benefit against harm

90. In many cases where alterations are proposed to a church which is a listed building, it may be clear either that the public benefit and need for the change outweighs any harm; or *vice versa*. If a proposal comes to the Consistory Court with a recommendation from the DAC for approval, the works very often fall into the first category. It is only rarely that proposals come to the Court which the DAC views as seriously harmful or inadequately justified and, accordingly, does not recommend but which a parish still pursues; a parish generally heeds the advice of the DAC in respect of such proposals and do not pursue them. In the present case, the DAC made it clear that it could not recommend the proposals in respect of the portico and, in the light of this (and the other strong objection), the proposal were dropped.

⁴⁷ A lawyer might object that the submissions of the Victorian Society are not evidence at all, let alone expert evidence. However this matter has not gone to a hearing and is being determined on the basis of written representations. In this context, coherent submissions from such a source are generally treated as in the nature of expert submissions and I consider it is appropriate that they are. The Society’s Southern Buildings Committee, which considered the application, is evidently made up of experts.

⁴⁸ See its letter dated 22 July 2022. It reminds me that in *In re St John the Baptist, Penshurst* (2015), the Court of Arches recognised that matters of aesthetic appreciation involved a degree of subjectivity. The DAC, of course, brings to its recommendations the expertise and experience of many; and, as it observes, the fact that its recommendations on this basis are not given any special weight in legislation may be regarded as a something as a lacuna. However in considering the views of the DAC I do bear in mind that it represents the views not of one person but many who between them have come to a common view.

91. However there are cases which are less clear. Proposals may come to the Chancellor with the recommendation of the DAC but in circumstances where there are, nonetheless, weighty objections. Such cases require a Chancellor to make a difficult judgment – that is what he is there for.
92. The difficulty in such cases is inherent in the nature of the exercise where precision is impossible and neither public benefit and need nor harm can be reduced to terms which are directly comparable. What a Chancellor does is to identify and set out as clearly and precisely as he or she can the public benefit and need on the one hand and the harm on the other; and then with reference to each side of the balance indicate why he or she prefers one over the other.
93. Difficult though it is, in the present case, I have reached a clear judgment that weighing public benefit/need against harm the former does outweigh the latter: both in respect of the pews and also the extensions. The strong presumption against a proposal that causes harm is outweighed in both cases. I shall explain this judgment in a moment. However as has been seen, the test is not, on the face of it, in all cases simply whether public benefit/need outweighs harm, taking into account the strong presumption against harm; in some cases for it to do so and for a faculty to issue it is necessary that the case should be exceptional.
94. I am mindful that on one view an exceptional case is one in which an exception falls to be made and so that the word exceptional does not necessarily denote anything special⁴⁹. However it does seem to me that the meaning of exceptional depends on context. In terms of question 5 of the Duffield questions, it seems to me clear that something special is being spoken about. I am also satisfied that it is clear from the context that there is a positive requirement under the Duffield questions for exceptionality in cases of serious harm i.e. the guideline is not simply descriptive – an observation along the lines that there will not be many cases where serious harm is permitted. It is this additional requirement which has given me pause in this case. This is because I think that it is difficult to say that the circumstances of this case justifying the harm are exceptional. This is a not a point that is capable of elaboration. The DAC, which takes the view that the harm is not serious in terms of question 5, suggests that, if it were, the *overwhelmingly essential need* amounts to exceptionality. However a case can be very strong without being exceptional and that is the judgment that I have formed in this case. The one possible candidate for exceptionality is the fact the Holy Trinity is a resourcing church and it is convenient to consider that aspect of the matter at this point.
95. The Victorian Society have questioned in the context of public benefit and need the relevance of the designation of Holy Trinity as a resourcing church; making the point the Bishop need not have so designated it. There is some force in this but, realistically, it is not every church or indeed many churches that could be so designated. As I understand it, the designation reflects what Holy Trinity was already doing and signals an intention of the Diocese to assist that missionary effort in what ways it can. It is part and parcel of the aspiration to develop the present use of an existing building in ways that provide public benefit. From the Diocese's point of view this is obviously a good policy; from my point of view, I consider that what is involved is something that I can take into account as an aspect of public benefit. Thus I do not accept the Victorian Society's submission that the fact that Holy Trinity has been designated as a resourcing church is not relevant. However I cannot see that its status can fairly be taken to confer exceptionality on the case on public benefit. A better argument is that the needs of an exceptionally successful church can, on that account, be regarded as exceptional. Again, I recognise the force of this, but I am unpersuaded. The sort of things that Holy Trinity want to do are the sort of things that all churches want to do, even though Holy Trinity may be better placed to achieve them.

⁴⁹ See eg *In re Blagdon Cemetery* [2002] Fam 299 at para 33 per Cameron QC, Dean.

96. In the absence of any public benefit in this case being justifiable on an exceptional basis, it becomes of crucial importance to determine whether the harm arising is serious in terms of the fifth Duffield question. In respect of both the removal of the pews and the building of the extensions I have decided that it is not, for reasons I set out below.

The pews

Alternative proposals

97. It is clear that the loss of the pews will cause some harm⁵⁰. Accordingly it is appropriate to begin by considering whether the same or similar objectives as the proposals are intended to achieve could be achieved by proposals which cause less harm. This is not expressly required by the Duffield questions but is implicit within them⁵¹.
98. One way in which the visual harm arising from the removal of the pews could be reduced would be if rather than the pews being replaced by chairs they were replaced by moveable benches. That this is not an entirely hypothetical possibility is illustrated by *In re St Paul's, Covent Garden*⁵² to which I was referred; this was a case where the Chancellor granted a faculty for the replacement by 88 freestanding oak benches.
99. The various possibilities including benches and benches in combination with chairs have helpfully been considered in a paper prepared by the architects. I think, as the paper acknowledges, the replacement of the pews by benches would mitigate the harm otherwise arising when they were all laid out. Nonetheless there are all sorts of practical issues with an “all bench” solution; and mixed bench and chair solutions represent compromises which achieve neither flexibility nor a visual replication of the pews. The DAC has in the past been a strong advocate of bench replacements for pews in other churches but in this case they do not think that they would work. I agree with the DAC about this.

Benefit weighed against harm

100. The case of public benefit and need is evidently a strong one. Holy Trinity is a lively church, involved in the community, which wants to expand its ministry by increasing the use it makes of its building in ways which have been clearly and fully explained. At the moment it is an outstanding local centre for worship and mission and the proposals are designed to enhance that role. It is clear that the existence of the pews constrains the use of the church building on a Sunday for and in connection with services and restricts the use of it that can be made of it during the week for church sponsored activities currently taking place off site.
101. I recognise, of course, that the success of the church, which has led to it having such a large congregation, demonstrates that the existence of pews need not be a barrier to growth. But it does not mean that they are not a constraint; the growth has been achieved **despite** the pews. Also it is the case that activities that currently take place “off site” could continue to take place off site (albeit that Trinity House is not ideal for these activities). But much more could be achieved in an enlarged building in which the use of principal space is not constrained by fixed furniture. Holy Trinity is a large “landmark” building which has by its presence for two hundred and fifty years spoken of the existence of a Christian community and witnessed to the Christian faith itself. What the church now

⁵⁰ See paragraphs 103 to 111 below.

⁵¹ See eg *In re All Saints', Wellington* [2019] ECC Lic 7. As HHJ Eyre Ch explained it, if a desired benefit can practically be achieved in a way that causes less harm, it will not be necessary to cause the harm to obtain the benefit. Thus issue raised by the fourth Duffield question will not be satisfied.

⁵² [2020] ECC Lon 2.

wishes to do is to develop this priceless inheritance for the benefit of the community around it to enable to it continue and expand its ministry into the future. As in any such situations, there must be alternatives, although quite naturally the church has not spent a lot of time working out how it might function if its plans were frustrated. If I were to refuse permission for the removal of the pews, the church is not going to give up on its mission even if it is made more difficult. But if I were to refuse permission, I would be refusing permission for the church to make the best and fullest use of this impressive building. The point is often made that the story of church buildings over the years is of continued adaptation. The adaptations in the present case that are called for to enable the church to continue to flourish are significant but that does not mean that they are not necessary. Although a conservationist is bound to regret adaptations which lead to the loss of the pews, in this broader perspective he or she will recognise a process which incidentally provides for the preservation of this historic building⁵³.

102. I turn to consider harm.

103. I think that the statement in the Gazetteer to the Statement of Significance is a good summary

The pews incorporate material from 1776, but were cut down and altered in 1875, and further reduced in number in the twentieth century. Nevertheless they contribute to the character of a Georgian preaching box.

104. I remind myself that one of the principal reasons for listing is that Holy Trinity is a [p]lain classical church of 1774-6, exemplifying the characteristics of the 'preaching box', with original galleries.

105. In these circumstances the conclusion that the significance of the pews is *Moderate – High* seems appropriate, reflecting what they continue to contribute to the character of the church and also the fact that they have been comprised.

106. If one were to imagine that the pews as originally installed (or essentially as originally installed) had survived unto the present day, I think that they now would be accorded high significance; and it would be unlikely that a scheme for their removal would now be brought forward.

107. The point is, however, that they have been compromised i.e. subsequently modified so they are neither as significant architecturally and historically as they would have been had they not been modified. And, of course, the fact that they are compromised does not mean that they are not significant. The familiar process of adaptation over time is one that adds interest to the pews even though at the same time that it compromises their integrity. The same actions both adds architectural and historic interest and takes it away. And although compromised, from an architectural point of view they are appropriate fittings for a Georgian “preaching box”; and they retain historic value⁵⁴.

⁵³ In its guidance *Making Changes to Places of Worship* (2019), Historic England say *Historic places of worship have been community spaces for generations and we believe they should continue to be so. Inevitably your historic place of worship will have been rearranged over its lifetime, with each generation leaving its mark. We realise that it will need to provide modern, welcoming, spaces and facilities for the 21st century too.* I credit my notional conservationist with a view along these lines.

⁵⁴ No-one has made or referred to the point, but in these pews William Wilberforce and other members of the Clapham set would have sat; and Thomas Macaulay when he attended worship in 1849. Of course it is not possible to point to “Wilberforce’s pew” or anything like that and I incline to the view that the historical significance from past users derives from all have sat in the pews since the eighteenth century and not particular persons.

108. Another matter has weighed with me as a factor reducing harm, although I can see that some would disagree⁵⁵. This relates to the fact that the work is, to a degree, reversible. Of course if the pews are removed they are not going to be put in storage; most will be lost for ever⁵⁶. Whatever replaces the pews in the future can never have the same historic significance. However it could have the same architectural significance; and, if it was wished, the original pewing could be reproduced in contemporary materials. I think that this does reduce the harm. When it comes down to it, I consider that the principal loss deriving from the removal of the pews is not an historic one but architectural or aesthetic. This could be repaired; I consider that there is a significant difference between harm that is reparable and that which is irreparable.
109. I recognise of course that it is not possible now to envisage circumstances in which the pews might ever be put back. But they could be, and a visitor to the church after the pews have been removed will (a) still be able to appreciate a fine Georgian church and (b) will appreciate that the harm done by the removal of the pews is not irreparable.
110. I take into account the mitigation that arises from the retention of some of the pews within the building.
111. Finally, it is important to see the harm caused to the listed building by the loss of the pews in context. Although one important feature will be lost, much remain; Holy Trinity will still be a Grade II* building which is well worth visiting. I have been referred to one or two comparable cases and I have derived some assistance from considering the case of Christ Church, Spitalfields. This is a Grade I listed Georgian church which, after falling into disrepair, has been beautifully restored. The pews, which were Victorian, were removed before the restoration and were not put back. This was because flexibility was required for concerts and the like events. In listed building terms, the original pews would look better than chairs; I think that probably the Victorian pews may well have “looked better” than chairs. But no-one doubts that it continues to be an architectural masterpiece. Holy Trinity is not quite in this league – a fact that means that the removal of its pews is in principle more acceptable.
112. Accordingly I have reached the conclusion that the present petition is a case where taking all relevant matters into account, public benefit/need outweighs harm.
113. I turn to consider whether this provides a sufficient basis for the grant of a faculty or whether there is a requirement for exceptionality.
114. The starting point is a recognition that I am required to consider harm to the listed building, not harm to the pews. This means that the point that I have just articulated is important, namely that the harm caused by the loss of the pews has to be seen in context. The building will continue to be a Grade II* building which is well worth visiting. Viewed overall, it may be argued, the harm is not serious because so much else remains.
115. It seems to me that although it is both relevant and important to put the harm arising in context, it is too simplistic an approach simply to minimise it because so much of value remains. On this basis, a furnishing of high intrinsic value could be removed without the harm being categorised as serious. Of

⁵⁵ See paragraph 159 of *In re St Mary Magdalene, Reigate* (2011) 30 Consistory and Commissary Court Cases, case 40 (commented on at paragraph 93 of *In Re St Alkmund, Duffield*. Mr Derrick, the Victorian Society and the DAC have all, from their different perspectives, doubted the relevance of reversibility. The short point that they make is that if, in practical terms it is not possible to foresee proposals being reversed, it cannot be relevant to consider the fact that they could be. Although I recognise the force the argument I do not think, for reasons I have explained, that it quite meets the circumstances of the case.

⁵⁶ I recognise of course that some will be preserved.

course, the harm might be mitigated by its preservation elsewhere and, if the furnishing did not form an integral part of the building it might indeed be possible to say that its loss was not serious harm. But this does not seem to me to be an appropriate approach where the furnishing **does** form an integral part of the building. This is not an issue which is engaged with by the Duffield questions nor by the NPPF on which they are based. However, as will have been seen, it is an issue which is addressed in the National Planning Guidance.

116. I note, of course, that this guidance is not directly applicable to cases under the ecclesiastical exemption but it does seem to me that, unless for some reason I thought it to be irrelevant or inapplicable, I should give it considerable weight as reflecting the sort of harm the Dean of Arches is likely to have had in mind in formulating the Duffield questions.
117. I do not consider it to be irrelevant or inapplicable although I do think that its application gives rise to a difficult issue.
118. In respect of the guidance I begin by noting three things:
- first, that substantial harm is a high test; and
 - second, that what is proposed here falls a very long way short of being total destruction; but
 - third, that [...] even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting. It is not the scale of the development that determines the level of harm.
119. These provide the context to what I consider to be central to the guidance, namely
- ... whether the adverse impact [would] seriously [affect] a key element of its special architectural or historic interest.*
120. In the present case I think that for the loss of the pews to be viewed as a substantial harm, they would have to comprise a key element of its special architectural or historic interest. It is clear that they form an integral part of the church as it has developed. If their significance were *high*, I think that they would comprise such a key element. If it were *moderate*, it seems to me that the question whether their loss would involve answers itself: it would not. The difficulty arises in a case – as here – of harm which is categorised as *moderate – high*. I accept that categorisation. If it be the view of the Victorian Society that it is *high* (and I am not sure about this), I disagree; recognising the force and clarity with which it articulates its case. I do not disagree with the Society’s comments but do disagree as to how far those comments take them.
121. Further, I think that, though important, a fitting that is of *moderate – high significance* is not key in terms of the thrust of the guidance. What the guidance is trying to do is to identify a clear category of the severest harm which is subject to a test of exceptionality. I think that this is satisfied by confining harm in cases of this kind to a fitting of high significance⁵⁷.
122. By way of contrast, it seems to me that the monument in the recent *Rustat*⁵⁸ case presents an example of a fitting that, on the evidence which the Deputy Chancellor accepted, was a key element of the

⁵⁷ I am fortified in my conclusion by the fact that Historic England did not suggest that the harm would be substantial. It clearly is aware of the distinction between substantial harm and harm which is not substantial, since it had objected to the proposals to glaze the portico (now dropped) on the basis that the harm it would cause would be substantial.

⁵⁸ i.e. *In re the Rustat Memorial, Jesus College, Cambridge* [2022] ECC Ely 2.

listed building⁵⁹. There are, of course, any number of cases where the Chancellor's assessment of the significance of the fitting is *moderate* so that its removal will not amount to serious harm.

123. In these circumstances I have concluded that the harm arising from the loss of the pews is not serious in terms of the *Duffield* guidance. As I have already explained, my overall conclusion, weighing benefit, is that the public benefit against harm, is that the public benefit outweighs the harm.

The extensions

124. The first matter to note is that the extensions have been granted planning permission. In considering that grant of planning permission, Lambeth LBC will have had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses⁶⁰. Further, in *In re St Mary's Churchyard, White Waltham* (No 2)⁶¹, Bursell QC Ch observed:

... I have reached the decision that the consistory court is entitled to accept the reasoned decisions of planning authority, or of a planning inspector, unless they are demonstrated to be wrong by cogent evidence⁶².

125. I agree that this is the right approach. I accept, of course, that the local planning authority were not considering a listed building application. However given the basis on which Lambeth LBC considered the planning application, it seems to me inconceivable that, if it had been seised of the matter and it had been determining a listed building application⁶³, it would have reached a different conclusion. Thus I think that, on the face of it, the decision of Lambeth LBC on the planning application is of considerable weight.
126. There are two caveats to this.
127. The first is that unfortunately the Victorian Society did not receive a request for a consultation response and accordingly it did not make any comments on the application⁶⁴.
128. The second is that, although it seems that Historic England made it clear that they did not consider any harm arising from the proposals to be substantial harm, it was saying nonetheless that they would cause harm. The officer's view was that that they would not cause harm⁶⁵. Obviously the officer was entitled to her view but I cannot see in the report that the disagreement is explained.
129. In these circumstances it seems appropriate to look independently at the issue of whether approval should be given for the extensions. Only if I were minded to reach a different conclusion to that of Lambeth LBC would it be necessary to consider what weight, if any, to give to the planning permission; it will be seen that, for reasons I explain, have not reached a different conclusion.
130. The Victorian Society have suggested that the impact of the proposed extensions could be reduced while, at the same time, retaining the same broad configuration. The suggestions of the Victorian Society have been carefully considered by Hanslip and Co. I think it comes to this. It is possible to

⁵⁹ I accept that the Deputy Chancellor's analysis proceeded on an approach somewhat different to mine.

⁶⁰ See section 66 (1) of the Planning (Listed Building and Conservation Areas Act) 1990.

⁶¹ [2010] Fam 146.

⁶² See paragraph 23.

⁶³ i.e. had the ecclesiastical exemption not applied.

⁶⁴ There was a misunderstanding as to e mail addresses. It is unnecessary to consider how this came about or, more particularly, whether it was anyone's fault.

⁶⁵ See paragraph 7.23 of the Officer's Report.

reduce the impact of the extensions generally and on the Beresford Pite extensions but at the price of sacrificing space and making the extended areas provided difficult to work. It is not in practical terms an alternative which delivers the same public benefit (or substantially the same) and would still involve harm to existing extensions. It seems to me that it does not form the basis for rejecting the proposals that are before me. The DAC remind me that the proposals before me are themselves a pragmatic compromise; it supports them on this basis⁶⁶. Accordingly, I go on to consider whether or not the proposed extensions should or should not be permitted as they stand.

131. The proposed extensions are an integral part of a scheme to improve the facilities at the church to enable it to be used more fully for the public benefit as a local centre of worship and mission. As I have concluded in relation to the pews, this is a weighty public benefit.
132. As regards harm, Historic England have counselled against underestimating the significance of the Beresford Tite extensions. However I think that there is also a danger of overestimating it. They are, after all, skilful extensions and not buildings in their own right. One can see that the new extensions must be completed to the highest quality if they are not to be seen as obviously inferior modern work. But, conversely, if they are completed to the highest quality, the harm does seem to me to be limited⁶⁷. On this basis, and granting the significance of the extension to be *moderate – high*, I do think that the harm flowing from their loss is less than that caused by removal of the pews. Because the harm is *moderate – high* and not *high*, I do not think that the test of exceptionality comes into play⁶⁸. Remembering, as I do, the strong presumption against proposals which harm the special character of a listed building, when I weigh public benefit against harm, I am clear that the public benefit outweighs the harm. I should add that I have noted the Victorian Society’s concern about the new window in the southern elevation. I take their point but one can see why an architect would wish to provide light through such a window. I do not think it so harmful that I should require this detail to be deleted.

IX. Decision

133. In the light of my reasons given above, a faculty shall issue as prayed, subject to conditions.

X. Conditions

134. The faculty will be subject to following conditions which the DAC have suggested:

(1) **Building-recording:** A suitable programme of written and photographic recording of the building 'as is' (prior to demolitions/strip-out) shall be carried out, the details of which are to be submitted to the DAC. This includes completion of the survey of stone flooring in the Nave South-West corner, and detailed photographic recording of the first-floor window (prior to dismantling) in the South elevation of the Wilberforce Centre.

(2) **Arboricultural mitigation:** All excavations within Root Protection Zones to be hand dug for the first 1m depth.

(3) **Archaeology:** An appropriate archaeological written scheme of investigation (WSI) is to be submitted to the DAC for approval.

⁶⁶ See its letter dated 12 July 2022.

⁶⁷ There will certainly be some harm. One imagines that the Planning Officer was taking a broad view.

⁶⁸ I note, as in relation to the pews, that Historic England did not consider the harm arising from the construction of the extensions to be substantial.

(4) **Accessibility:** (i) Section drawings showing the Nave ramp (in the North-East corner) and the ramp into the Chancel (on the North side) should be submitted to the DAC for approval. (ii) The applicants are asked to consider outwards-opening doors for all WC cubicles wherever possible, to improve accessibility and ease of use.

(5) **North and South extensions:** (i) The following are to be submitted to the DAC for approval: 1:5 scale details of Ground Floor new window and First Floor reconstructed window on South side; brickwork, mortar, and other materials; architectural detailing; photos of a sample panel of new brickwork and mortar (and the DAC is to be given reasonable advance notice of the opportunity to attend site to inspect the sample); specification of the cleaning to stone and brickwork. (ii) The applicants are asked to consider further whether the proportions (particularly its height) of the Ground Floor new window on the South elevation could be more aligned with the nearby new doors. (iii) (Structural engineering) A drawn sequence of the structural underpinning, and other details of the proposals are to be provided to the DAC for approval.

(6) **Nave designs:** (i) Details of the new engineered floor, including the stain, to be agreed with the DAC. (ii) The colour of the new Theo M chair type to be agreed with DAC.

(7) **West end and Narthex designs:** (i) Details of the retractable screen in the Nave beneath the West gallery are to be agreed with the DAC, including its specification, finish, colour, and fixing method, together with any supporting structures. (ii) Details of new internal draught lobby, or of other means to draught-proof the main West entrance, to be agreed with the DAC.

(8) **Wilberforce Centre:** (i) Details of the retractable screen in the Wilberforce Centre are to be agreed with the DAC, including its specification, finish, colour, and fixing method, together with any supporting structures. (ii) The design of any manifestations/artwork on the glazed enclosure within the South-East stairwell to be agreed with the DAC.

(9) **Lighting:** Specification and precise locations of proposed light fittings (internal and external) to be agreed with the DAC, along with retention proposals for the existing fittings. (ii) The applicants are asked to investigate alternatives to recessed downlighters on the underside of the galleries.

(10) **Audio-Visual System:** The specification for the Audio-Visual System proposals (such as the details of the projectors and projection-screens, including precise locations of equipment, and window blinds for upper gallery windows), and acoustic provisions to be agreed with the DAC.

(11) **Specifications for works generally to be agreed with the DAC, and in particular to include:** (i) security CCTV system, (ii) drainage details, (iii) waterproofing of basement, (iv) kitchen fit-out, (v) vertical ground source heating installation.

(12) **External Landscaping:** Detailed designs of landscaping works to be submitted to the DAC for approval, including the specification of external railings, guardrails, handrails, gates, benches, signage, and information / interpretation boards.

(13) The works overall to be completed to the reasonable satisfaction of the Church's Inspecting Architect.

135. It will be seen that the conditions incorporate the matters that Historic England wanted to see covered as regards the extensions⁶⁹. Where a condition requires the agreement or approval of the DAC and agreement or approval is not forthcoming, the matter is to be referred back to the Court.

XI. Conclusion

136. It seems to me that the requirement objectively to analyse the architectural and historic significance of a building having such significance before considering the effect of such works is obviously very important. The calibration of such significance follows a customary terminology which is helpful. When one has made an assessment of such significance of the building – both as to the whole and individual parts of it – it is possible, in accordance with the Duffield questions, to make an assessment of the degree of harm that will arise from the execution of the particular proposals. In doing this, a Chancellor will be assisted by the assessments of the Petitioners and their advisers and of consultees. Where, as in the present case, an issue arises as to whether the loss of a particular feature is to be viewed as *serious* in terms of the Duffield questions, he will be assisted by assessments on that matter also. It seems to me that assessments of impact are of lesser use because they do not tell a Chancellor anything about harm. It may be that their function is to help “flag” that a proposed change is potentially serious – so that in the present case, the fact that the removal of the pews would have a major impact focused attention on whether this would result in serious harm. I wonder if it might be helpful if the *Guidance Note* issued by the Church Buildings Council indicated to parishes and those advising them the potential need for the assessment of harm, even if it thought that it is not appropriately addressed in the Statement of Significance supplied under the rules.

XII. Costs

137. The Registry have incurred some costs in respect of this petition over and above what would be usual in respect of an unopposed petition and the Petitioners should pay these. I expect that this will be straightforward but if there is any issue as regards quantum, it should be referred back to me. I waive any fee in respect of preparation of this judgment.

PHILIP PETCHEY

Chancellor

27 September 2022

⁶⁹ These matters are also addressed by the conditions imposed on the planning permission by Lambeth LBC, although not as completely. This does mean that Lambeth LBC, as well as the DAC, will be involved in the approval of details.