

Neutral Citation Number: [2022] ECC Bri 3

IN THE CONSISTORY COURT OF THE DIOCESE OF BRISTOL

In re Bitton, St Mary

JUDGMENT

1. This is a petition for major re-ordering of this Grade I listed church.
2. This petition is for part of a proposed three phase project. This is a petition for the second phase. It consists, in summary of these proposals:

- Reconfiguration of the internal floor at the west end to achieve level access
- Raising of the floor throughout the Nave and Chantry Chapel by 160mm to be level with the lower step in the chantry chapel
- Recording all ledger stones, leaving some in situ under new floor, and raising some to new floor level, depending on significance and condition
- Introduction of energy efficient zoned under floor heating system and new booster heating units in the main body of the church
- Alterations to some pews to make them moveable and purchasing new chairs for flexibility
- Retention of the existing hospitality unit (albeit raised onto the new floor) and the introduction of matching mobile serveries/welcome desks
- Relocation of font within the south west corner of the nave to allow more circulation space
- Adjustments to pulpit and stepped access
- Adjustment to timber screen between porch and nave.
- Alterations to altar steps within Sanctuary.
- Lifting, repairing and relaying Chancel marble flooring to be level with Nave.
- Cleaning of the internal walls and ceiling of the porch, nave and chantry chapel.
- Renewal of services including power and lighting, with provision for new sound and AV system etc

3. This is an extremely ambitious project which is going to cost the parish approximately £375,000. To date I understand that the petitioners have secured either by fundraising, grants or promised grants, the sum of approximately £87,000.
4. When this petition was first lodged I was concerned that I had insufficient information in terms of the statement of needs and advice from the amenity bodies. I now have very substantial assistance from the amenity bodies and a fuller statement of needs.
5. In submissions from SPAB in 2018 they raised their concerns about the lack of detail, in particular in relation to the proposal to raise the current floor. Further information has now been provided by the petitioners (below)
6. The CBC raised their concerns in a very full and helpful letter, including some most useful photographs.

Raised floor and associated works

The Council accepted that there is a strong case for access and circulatory improvement within the church, particularly in areas where equal access is a challenge, but asked for a great demonstration of need where it is proposed to make significant alterations which will have a permanent impact on the character of the Grade I listed building. The proposal to raise the main floors, resurfacing them with new stone, and introduce underfloor heating, will come at considerable cost to the parish and the Council would expect to see a strong justification for this alteration demonstrated by a clear appraisal of its need. Given the absence of information in the present documentation, the Council felt that the parish may be able to meet its need by scaling down its proposals.

The Council accepted the need to adapt the floor level around the sanctuary in the chancel as a protruding platform represents a trip hazard immediately West of the Vestry entrance, a space formerly occupied by the choir stalls. It was noted moving the 3 steps up to the sanctuary further East will create step-free access to the chancel's South door fire-exit, but also that 2 steps up to the adjacent Vestry would be retained. The Council asked that consideration be given to make both the approach to the Vestry and South door fire-exit are both given equal access. In addition, the Council asked for greater detail to determine what other options have been explored to create step-free access to the chancel, and asked for more detail of the liturgical use of the chancel. The Statement of Needs is useful in highlighting the constraints of the current interior arrangement for services and general meetings, and explores strategies for change, but it is not clear in showing

which areas of the building are used for services and the regularity of use. The PCC is encouraged to produce a liturgical plan and a general space plan, to help consultees understand how the building, including the hall and extension will be used in worship and for other activities.

7. Historic England said this of the petition:

Historic England advice

Significance of Designated Heritage Assets

The parish Church of St Mary has Saxon origins with Norman remodelling and St Catherine's Chapel added 1298-9. The tower and chancel were added in the latter half of the 14th century. The 19th century restoration is attributed to HT Ellacombe (and son, HN) and included the blocking of the south Norman door (the tower door opened as the main public entrance), a screen separating the tower from the nave (subsequently replaced during the 20th century), adaption of and adding to the number of pews, and a new nave roof and chancel arch. These changes, to highlight a few, were well documented and we advise that the relevant significance of the 19th century work is further assessed. In general terms, we consider that the significance of the Church, its construction phases and individual architectural elements and furniture to be affected by the proposals, is still not assessed in a proportionate manner to the significance of the heritage asset. While the submitted assessment provides a comprehensive historical account of the changes that have been made to the church, this does not meet the requirements of para 194 of the NPPF.

Within the setting of the Church are a number of designated heritage assets, including the Grade II* Grange immediately to the south. The Church is designated as grade I, and as such is in the top 2.5% of listed buildings. Therefore, greater weight should be given to its conservation. The National Planning Policy Framework (NPPF) defines 'conservation' as 'the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance'.

8. Historic England conducted extensive and helpful research and were not convinced that the alterations were either necessary or would reinstate the historic floor level:

From this research, we understand that the proposed raised level of the floor would not, in fact, reinstate the historic floor level, apart from the level within the tower porch, and would result in impact to the architectural character of the Church, existing fabric and the raised level of the Chancel. There are also implications of raising the floor on the proportions of column bases, adapting doors and thresholds. In terms

of DDA requirements, expectations and means of improving access within historic buildings, our standing advice is contained within our advice document: Easy Access to Historic Buildings. We have previously advised that an access audit is carried out, which should assess the existing access arrangements and constraints, and look at the various options to make improvements and their relevant impacts upon the significance of the Church

9. I note that no such access audit was carried out by the petitioners.

10. The Petitioners responded very fully in relation to the floor via their architects:

Alterations to floor of nave and Chantry Chapel

It is accepted by the committees as well as the PCC that there is a strong case for access and circulatory improvement within the church, whilst respecting the character of the Grade 1 listed building.

Condition of the existing floor:

- Steps down from the main west entrance into the porch and nave pose a problem for easy accessibility.
- Most of the ledger stones present in the nave are clearly suffering with various degrees of degradation through age and wear and tear, leaving a very uneven surface which is breaking up causing trip hazards and difficulties with cleaning.
- The raised plinth under the font in the south west corner of the church is another trip hazard, creating accessibility issues and limits the use of this space.
- In the areas beneath the existing pews, as far as we know, is no substantial floor – only rubblestone. This is explained in some detail in the existing documentation.
- The areas where pews have already been removed have been filled with a temporary limecrete slab, and the projecting vault in the north east of the nave has been covered with temporary plywood boxing.
- The step from the nave up to the chancel also limits accessibility.

The proposal to renew the floor of the nave and Chantry Chapel is not so much a need as a solution to a number of difficulties in providing such flexibility and accessibility for all. There is no option, other than doing nothing, that does not require some significant change if the space is to be used in any way flexibly, other than to replace the floor. If the floor is to be replaced, it makes sense from a wide range of perspectives, including environmental ones, to install underfloor heating. It also seems likely both from the archaeological records and visible signs within the church itself, that the church floor has been higher than its present level in the past.

The case could be made simply to install a new floor under the pews at the same level as most of the existing floor, but this in itself, would not get over the fact that at the east end of the nave there is a vault, the top of which is higher than the existing floor. Again there are other options, such as the creation of a higher level floor in this area, while leaving

the remainder at the current level creating a platform at one end of the church; but this, and the need for ramps and steps, would reduce the level of flexibility of the space.

A new level floor with an integrated ramp at the west entrance will aid access for everyone, and will provide a more suitable base for the new flexible seating and mobile pews proposed. By raising this by 160mm throughout, less impact will be made on any existing archaeology below the existing floor, and there is the potential to integrate an under floor heating system. The step from the nave to the chancel can be eliminated, and any future proposals to reopen the south door from the nave can involve step free access over the existing historic threshold documented in this location.

11. In relation to the liturgical and other use of the new space, the petitioners are, in my view, disappointingly vague, despite the requests of the CBC (emphasis added below):

Proposed use of spaces

There were suggestions for the PCC to explore and demonstrate further potential uses of the flexible spaces created within the nave and the chantry chapel if the proposed changes were made including removal of the fixed pews and removal of the raised plinth to the font. The Statement of Need highlights the constraints of the current internal arrangements of both the church and the church hall for services and other activities.

An example from the PCC illustrating the need for flexible space within the church is the Family Café Church which utilises the existing space at the west end being used for tables and chairs for serving breakfast and later for craft. The story telling and activity part of the service is currently limited to the aisle but would be far better served by a bigger, wider space. This was reinforced by our recent meeting with the parents who bring their children to Family Café Service.

Examples of story telling requiring larger spaces include the telling and acting out of the Parable of the Lost Sheep, the Building of the Ark and St Paul's travels which often involve interactive participation.

The current church hall itself has significant limitations. It is small and the groups that use it have largely grown too large to use it comfortably. It is not immediately adjacent to the church, but about 150 metres to the north of the church yard. It is a former schoolroom and is in need of constant repair. In the longer term it could be put to more appropriate use.

We do not have a liturgical plan other than to state that the chancel will be maintained as a space wholly for worship and will not be used for any other purpose. Within the main body of the church the availability of greater space and flexibility is intended to promote experimentation in worship and to allow new expressions of worship. For instance, although Family Café Church has grown, with a

steady increase in the number of families participating, we are unable to offer anything attractive in terms of worship for older children and teenagers. In the future we would hope to make greater provision for them, investing in more modern and lively forms of worship and presentation that is entirely ill suited to a fixed pew environment.

The church is unattractive to this age group in its present appearance, but also in our ability to offer modern facilities such a staging or providing space to move around.

In terms of the other organisations that might use the space the petitioners' responded:

Please refer to Appendix A for a series of example space plan options for the main church with the new moveable pews and flexible chair arrangements in mind for a series of activities each with a different focal point.

The PCC are also keen to maximise its engagement with wider community of Bitton and beyond. The church has identified many potential users who would be keen to use the improved function spaces, which is vital to justify the level of the intervention proposed within this Grade 1 Listed Building. It is very clear to the client that proposed regular use and regular income will help to sustain the facilities and maintenance of this highly regarded church building and in turn make the investment and alterations worthwhile in the long run. The vision is that the financial investment and ongoing running costs are balanced by the increased number of people who will be using the building, with potential for more and more people to choose to come to worship.

The PCC has included a list of examples of proposals raised which would engage with the wider community and its own congregation:

- Request by Jazzbeanz for regular use of the church for their concerts
- Use by Garden Club now that numbers are too large for use of the village hall. The church is not yet ideal because the lighting is not right for the screen, but the space is excellent especially for workshop session (eg willow weaving – a recent example)
- Flicks in the Sticks is also attracting more than the village hall can accommodate. With improved lighting for the screen this could be moved to the church.
- Indoor games: When there is sufficient space table tennis, short mat bowls, badminton.

These were popular ideas at the open evening for residents

- Library: We have been approached in the past by the library service and there was interest in the community. With an even floor on which mobile bookcases could be moved into place a library would be

possible.

- Drop-in coffee mornings would be popular
- In phase 3 a café would be welcome.

The church is already used by a wide variety of community groups for:

- Concerts
- Plays
- Dinners
- General meetings including consultative local authority meetings

12. I have to carry out a balancing exercise between the concerns raised quite properly by the CBC, Historic England and the Victorian Society and the test laid out in the *Duffield* case together with the Church's statutory duties under S 35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

Re *St Alkmund, Duffield* [2013] Fam. 158 at paragraph 87 (with editions):

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

*(2) If the answer to the question (1) is 'no', the ordinary assumption 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 *Peak v Trower* (1881) 7 PD 21, 26-28, 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* [1995] Fam. 1 at 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), it is well established that 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 be exceptionally allowed.

Ecclesiastical Jurisdiction and Care of Churches Measure 2018

35 Duty to have regard to church's purpose

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.

13. Having read all the very extensive exhibits submitted to me I am satisfied that the proposals, particularly the proposals in relation to raising the floor would result in harm to the significance of the Church as a building of significant architectural or historical interest. I agree with the concerns raised by Historic England. In my judgment, however, the harm would be of moderate significance bearing in mind the other important architectural and historic features of the church.
14. The petitioners have been less than entirely helpful to me in relation to the justification for the changes they petition for. They were encouraged to carry out an accessibility audit and a liturgical plan, but have done neither. Whilst acknowledging that it is impossible to provide precisely detailed evidence of the use for which proposed future alterations might be put, the examples provided to me are short on detail.
15. I note however that these proposals will make the Church a more accessible space for the very young, the elderly and for those with mobility issues. All parties accept that this is the case. In my view the guiding principles enshrined in the Equality Act assist me in deciding whether these proposals will result in public benefit and also assist the role of the church as a local centre of worship and mission. I am therefore just persuaded that this petition should pass the seal.
16. I am concerned about the question of the cost of this very ambitious petition and the conditions I impose are that the DAC should approve the proposed seating and that the works should not proceed until all the funding is in place.

27th September 2022

Justin Gau,
Chancellor of the Diocese of Bristol