

Neutral Citation Number: [2022] ECC Lei 3

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

5 NOVEMBER 2022

CHURCH OF ALL SAINTS, COSSINGTON

IN THE MATTER OF:

(1) Petition 2020-054509 Repair and Redevelopment of Church Building and Churchyard Project (Phase 1)

(1) Petition 2020-054523 Repair and Redevelopment of Church Building and Churchyard Project (Phase 2)

JUDGMENT

Introduction

1. Cossington is a village in the Soar Valley of Leicestershire. At its heart is the church of All Saints. It is part of the united benefice of Sileby, Cossington and Seagrave. All Saints church is Grade II* listed.
2. The Historic England listing (which draws heavily on the corresponding entry in Pevsner's *The Buildings of England, Leicestershire and Rutland*) describes the church thus:

“Church. C13-C15 and C19. Granite rubble stone with stone dressings and Swithland slate roof to chancel and S porch, the rest leaded and parapetted roofs. Stone coped gables. West tower, nave, aisles, chancel and S porch. Tower of C13 of 3 stages with small blocked W door, W lancet with C19 stained glass, N and S lancets, 4 bell openings with hood moulds, head frieze and battlements. Triple-chamfered nave arch. C13 4 bay N arcade with double-chamfered arches on circular piers. Early C14 4 bay S arcade with double sunk quadrant-moulded arches on quatrefoil piers. Perp clerestory with 4 3-light windows either side and C19 4 bay low-pitch tie beam roof. N aisle with buttresses with set-offs and part battlemented parapet. NW window with Y tracery, blocked N door, 2 N windows with C19 stained glass, and NE window with Y tracery and C19 stained glass. By chancel arch part of spiral stairway to former rood, and a squint to both aisles. Early C14 chancel. Windows with Reticulated tracery those to W on both sides originally 'low-side', that to S now with lower section blocked. E window with Intersected tracery and stained glass c1918 by Strachan.

“Fine sedilia with ogee arches and piscina, and on N wall a C14 tomb-recess, with ogee arch over the alabaster tomb chest of Dr. Matthew Knightley, a former Rector, of 1556. Incised top and carved sides. Chancel S door. S windows have C19 stained glass. C19 boarded wagon roof. S aisle has buttresses and part battlemented parapet. SE window has Geometric tracery and stained glass of 1862. 2 S windows with Y tracery and SW window with restored Y tracery. Early C14 S doorway and C19 S porch. Round font, possibly C13/C14, with C17 restored cover. Restored Perp screen and pulpit. Choirs stall ends probably of same date, partly restored. Some benches with linenfold panelling c1500. In N aisle under E window tomb with recumbent effigy of priest, c1320. In chancel alabaster wall monument to Rev. William Stavely, a former Rector, of 1652. Further early C19 wall monuments, a rectangular painting of the Royal Arms of Georgian period and c1700 painting of the Creed, Commandments and Lord's Prayer with portraits of Moses and Aaron. Carved frame.”

3. There are two further buildings within the curtilage of the churchyard. The first is a nineteenth century vestry building. It is Grade II listed:

“Detached vestry. Dated 1835. Granite rubble stone and brick and Welsh slate hipped roof with brick side stack. 1 storey. Central doorway with stone surround and door. Stone tablet over carved with Babington coat of arms and inscribed 'Erected April 1835'. A small niche either side. On right side 2 3-light casements the top glazing bars forming Gothic arches. Was used as meeting room and place of shelter by 'Temperance' groups organised and brought from Leicester by Thomas Cook (of Cook's Tours). Both he and William Babington, Rector of Cossington, were interested in this movement.”

The second building is a 1960s concrete garage which is in poor repair and which is currently used by the church as a store.

4. The Rector and PCC of All Saints have for some considerable time wished to repair and extend the church building. Significant repairs are needed because the church sits in a flood plain with a high water table. This has caused significant damage to the floors, walls, pews and monuments, and in 2020 Historic England placed the church on its Heritage at Risk Register. The Rector and PCC wish also to remove some of the pews (and make other pews moveable) to provide more flexible seating arrangements for different types of service. Finally they wish to extend the church to provide additional meeting space which can be used, for example, for children's groups whilst Sunday worship takes place in the main church building. The intention is that the

extension will also include facilities such as a kitchen and toilets which are currently absent.

5. The plans for an extension have been in development for a long time. A previous petition for a faculty for a two storey extension was dismissed by Chancellor Blackett-Ord in 2012. Both English Heritage and the Society for the Protection of Ancient Buildings had expressed dislike of that scheme (although they did not formally become parties opponent to that petition), and the Chancellor dismissed the petition having regard to both the size and appearance of the extension then proposed commenting at [37]:

“The extension which is proposed in this case is likely to survive for centuries. We owe it to those who will worship in All Saints in future centuries, as well as those who contributed to the building of the Church in the past, that any extension of the church is of the highest aesthetic and architectural merit.”

6. Although the Chancellor’s judgment recorded that he had been told that if the petition was refused there would be “no appetite to return to the drawing board”, commendably that is what the Parish have done. Steered by a volunteer Cossington Project Group and with the assistance of the DAC the parish have spent the past ten years working hard to put together proposals for a new set of plans. The relevant amenity societies and heritage bodies have been consulted from the outset, with their views being sought on numerous occasions as the project has progressed and taken shape and the parish has shown great flexibility in adapting its plans to accommodate those bodies’ comments on a wide range of issues. The result is a set of proposals which now command a wide range of support.

7. For funding reasons the parish has split its proposals into two phases; the intention being that the first phase can be completed and stand alone whether or not funding for the second is available. It has therefore brought two petitions.

(1) **Phase 1 - Petition 2020-054509**: This covers what is referred to in the papers as “the Church Project”, and comprises the repair and reordering of the existing church building. I set out in Schedule 1 to this judgment the full list of matters covered by this petition. However in broad summary its main features are as follows:

- (a) Raising and replacing the existing flooring in the nave and side aisles;
- (b) Relocation and conservation of the font and a 14th Century effigy believed to be of Hugh Grosseteste, Bishop of Lincoln;
- (c) Plastering of the wall in the north aisle to match the south aisle and repairs to plaster in chancel and south aisle and limewashing;
- (e) Renewal of the mechanical and electrical systems in the church
- (e) Alterations to twelve of the nave and aisle pews to shorten them and mount them on castors;
- (f) Removal and disposal of eighteen of the nave and aisle pews (subject to certain older elements from these pews being removed before disposal and used for repairs to the retained pews);
- (g) Demolition of the existing garage / store in the churchyard, the removal of one tree and construction of new detached outbuilding to accommodate boilers and an accessible WC; and
- (h) The repair, refurbishment and redecoration of the vestry building and the felling of two trees that are currently very close to it.

The cost of phase 1 is put at around £1.2M of which around £1M has been raised.

(2) **Phase 2 - Petition 2020-054523**: This covers what is referred to in the papers as “the Annexe Project” and comprises the proposed new extension. I set out in Schedule 2 to this judgment the full list of matters covered by this petition. In broad summary its main features are as follows:

- (a) Construction of a single storey annexe in the churchyard abutting the north wall of the church;
- (b) The removal of five trees on the edge of the churchyard;
- (c) Relocation of headstones from the area where the new extension is to be built;
- (d) Improvements to the churchyard including the reinstatement of a grassed over path.

Phase 2 is estimated to cost c£980,000.

In each case the petitioners are the Rector, the Rev. Duncan Beet, and the Churchwardens Mr Stephen Castleman and Mr Malcolm Kitching.

8. The advice of the DAC in relation to both petitions is that the work or part of the work proposed is likely to affect:

- (1) The character of the church as a building of special architectural or historic interest;
- (2) The archaeological importance of the church; and
- (3) Archaeological remains existing within the church or its curtilage.

9. Both petitions have been advertised. No objection has been received to either petition.

The Duffield Questions

10. All Saints is a Grade II* listed building and in determining these petitions I have to consider what have become known as the Duffield Questions following the decision of the Court of Arches In *In re St Alkmund, Duffield* [2013] Fam 158.

These are as follows:

- “(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If the answer to question (1) is ‘no’, the ordinary presumption in faculty proceedings ‘in favour of things as they stand’ is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8 and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3 4 and 5 do not arise.
- (3) If the answer to question (1) is ‘yes’, how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at para 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.”

11. In *In re Holy Trinity, Clapham* [2022] ECC Swk 4 Chancellor Petchey set out some further observations (at para [36] *et seq*) on the meaning of the expression “serious harm” in the final Duffield Question, taking the view that it was legitimate to consider what the Government defined as “substantial harm” in the National Planning Policy Framework (“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.”

I agree and have taken these matters into account in this judgment.

The Statement of Need

12. Following the rejection of its earlier proposals in 2012, the Cossington Project Group put together a new and robust Statement of Need. The initial statement dated July 2013 has been supplemented by a further document dated November 2015 which focuses on the proposal for raising the floor in the church itself and by an Addendum Statement of Need dated December 2020 which identifies additional needs arising from more recent developments and from the experience of the parish during the Covid 19 pandemic. The key points identified in those documents include the following:

- (1) Cossington (along with the other churches in the benefice) is seeking to grow its congregation;
- (2) Every month it holds a Family Service. This takes place in the hall of the village school (rather than the church). Activities for the children take place for part of the service. These are held in a separate building. The Statement of Need puts matters thus:

“Our experiences lead us to feel strongly that the All Saints Church site in its present state is unable to provide the facilities needed for this Family Service, and is even hindering worship and mission, with some families limiting their attendance to Family Services only. The success of the Family Service in attracting families with children depends upon it being an informal service with the main meeting space able to be used flexibly and other spaces being available.”

- (3) Previous attempts to use the separate vestry building for children’s groups during the Family Service have proved unsuccessful - it being too small to separate school aged children from the crèche for very young children “resulting in problems of noise, distractions and frustration all round”.
- (4) The serious issues with damp in the church building and the lack of any toilet facilities have also proved off-putting to families.

- (5) The lack of any suitable meeting space at the church has also hindered other aspects of the church's mission and outreach. For example, the other churches in the benefice hold a "Christianity Explored" course. Cossington lacks a suitable venue to hold such an event itself. Similarly there is no suitable place for youth and children's work to take place outside of the Family Service, and a toddler and carer group run by the church meets elsewhere because of the lack of suitable facilities at the church itself.
- (6) The current seating arrangements at the church with fixed pews, restrict the use that can be made of it, a problem exacerbated by the damp and rot in the north aisle where pews have had to have been removed and placed in storage. For example, the fixed seating means that although children from the village school can attend special services (for example Christmas, Harvest Festival) there is insufficient space for parents to attend too.
- (7) The proposed meeting space would also provide a wider community benefit by providing a venue for other groups not directly linked with the church to meet. A recent (2020) survey indicated widespread support within the village for new village hall facilities, and experiences during the Covid-pandemic have led to "a resolve to maintain the heightened sense of civic cohesion" that resulted from the village's shared experiences.
- (8) There have been a number of pre-planning applications for the development of a significant number of new homes on farmland near Cossington. The likely expansion of the village will further increase the need for more appropriate facilities for the church.

- (9) There is clearly a pressing need in any event to address the very serious damp issues within the church and effect other repairs identified in the most recent Quinquennial Inspection. In 2020 the church was placed on the Historic England Heritage at Risk Register. The Addendum Statement of Needs acknowledges:

“The inclusion on 2020 of this most cherished ancient building in the Heritage at Risk register for England was a most salutary event. The official recognition by Historic England of the problems arising and the attendant trajectory has served to underscore the critical state of the church fabric.”

13. Clearly the repair of the existing fabric is a pressing need, but of themselves the majority of these repairs should not affect:

- (1) The character of the church as a building of special architectural or historic interest;
- (2) The archaeological importance of the church; or
- (3) Archaeological remains existing within the church or its curtilage.

However the works for which a faculty is now sought goes considerably beyond making good the existing damage to the church’s fabric, and as the DAC have recognised in their advice, the overall effect of each of the proposed petitions is that the works proposed will affect the three matters identified above.

14. The three elements of the proposed works which in my view are likely to have the most significant effect on these matters are:

- (1) The new extension (Phase 2);
- (2) The proposal to raise the floor of the Nave and Aisles (Phase 1); and
- (3) The proposal to remove 18 pews and to make the remaining pews moveable (Phase 1).

This judgment therefore focusses on these three matters, although in reaching my overall conclusions I have taken into account all of the works proposed requested in the petitions both individually and cumulatively.

The Extension

15. The proposed single storey extension will be built on the north side of the church. Following advice from the heritage bodies an earlier plan for the extension to “wrap around” the ends of the north aisle has been dropped and the extension does not extend any further south than the northern wall of the north aisle.

16. The extension will use the same architectural vocabulary as the church. It will be built of local Mountsorrel granite random rubble to match the church and the main part will have a low pitched roof covered with Welsh slate (in keeping with the roofing of the north aisle). The external windows are in keeping with those of the church. There will be ashlar stonework for parapets, buttresses, windows and string courses. These will use a fine-grained sandstone to match the same details on the existing church. The extension’s foundations will be piled to minimise damage to archaeological remains on the north side of the churchyard.

17. The extension will have an external doorway at its western end (to be accessed by a new path in the churchyard). This is set in a glazed and wooden screen which leads into a circulating area / corridor along the existing north wall of the church. There is also access from the church itself into this area, achieved by the reopening of an existing (but blocked-up) doorway in the north wall. Within

the extension is a large meeting room, capable of being subdivided into two separate spaces, a kitchen and two toilets, one of which would be fully accessible.

18. The roof of the extension is lower than that of the north aisle and the building is intended to appear physically subservient to the church. The circulating area separating the main part of the extension from the church building will have a glazed roof. Although it is necessary for there to be a physical connection between the north wall of the church and the extension, the intention is for this to be as reversible as possible.
19. An archaeological investigation of the affected part of the churchyard was undertaken by the University of Leicester in 2016. Four test trenches were dug. All four trenches uncovered disarticulated bone at around 0.68-0.88m depth. One test trench also revealed articulated human remains at 0.88m depth. These burials appear to be deeper than the depth of excavation required for the floor slab, so the only interference with burials is likely to come from the piled foundations. A number of gravemarkers to the north of the church will need to be moved. I do not understand any of these to be recent. These are to be relocated against the churchyard wall.
20. As I have already mentioned the various heritage bodies have had significant input throughout the design process for the extension. English Heritage / Historic England have accepted that the extension is justified in terms of need and consider that it “sits comfortably” within their existing advice and guidelines.

Their letter of 11 July 2014 confirmed that:

“Whilst we believe there remains a degree of harm to the heritage significance of All Saints, we have no objection to the development of option 12. The mitigation of harm and indeed the success of the scheme will lie in the high quality of detailed design, materials and finishes - and we welcome the parish’s commitment to this.”

Subsequent concerns on matters of detail (including the introduction of timber elements to the proposed screen at the western end of the circulating area) have been resolved. A letter of 4 February 2021 confirms that Historic England were “broadly content” with the proposals. The Society for the Protection of Ancient Buildings considers that “the current proposals constitute an acceptable way forward”; the CBC / ChurchCare has confirmed that it too is content with the key elements of the proposal.

21. Planning permission for the extension was granted by Charnwood District Council in 2018 (extended in 2021). This planning application received substantial local support. No objections appear to have been lodged. The planning officer’s report concluded that the impact of the extension would harm the church “to a minor extent”.

22. The petitioners have provided a Heritage Assessment dated May 2017 assessing the various elements of the works by reference to the heritage policies set out in the NPPF. Their assessment of the impact of the extension on the existing church building is that it is “low adverse” that is to say “the development harms to a minor extent the heritage asset, views of the heritage asset, or the ability to appreciate its significance values”. They reach the same conclusion in relation to the impact of the extension on the historic fabric of the church and on any archaeology in the churchyard.

23. I agree. It is clear that the extension will have an impact on both the character and the archaeological importance of the church, and also upon archaeological remains existing within the churchyard. However, it is evident that the petitioners have taken clear steps to address this impact and to take into account the views of the various heritage bodies as their plans have progressed. The extension itself is smaller and lower than that proposed in 2012. It adopts the same visual language and materials as the existing church building, but is clearly subservient to it and its impact on the church will be limited. Steps have been taken to minimise the extent to which work will be required to the existing structure of the church to join it to the extension, and the proposed piled foundations will minimise the disturbance to the archaeological remains within the churchyard.
24. In my judgment a powerful case has been made by the petitioners for the need for the extension to further the ministry of the church and to enable it to grow and to maintain its place as a central focus within the village and I am fully satisfied that the needs that have been identified outweigh the limited harm to the church that the proposal will cause.

Raising the Floor Level

25. At present there are four floor levels within the church. The south porch (which is the main entrance to the church) is slightly above the level of the approach path. The floor in the nave, aisles and base of the tower is approximately 150mm below that of the south porch. The floor of the chancel is up two steps of approximately 300mm above the nave floor and the sanctuary floor is up one step of approximately 100mm above that of the chancel. The floors are made up

of the following materials:

South porch	Victorian tiles
Nave and aisle walkways and tower	Victorian tiles
Other areas of nave	Wooden platform, earth, concrete, slate gravestones and floor grilles
Chancel and sanctuary	Polychromatic Victorian tiles (area of earth where choir stall plinths have been removed)

26. The condition of the floor in the porch and in the Chancel and sanctuary is reasonable. However the high water table and damp have caused significant damage to the floors in the nave and aisles and the condition of the Victorian tiles in these areas is poor.
27. It is proposed to replace the floor in the nave, aisles and tower with a new limecrete floor which will resist capillary movement of water and allow the floor to breathe. This floor would have limestone paving upon it. To reflect comments from the Victorian Society it is proposed that the layout of the paving stones would subtly reflect the position of the existing wooden pew platforms. The Victorian tiled floors in the chancel and south porch would be retained and repaired.
28. The new floor would be about 150mm higher than the existing one. This would lead to a flat transition from the south porch to the nave and a reduced step up from the nave to the chancel. Additionally it is proposed to create a plinth (at the height of the chancel floor) in front of the chancel arch that will project into the nave. There would be a ramp on the north side of this plinth to enable step free access to the chancel and altar rail. The proposed new floor level is believed to

be closer to the floor level that existed prior to work done in the 19th Century.

29. Near the south door there is a small area of medieval encaustic tiling on a plinth upon which the font sits. These tiles will be conserved and replaced on a new plinth in the same position.
30. A 2015 document supplementing the initial statement of needs set out the parish's reasons for the change in level of the floor in detail. It is said that the changes will improve accessibility, will assist with the avoidance of damp in the future and will (by limiting the depth of any excavations required) mean that the work is less likely to affect any buried remains with the church.
31. These reasons were accepted by Historic England as providing sufficient justification for the proposed changes. The Society for the Protection of Ancient Buildings has confirmed that it considers there is a justifiable case for the replacement of the floor, and ChurchCare has confirmed that it too is content with this proposal. The Charnwood planning officer's 2018 report notes that although this element of the works would result in loss of historic fabric from the Victorian restoration, the overall benefit of a new level floor enabling increased accessibility and use of the church would offset any loss.
32. An archaeological investigation of the church floor was undertaken by the University of Leicester in 2016. A small amount of disarticulated human bone was uncovered in the test pits dug. It was unclear whether these were from burials within the church itself which had been disturbed during the lowering and

levelling of the floor in the 19th Century or whether soil from the churchyard had been brought in and used to level the floor at that stage.

33. The petitioners' own assessment of this element of the works is that the loss of the existing Victorian floor in the nave and aisles has a "low adverse" impact on historic fabric of the church, but that the overall benefit of a new floor will offset this and lead to a "high beneficial" impact on the use of the church.
34. Again I broadly agree with this assessment. The proposals will plainly impact upon the character of the church. The loss of the Victorian floor in the nave and aisles will remove forever an element of the church's history. However, this will be offset to some extent by the retention and repair of the Victorian tiles in the south porch and chancel and the important medieval tiles around the font. Likewise, although the change in levels between the nave and chancel is reduced by this proposal, there will still remain a progression of levels from the nave to the chancel and from the chancel into the sanctuary. In the light of the archaeological investigations that have already taken place it seems likely that any impact on archaeological remains within the church will be limited, and the plans to raise the floor level will assist in minimising any disturbance to such remains as do exist.
35. In any event the reasons for the works are again compelling. First and foremost, the issues with damp and water damage to the existing floor need to be resolved. They are sufficiently serious for Historic England to have placed All Saints on their Heritage at Risk Register. I am satisfied that the proposal to raise

the floor level with a new limecrete floor (coupled with other drainage works also included within the petition for Phase 1) is an appropriate method of addressing this issue. I also accept that the majority of the existing Victorian tiles in the nave are sufficiently damaged to make their re-use impractical and that the proposed use of limestone paving throughout for the new floor will provide a coherent scheme for the nave and aisles. This will also (in conjunction with the proposals regarding the pews which I discuss below) have an important and beneficial impact on the ability to configure the church for different forms of worship. The proposals will also mean that the chancel and altar rail become fully accessible.

36. Again I am satisfied that the benefits of the proposals significantly outweigh the limited harm that they will cause.

Seating

37. The church owns a total of thirty wooden pews of varying length. The May 2017 Design and Access Statement shows that 18 of the pews are currently fixed in blocks in the nave, the two rearmost pews having decorative backs. Four more pews are against the walls of the north and south aisle. Two choir pews are in the chancel¹. The remaining six pews are currently in store (having been removed from the north aisle owing to damp). The pews were mostly rebuilt in the 19th Century, but on that occasion a significant number of 16th and 17th Century pew ends with linen-fold panels were retained and reused. Good quality replicas were made for the other pews, although it is possible to identify which

¹I understand that these may currently be being stored in the aisles.

are the older work and which the 19th Century copies. The pews that are now in storage suffered from wet rot during their time in the church and this has damaged them, including some of the older bench ends.

38. There are also five pew frontals, two of which are in the choir, two in the nave and one in store. Four of these are Victorian and one (in the chancel) is of older work.

39. There is other wooden furniture within the chancel including two return stalls. Although of 19th Century design, these include elements of earlier furnishings from the 14th / 15th Century and the 17th / 18th Century. I understand that these stalls have been partly dismantled and pieces are missing. The petition seeks authority to repair and reinstate these furnishings. Historic England have proposed that given the age and significance of these earlier items their reinstatement should be made a specific condition of the proposal.

40. The petitioners seek to reduce the number of pews within the church to enable the re-floored aisle and naves to be used for a wider variety of purposes as identified in the statement of needs. The intention is that a smaller number of retained pews (12 in total) combined with individual chairs would enable a number of different uses to be accommodated such as:
 - (1) Seating for the maximum size of congregation for the usual Sunday service
 - (2) Seating for the maximum size of morning Family Service;
 - (3) Seating for the maximum capacity for the largest services, at Christmas,

or for weddings and funerals

- (4) Clear space for uses by groups who want open floor space;
- (5) Clear floor space for tables and chairs for a sit down event.

The space under the tower will have new wooden doors fitted (to be made from trees to be felled in the churchyard) to enable it to be repurposed as a furniture store.

41. The plan is that the 12 retained pews would be resized and that a selection made of the best old bench ends. The new pews would be mounted on lockable casters to enable them to be moved easily. The May 2017 Design and Access Statement states:

“It is anticipated that the surplus timber from the shortening of the pews and pews not being retained would be reused wherever possible within the church extension.”

42. All of the heritage bodies that have been consulted have accepted the principle of removing some of the pews. Indeed the number of retained pews was increased from 10 to 12 to accommodate the views of the Victorian Society. Likewise the proposal to reuse the older bench ends in the reconstructed pews reflects advice provided.

43. It is proposed that the two pew frontals in the chancel should be retained in their existing places (with two of the reconstructed pews). It is also proposed that the existing pew frontals in the nave should be retained. The various plans that I have seen for the reordering of the church show only four pew frontals and I am unclear what is proposed for the fifth pew frontal (originally from the north aisle) which is currently in store.

44. The petition also seeks “the introduction of stackable chairs”. However, a document headed “Seating and Audit Proposals” from December 2021 envisages the refurbishment of 65 chapel chairs already owned by the church (some of which are in current use, the remainder being stored) and makes reference to replacing these with lightweight stackable chairs at some point in the future as part of the implementation of Phase 2. An e-mail from the Victorian Society dated 13 January 2022 welcomes the proposal for the retention and refurbishment of the existing chairs. In the circumstances it does not appear that the petitioners intend to proceed with the proposal to introduce new stackable chairs for the foreseeable future.

45. The petitioners’ May 2017 Heritage Assessment assesses the proposed works on the pews as having a “low adverse” impact on the historic fabric of the church, but describes the impact of the flexible use of the space within the church that will result as having a “high beneficial impact”.

46. Again I broadly agree with this assessment. Although there will be some loss of historic fabric, this will be limited by the retention and repair of the most historic items. I accept that the benefits that will result from the ability of the parish to put the church to more flexible uses and to utilise seating in different ways for different types of service will assist in the promotion of its mission and its aim to grow its congregation. I consider that these benefits more than outweigh the relatively modest harm that the proposals will cause.

Discussion

47. As I have identified above, the benefits of each of the three main elements of the petitioners's proposals significantly outweigh the limited harm that I consider that they will cause to the character of the church as a building of special architectural or historic interest; to its archaeological importance and to any archaeological remains existing within the church or its curtilage. As such I am satisfied, subject to the points that I set out below, that it is appropriate to grant faculties in relation to both petitions.
48. I should make clear that in reaching this conclusion I have also considered all of the elements of the works that are proposed within the two petitions, even though I do not address each of these elements individually in this judgment. Subject to the points that I set out below, I am satisfied that these additional matters are either plainly beneficial in nature (for example the extensive repairs proposed to the fabric of the church) or they are ancillary to the aims of the three main elements I have discussed above and that any harm that they may cause is substantially outweighed by the benefits that will follow.

Additional Issues and Conditions

(1) Stackable Chairs

49. There is one element of the petition for Phase 1 that I do not propose to permit. As I have already described, although the petition seeks permission for the introduction of new stackable chairs, it now seems to have been agreed that the church will repair and reuse its existing stock of chapel chairs. I have not been provided with any proposals for the design of any new stackable chairs.

50. I have therefore assumed that this element of the petition was included by mistake. However, the position is not wholly clear and I should therefore record that I am not willing to grant a faculty for the introduction of an unspecified design of chair at this time. I consider that the revised proposal for the repair and retention of the existing chapel chairs which as the PCC acknowledge “will deliver a balanced blend of conservation, cost efficiency and utility” is an appropriate option for the time being. The faculty for Phase 1 will therefore provide for the restoration and reinstatement of the existing chapel chairs instead; the introduction of new stackable chairs is not permitted.

(2) Other furniture and woodwork

51. I note the comments of Historic England referred to at paragraph 39 above and I propose to impose a condition to the faculty for Phase 1 that, once repaired, the choir pew frontals and the chancel return stalls should be reinstated in the chancel (together with two pews from the twelve that are being retained). The existing furniture in the sanctuary is also to be reinstated.

52. The petitioners have indicated that where possible they wish to use the surplus wood from the pews in making other furniture for use in the church. I note that once the new pews have been constructed there are likely to be some older bench ends and one pew frontal that are surplus to requirements. Whilst I am very sympathetic to the aim of reusing material from the old pews within the church, I consider that it is important that care is given to the design of any new furniture and, in particular, that the most historic elements of surplus woodwork should not be disposed of or modified without further consultation. I am also

concerned that the proposals do not appear to deal with the fate of the pew frontal currently in store. I will therefore also impose a condition that, save for the purposes of reconstructing the pews in accordance with the submitted drawings, no pre-19th Century woodwork nor any pew frontal shall be cut, modified or disposed of without prior consultation with the DAC.

53. The petitioners should note that a further faculty will be required in due course should they wish to introduce items of furniture made from the surplus materials from the pews into the church.

(3) Other Conservation Issues

54. There were suggestions in the correspondence that Historic England continued to have reservations about the proposals for replastering the side aisles in the church. Likewise the CBC / ChurchCare indicated that they wished to see final conservation proposals for the effigy, font and stained glass. Both were given the opportunity by Chancellor de Mestre to become parties opponent to these petitions, but have not done so. I have assumed that they have nothing further to add to the correspondence that has been placed before me.

(4) Plastering

55. On the issue of plastering the aisle walls, Historic England commented in 2015 that they were not convinced by this proposal, unless proven to be essential. ChurchCare also expressed concern around the same time, although I understand these concerns were more about the need for the walls to fully dry out before replastering took place, and the responsibility for upkeep of the

plasterwork that would ensue. The Society for the Protection of Ancient Buildings has taken the view that the plastering of the aisle walls is supportable and should have a noticeable positive impact on the environmental conditions and appearance of the church. Given that:

- (1) the north aisle wall appears to have been plastered at some point in the past (and part of the south aisle wall is already plastered);
- (2) neither Historic England nor Churchcare have sought to pursue their concerns about plastering and;
- (3) plastering is likely to lighten the church interior

I do not consider that the proposal to plaster the aisle walls will cause any harm, and I am content to authorise it as part of the Phase 1 works.

(5) Conservation proposals

56. As to the detail of the conservation proposals, there are a number of conservation reports within the petition documents including:

- (1) Report from Ludovic Potts Restorations dated 1 November 2017 regarding Furniture Repairs
- (2) Report from Skillingtons on conservation of monuments and the font dated December 2017
- (3) Report from Derek Hunt dated June 2016 regarding the church glazing.

I will make it a condition of the faculty that the conservation of these items should take place in accordance with the methods set out in these reports (whether or not the original makers of these reports are used to carry out the works). Any substantive change to the methods set out in these reports that is proposed must be agreed by the DAC in advance of any work being carried out.

(6) Gravemarkers

57. There is some ambiguity in the plans regarding the slate gravestones currently forming part of the floor to the South Aisle. Plan 1504/Ch/201F refers to these being placed alongside the south and north walls of the churchyard. However the letter from ChurchCare dated 22 October 2020 refers to the parish having agreed to retain these stones in the relaid floor. If possible, the latter would seem preferable, and given the terms of Churchcare's letter I have assumed that is what is now proposed. I will direct the petitioners to confirm to the Registrar within 28 days of the date of this judgment what their proposals are for these gravestones and if necessary will then give any further directions that may be required.

58. A number of gravestones to the north of church will be displaced by the extension. The proposal is that these should be placed against the north and south walls of the churchyard. It seems to me desirable that the placement of these stones against the churchyard wall should be as close as reasonably practical to their previous position and I will include a condition to this effect.

(7) Trees

59. The petitions seek permission to fell a number of mature trees in the churchyard. I understand the position to be as follows:

(1) Under Phase 1 the petitioners seek to fell:

(a) A lime tree (No 12²) which is to be felled to permit construction of

²References to tree numbers are to the identifying numbers on the plans and the Tree Inspection Schedule contained in the petition documents.

the new outbuilding; and

(b) Two yew trees (Nos 15 and 16) which are encroaching upon the vestry building and causing damage to its roof.

(2) Under Phase 2 the petitioner seek to fell a further five trees to permit construction of the new extension. These are: Nos 5,6,7,9, 11

(a) Three sycamore trees (Nos 5, 6 and 9);

(b) An elm tree in poor and declining health (No 7); and

(c) A hawthorn (No 11).

60. I am satisfied that the grounds for a faculty have been made out in this regard too. The two yew trees that are encroaching upon the vestry building are relatively young. They are already causing problems and there is a clear risk of harm to that building if they are not removed. The church proposes to use wood from these trees to make doors for the space below the tower.

61. The remaining trees need to be felled in order to accommodate the new outbuilding and extension. The foundations for these buildings occupy part of the designated root protection area for these trees and if the building work is to take place they cannot be retained. Consideration has been given as to whether it would be possible to build the extension at a higher level to avoid disturbance of these roots, but I accept that the change in levels between the church and the extension that would be required means that this option is impracticable. There are a number of other trees on the churchyard's northern boundary which will be retained and I accept that any harm caused by the felling of these trees is outweighed by the benefit that the development will bring.

62. The various arboricultural reports and plans filed with the petition also appear to envisage the felling of an Ash tree (No 59 on the tree plan). It is said to be in a state of slow and terminal decline and requiring urgent felling. I am unclear whether permission to fell this tree is being sought within these petitions, or whether this matter has already been dealt with. For the avoidance of doubt, if it has not been dealt with I am content to give permission for this tree to be felled too.

(8) Other Conditions

63. The faculties will also be subject to a number of other conditions in addition to those described below. These broadly reflect those proposed by the DAC, although I have adopted the Chancellor's standard wording for the condition governing the reburial of any human remains disturbed in the course of the works, and I have added a number of additional conditions which reflect the Chancellor's usual practice. The relevant conditions that apply to each faculty are set out in Schedules 3 and 4 to this judgment respectively.

Outcome

64. In summary:

- (1) I will grant a faculty in respect of the petition for Phase 1, save that the faculty shall not permit item 2(e), the introduction of stackable chairs, but shall instead permit the restoration and reinstatement of the existing chapel chairs. This faculty shall be subject to the list of conditions set out in Schedule 3 of this judgment.

- (2) I will grant a faculty in respect of the petition for Phase 2. This faculty shall be subject to the list of conditions set out in Schedule 4 of this judgment.
- (3) In respect of each petitions:
 - (a) No works shall proceed until the Registrar is reasonably satisfied that the petitioners have funds (including grants and firm pledges) to complete the works for that Phase; and
 - (b) The works for a Phase must be completed within eighteen months of that Phase being commenced.
- (4) The petitioners shall within 28 days of the receipt of this judgment provide to the Registrar clarification of their proposals for the final placement of the gravestones currently forming part of the floor within the church.
- (5) The petitioners shall also pay the fees of the Registry and myself in connection with the petition and the preparation of this judgment which shall be notified to them by the Registrar.

Conclusion

65. I should record that the petitioners submitted a very large number of documents in support of the two petitions. These have included a number of iterations of the plans as they have progressed. I would note that in cases such as this the Court would be greatly assisted by a short summary document which identifies (by reference to each of the matters sought in the petition) where in the documentation the final version of the proposal that the court is being asked to consider can be found.

66. Finally, I must conclude by congratulating the petitioners, the Cossington Project Group and all members of the church congregation in Cossington for their fortitude and hard work in developing their plans to this point. There is doubtless much further hard work ahead in implementing their vision and they have the Court's best wishes for its success. I should also record the Court's thanks to the DAC and all of the heritage bodies that have provided guidance, assistance and input into the parish's plans.

David Rees KC

Deputy Chancellor of the Diocese of Leicester

5th November 2022

SCHEDULE 1

Phase 1 - Petition 2020-054509

1. Repair and conservation works to the church comprising: -
 - (a) Include replacing the existing floor in the Nave and Aisles and raising the level of the floor to match that at the South Porch to provide full accessibility
 - (b) Installation of ramp to give access from Nave into the Chancel
 - (c) Installation of new limecrete floor and tiles in areas of bare earth in chancel where furniture already removed
 - (d) Plastering of walls in North Aisle to match South Aisle, repairs to Chancel & South Aisle and subsequent limewashing
 - (e) Re-location of, and Conservation works to, Font & effigy by specialist and re-installation on new floor
 - (f) Replacement of the Pulpit steps
 - (g) Re-instatement and repair of Chancel furnishings by specialist
 - (h) Installation of wooden doors below existing Tower arch screen
 - (i) Repairs to Chancel screen
 - (j) Re-location of Safe into Tower
 - (k) Re-roofing and insulating of Tower, North & South Aisles and other repair works
 - (l) Stonework repairs externally
 - (m) Cleaning and repair (if found necessary) of all windows by specialist.

2. Renewal of: -
 - (a) Mechanical and electrical services including: -

- (i) Replacement of electricity supply
- (ii) Provision of new water, gas & foul drainage connections
- (iii) Provision of new AV System and associated trunking
- (iv) Provision for uplighting and spots to pick out architectural features
- (b) Heating system (boiler to be located in new detached building in the churchyard) to provide underfloor heating with supplementary radiators
- (c) Alterations to 12 Nave & Aisle pews to shorten them and mount them on castors
- (d) Removal and disposal of 18 Nave & Aisle pews with older pew ends to be removed from the pews before disposal and used for repairs to the retained pews
- (e) Introduction of stackable chairs
- (f) Demolition of existing shed, removal of one tree and replacement with new detached building to accommodate boiler(s) and accessible WC
- (g) Creation of new path in the churchyard with new low-level lighting to link the new detached building to the South Porch
- (h) Replacement of existing concrete apron around church walls with French Drains linked to overhauled Rainwater Disposal System with a new connection to a local watercourse
- (i) Upgrading of the church drive and access paving to the church with new low-level lighting
- (j) Removal of two yew trees adjacent to the detached vestry building
- (k) Repairs, refurbishment and redecoration of the detached Vestry building

SCHEDULE 2

Phase 2 - Petition 2020-054523

Phase 2 of Repair and re-development of the church building and churchyard project comprising: -

1. Construction of the single-storey annex to the north side of the church
2. Removal of five trees on the perimeter of the churchyard
3. Re-location of headstones from area north of the existing North Aisle
4. Improvements to the turnaround area on the southern boundary of the churchyard
5. Unblocking of the north door into the church
6. Associated external works to upgrade the access from the car park to the north
7. Installation of new additional boiler for the annex in the new detached building
8. Re-instatement of the grassed over path across the churchyard from the south porch to the existing gate near the war memorial

SCHEDULE 3

Faculty Conditions - Petition 2020-054509 (Phase 1)

1. That details of the works are entered in the Log Book so that a record is kept of what has been done
2. That no works shall take place until the PCC, after consultation with the Diocesan Archaeological Adviser, has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the PCC and approved by the DAC
3.
 - (1) That the contractors should be aware of the possibility of fragmentary human remains being found in the course of the works.
 - (2) Any disarticulated human remains shall be collected for reburial and the Incumbent notified
 - (3) Any articulated remains shall be covered from public view and the discovery notified to the Incumbent. The remains shall be cleaned in situ for recording purposes, recorded and, where directly affected by the works, removed by a competent archaeologist experienced in church archaeology for reburial as close as possible to the point of discovery
 - (4) All human remains must be treated with reverence and respect at all times.
4. That any trenches should be dug by hand and the DAC Archaeological Adviser invited to be present during the excavations
5. That any stone that is replaced should be checked for signs of re-use and if necessary contact the Diocesan Archaeological Advisor
6. That an updated Electrical Condition Report is commissioned, and submitted to the DAC Secretary, after the installation

7. That, in line with the requirement and advice of the Ecclesiastical Insurance Group, the installation and/or testing must be carried out by an electrician who is an accredited member of the NICEIC, the ECA or the NAPIT on a "Full Scope" basis to work on commercial systems as failure to comply may result in the insurance cover not being invalid
8. That the installation must comply with Regulation 413-02-02 "Main equipotential bonding conductors are required to connect the following metallic parts to the main earthing terminal ... (vi) lightning protection systems". Bonding should generally include metal bell frames, clock faces and mechanisms and the mains electrical installation, which will itself be connected to other services. BS EN 62305-3 states in clause 5.4.1 "Earth termination systems shall be bonded in accordance with the requirements of the IEE Wiring Regulations".
9. The installation must comply with Amendment 1 of BS 7671:2018 18th edition Wiring Regulations now includes a key new section (534) for protection against transient overvoltages using surge protection devices (SPD's) needs to be complied with Section 534.
10. That, where possible, all fixings should be made into joints, not stonework, using stainless steel or non-ferrous screws in fibre plugs
11. That all wiring should be as unobtrusive as possible and of an appropriate colour to blend with the background and to be "FP200" cable or similar approved
12. If hot works are undertaken on the building, or within 3 metres of the building, then a hot works permit will be necessary.
13. All those working at height shall take all appropriate safety measures. Those used should be capable of arresting the fall of a person who loses a handhold or foothold.

14. Upon conclusion of the works authorised by this petition the repaired chancel return stalls and the repaired choir frontals (together with two of the pews that are being retained) shall be reinstated in the chancel. The furniture currently in the sanctuary shall also be reinstated in its current position.
15. Save for the purpose of reconstructing twelve pews in accordance with the authority given by this faculty, no pre-19th Century woodwork nor any pew frontal shall be cut, modified or disposed of without prior consultation with the DAC.
16. The conservation of the items identified below shall take place in accordance with the methods set out in the identified reports (whether or not the makers of these reports undertake the work). Any substantive change to the methods set out in these reports that is proposed must be agreed by the DAC in advance of any work being carried out.
 - (1) Woodwork repairs: Report from Ludovic Potts Restorations dated 1 November 2017
 - (2) Conservation of monuments and the font: Report from Skillingtons dated December 2017
 - (3) Glazing: Report from Derek Hunt dated June 2016.
17. No works shall proceed until the Registrar is reasonably satisfied that the Petitioners have funds (including grants and firm pledges) to complete the works.
18. The works must be completed within eighteen months of being commenced.

SCHEDULE 4

Faculty Conditions - Petition 2020-054523 (Phase 2)

1. That details of the works are entered in the Log Book so that a record is kept of what has been done
2. That no works shall take place until the PCC, after consultation with the Diocesan Archaeological Adviser, has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the PCC and approved by the DAC
3.
 - (1) That the contractors should be aware of the possibility of fragmentary human remains being found in the course of the works.
 - (2) Any disarticulated human remains shall be collected for reburial and the Incumbent notified
 - (3) Any articulated remains shall be covered from public view and the discovery notified to the Incumbent. The remains shall be cleaned in situ for recording purposes, recorded and, where directly affected by the works, removed by a competent archaeologist experienced in church archaeology for reburial as close as possible to the point of discovery
 - (4) All human remains must be treated with reverence and respect at all times.
4. That any trenches should be dug by hand and the DAC Archaeological Adviser invited to be present during the excavations
5. That a programme of recording of the grave markers that are to be relocated from the area on the north side of the church should be approved and implemented prior to the start of works.
6. Any gravemarkers that are relocated from the north side of the church in the

course of construction of the extension in accordance with this faculty should be placed alongside the churchyard wall as close as reasonably practicable to their original possible.

7. That an updated Electrical Condition Report is commissioned, and submitted to the DAC Secretary, after the installation
8. That, in line with the requirement and advice of the Ecclesiastical Insurance Group, the installation and/or testing must be carried out by an electrician who is an accredited member of the NICEIC, the ECA or the NAPIT on a "Full Scope" basis to work on commercial systems as failure to comply may result in the insurance cover not being invalid
9. That the installation must comply with Regulation 413-02-02 "Main equipotential bonding conductors are required to connect the following metallic parts to the main earthing terminal ... (vi) lightning protection systems". Bonding should generally include metal bell frames, clock faces and mechanisms and the mains electrical installation, which will itself be connected to other services. BS EN 62305-3 states in clause 5.4.1 "Earth termination systems shall be bonded in accordance with the requirements of the IEE Wiring Regulations".
10. The installation must comply with Amendment 1 of BS 7671:2018 18th edition Wiring Regulations now includes a key new section (534) for protection against transient overvoltages using surge protection devices (SPD's) needs to be complied with Section 534.
11. That, where possible, all fixings should be made into joints, not stonework, using stainless steel or non-ferrous screws in fibre plugs
12. That all wiring should be as unobtrusive as possible and of an appropriate colour to blend with the background and to be "FP200" cable or similar approved

13. If hot works are undertaken on the building, or within 3 metres of the building, then a hot works permit will be necessary.
14. All those working at height shall take all appropriate safety measures. Those used should be capable of arresting the fall of a person who loses a handhold or foothold.
15. No works shall proceed until the Registrar is reasonably satisfied that the Petitioners have funds (including grants and firm pledges) to complete the works.
16. The works must be completed within eighteen months of being commenced.