

In the matter of Holy Cross, Bearsted
Petition for replacement of remaining pews with chairs

1. This petition in respect of the grade I-listed church of Holy Cross, Bearsted, seeks faculty for: *“Removal of remaining fixed pews, minor making good to floor and installation of free-standing chairs in their place”*.
2. As implied by the word “remaining”, some pews were removed following the grant of faculty in December 2011 for the reordering of the north aisle. As the petitioners explain in support of their current petition: *“Almost immediately it was regretted that more pews had not been replaced with chairs, certainly that we had not put chairs in the whole of the north aisle rather than just one half of it. Because of pressures on finance, not least roof renewal, a further scheme has not been brought forward. Last year an unsolicited donor came forward to offer to fund the further replacement of the pews”*. The petitioners accordingly now seek the removal of all of the remaining pews.
3. The DAC recommends the proposal for approval by the Court, subject to the following proviso: *“The proposal should include the retention of a single row of pews to the rear of the nave immediately adjacent to the door/screen, and a specialist should be engaged to repair the areas of the pulpit likely to be disturbed by the removals in this area. The exact model of the wooden chair proposed is to be confirmed”*.
4. The petitioners have agreed to retain a single row of pews dating from 1874 at the rear of the nave, in accordance with the DAC’s advice. There is no dispute as to the making good of any impact on the pulpit area that the proposed works may cause. The petitioners confirm that the replacement chairs will be the “Jacob” model by Alpha Furniture. I am satisfied that this replacement chair is appropriate, not least in that it is non-upholstered, in keeping with the guidance note on seating issued by the Church Buildings Council.

5. Neither Historic England nor any of the amenity societies have expressed any concern about this proposal. Two objections have, however, been received from individuals, namely Mr John Taylor and Ms Ursula Gilmore. Neither wishes to be a party opponent. Both wish their objections to be taken into account.
6. By directions dated 2 December 2022, I invited the petitioners to respond to the points made in the letters of objection. I am grateful both to the objectors and to the petitioners for providing me with the input I need – alongside the input of the DAC and the consulted bodies – to reach an informed decision on this petition.
7. Having considered that input and the supporting materials relied on both by the petitioners and by the objectors, I have decided that faculty should be granted. My reasons can be set out in relatively concise terms, as follows.
8. In this case, it is appropriate to consider the framework of principles set out in *Re St Alkmund, Duffield* [2013] Fam 158 at [87]. As is well-established, and as the Chancellor of the Diocese of Leeds has relatively recently observed: the Duffield framework “*provides a convenient formula for navigating what lies at the core of considering alterations to listed places of worship, namely a heavy presumption against change and a burden of proof which lies on petitioners with its exacting evidential threshold*” (In the matter of *St John the Baptist, Bishop Monkton* [2021] ECC Lee 7 at [10]). I agree with that summary.
9. The first *Duffield* question asks: “*Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*”. I am satisfied that, on the facts of this case, the answer is no. The primary reason for that conclusion is summarised in the consultation response from Historic Buildings & Places (formerly the Ancient Monuments Society): “*the present pews are (apart from those by the screen which are of 1874 and to be retained) recent imports – and moreover rendered rather unattractive by the polyurethane finish*”. Having reviewed the numerous images submitted with this petition, and having considered the petitioners’ detailed case on the significance of these pews, as well as the input of the DAC, Historic England and the amenities societies, I agree with that assessment. I therefore agree with the DAC’s opinion that this proposal is unlikely adversely to affect the character of the church as a building of special architectural or historic interest.

10. Pausing there: I note that the objection of Mr Taylor is not based on the alleged importance of the pews proposed for removal. Instead, one of Mr Taylor's objections is that the removal of the remaining pews "*will spoil the present ambience and welcoming atmosphere that you feel as you enter*". In principle, Mr Taylor's reasoning is sound. In my view, the removal of pews can have an adverse impact on the overall character of a church, even where (as in this case) the pews themselves are of no particular historic or aesthetic value. The first *Duffield* question should not be addressed exclusively via a focus on objects or features in isolation; it is important also to take into account the contribution made by those objects or features to the character and significance of the church as a whole.
11. Even on that approach, however, I am satisfied that the removal of these particular pews will not result in harm to the significance of this church as a place of special architectural or historic interest. Whether viewed in isolation or in terms of their contribution to the character of this church as a whole, I accept the conclusion of the DAC (and others) that these pews make no, or no material contribution to the significance of this church. My answer to the first *Duffield* question is therefore 'no'.
12. Even if I were wrong about that, the loss of these particular pews would at best cause very minor harm, which is outweighed by the sufficiently clear and convincing justification the petitioners have advanced for their removal, by reference to benefits to the community and to this church as a place of worship and mission. In other words, if the remaining *Duffield* questions arose for consideration, my view is that the answers would favour granting this faculty.
13. As to justification, the case is summarised in the petitioners' Statement of Need as follows: "*The chairs [in place following partial pew removal pursuant to the 2011 faculty] gave a lot more flexibility. They are cleared each week for the twice weekly Mother and Toddlers group, and also for Messy Church and Taizé services and for other events (concerts/Christmas fair etc). They can also be rearranged to allow additional seating (from the attached church room) to be placed for large services Christmas, Weddings, funerals etc.*".

14. In my view, Courts should take care to ensure that justifications advanced in support of pew removal are sufficiently particularised, such that they do not rest on broad assertions about the desire for flexibility. I am satisfied that, in this case, the petitioners have advanced a sufficiently particularised and convincing case. Their responses to the objections received and to the questions posed in my directions, develop the case as outlined in the paragraph above, and also explain that the current pews impede the use of this church for the Christmas Fayre, repair workshops offered by the church's Climate Action group, youth group meetings and harvest suppers. The petitioners also develop their case based on maximising inclusivity for users of wheelchairs and pushchairs, as well as alternative formats of worship.
15. I am satisfied that, on the facts of this case, the petitioners' justification is sufficiently particularised and convincing. Removal of the remaining pews would be a proportionate outcome, particularly in light of the nature of the specific pews in question. I am fortified in that conclusion by the fact that (i) the petitioners speak from experience to a considerable extent, in that they have worked in a 'part pew, part chair' environment for some years, (ii) there are no reasonable alternative facilities that could be used for the purposes outlined in the two paragraphs above (noting for example that the church room is approximately the size of a living room, rather than a hall), and (iii) the petitioners have shown that they have considered a range of options and that their proposed option (removal of all remaining pews, save for the row that will be retained) is the best option.
16. The latter is a particularly important point of principle: in my view, those making the case for pew removal need to show why they reasonably need to remove pews to the extent that they propose, and why removing fewer pews would not suffice for their needs. I am satisfied that the petitioners have done so in this case. I therefore understand, but do not uphold, Mr Taylor's objection that this proposed change is merely a 'nice to have' and Ms Gilmore's objection that the petitioners' objectives could be achieved by interventions that stop well short of the scale of the proposed pew removal.
17. Having discussed what I consider to be the most fundamental points of objection above, I can address the remaining points in brief terms as follows:

- (i) Mr Taylor criticises the consultation process within the community of this church. This line of criticism does not affect my analysis. I am satisfied that there has been adequate opportunity for all interested parties to be heard.
- (ii) Mr Taylor also queries the safety of free-standing chairs as opposed to fixed pews. I am satisfied that these chairs, particularly when linked together in rows, do not pose safety concerns.
- (iii) Mr Taylor also suggests that this change may trigger a loss of donations income for the church. I accept the petitioners' response that, to the extent that this concern is relevant, it is speculative and without any firm foundation.
- (iv) Ms Gilmore's further points include a concern about a lack of hymnbook storage space. This point only has purchase on the front row, as all other rows will have storage slots on the back of the chairs in front of them. This is a very minor point that does not alter the overall assessment of this case.
- (v) In addition, Ms Gilmore expresses concern about the unsightly and untidy appearance of stacked chairs, but – having considered the petitioners' response – I am satisfied that full clearance of chairs will be rare, and that in any event these particular chairs can be stacked in a space-efficient way that will not cause any significant unsightliness.
- (vi) Finally, Ms Gilmore is critical of the proposal to introduce a new chair that differs from the type of chair introduced following the 2011 faculty. Again, however, I am satisfied by the petitioners' response: the contrast between the chair types is relatively limited and will be less marked than the current contrast (between pews and chairs), there will be no difference in comfort levels, and there will be a rational distinction in chair types (north aisle and then rest of church).

18. In summary, my answer to the first *Duffield* question (see paragraphs 9-11 above) is fundamental to the analysis in this case, and I am further satisfied that the petitioners' justification of this petition (see paragraphs 13-16 above) is sufficiently particularised and

convincing. I have carefully considered the salient points of objection, and while I have sympathy with a number of the points of principle raised (as indicated above), I am not persuaded that those objections are sufficiently weighty to alter the outcome on the facts of this case.

19. For those reasons, I am satisfied that faculty should issue for the removal of the remaining pews, subject to the provisos stipulated by the DAC (see paragraph 3 above) and for their replacement with the Jacob chair (see paragraph 4 above).

20. Costs to be paid by the petitioner.

ROBIN HOPKINS
Commissary General

24th January 2023