

IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS

IN THE MATTER OF: ST JOHN THE BAPTIST, ALDBURY

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JUDGMENT

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**Introduction**

1. There has been a church on the site of St John the Baptist, Aldbury since the thirteenth century. The present church is a grade I listed building in the village centre and as well as a place of regular worship and community activities for local people it is an important visitor attraction on a popular rambling route, through which it makes a contribution to local businesses by helping to attract customers to the pubs, café and post office store in the village centre.
2. By a petition lodged on 18 May 2023 the incumbent, churchwarden and treasurer (together the “**Petitioners**”) seek to undertake works “...to improve the sense of welcome on entry into the church by creating feeling of openness including modifying pews, installation of bookcases, cupboards and noticeboards [excluding the removal of the children’s corner].”
3. The plans and documents before me - and available through both public notice and the notice that has been given to expert consultees in this case - elaborate the detail of the works proposed. The scope of the specific intended works and areas of reordering encompasses the removal of seven half pews from the north west corner; levelling of the floor by the installation of raised platform flooring, including a ramp for wheelchair access, which will cover (but preserve) decorative tiles in that area of the church; the shortening of pews on the south side of the nave so that they are level with the outside<sup>1</sup> (as amended following the Victorian Society’s comments) of the arcade; installation of notice boards on south and west walls; the installation of bookcases and storage cupboards.
4. There are no party opponents to these proposed works, but strongly felt objections have been expressed on aspects of the proposals, both from consultees and members of the

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<sup>1</sup> Originally the proposal was more extensive shortening, level with the inside of the arcade, but this has been amended following the Victorian Society’s comments on this point.

public. I have read and considered the positions expressed carefully and make reference to the comments of those who have raised objections where appropriate without setting those out exhaustively in this judgment. I have noted, too, that some elements of the plans have been amended to take account of helpful observations that have been made during the periods of notice and consultation.

5. Historic England (“**HE**”): raised concerns regarding the justification for covering the existing decorative floor surface with a wooden surface; queried the impact of minor changes proposed to the south door; supported the Victorian Society’s query as to whether the removal of pews to the west end of the south aisle would provide sufficient space for the improved welcome and additional events the church is looking to introduce; sought clarification of the proposed shortening of pew lengths; raised a query regarding whether storage solutions were possible elsewhere in the church other than as proposed at the pew ends.
6. The Victorian Society: questioned the need for the size of the entrance space proposed, asking whether the removal of pews to the west end of the south aisle would provide sufficient space (as echoed in HE’s enquiry above); enquired whether the desired level access could be achieved by lowering pew platforms rather than concealing the attractive tiled floor surface by overlaying it with plywood; asked questions regarding the proposed shortening of pew lengths; expressed concerns re the stacking of chairs shown in plans; raised various queries regarding the specifics of designs for furniture and sought clarifications of design points regarding the tiled walkway in the crossing and the scope of other aspects of the works.
7. Members of the public have also expressed their concerns and objections:
  - 7.1. Alexandra Irwin (“**Ms Irwin**”) (a member of Aldbury DCC) objects to the removal of two pews on the right hand side of the church, on the basis that the proposed removal will leave the church interior space unbalanced and the increased space by removal of pews on the left hand side (which she does not object to) will be sufficient to improve the welcome upon entry into the church;
  - 7.2. Keith and Jean Emmerson (“**Mr and Mrs Emmerson**”) - local residents, regular church goers and registered on the electoral roll – do not object to the proposal to remove pews on the south-west aisle in order to create a more welcoming entry space,

but do object to the proposed removal of two pews from the south-east aisle. In a balanced and moderate letter, Mr and Mrs Emmerson suggest that it would be sensible for the proposed works to proceed in two phases, the first encompassing the non-objectionable removal from the south-west aisle, and the more controversial removal of pews from the south-east aisle proceeding as a second phase only after completion of the first phase, whereupon an evaluation of the likely aesthetic impact of the further removal can be more easily undertaken;

7.3. Dr Caroline Ellwood (“**Dr Ellwood**”), a member of the DCC, also writes with strong objections to the removal of the two pews on the right-hand side as one enters the church (for the avoidance of doubt, references to pews on the “right-hand side” and to those on the “south-east aisle” are references to the same pews, i.e. the two end pews east of the cross aisle). Dr Ellwood comments on her perception that their removal would unbalance the entrance to the church, add to costs and that it is unnecessary given the space that will be achieved by the large area that will be opened on the left upon entry into the church. Dr Ellwood, too, suggests the phased approach advocated for by Mr and Mrs Emmerson;

7.4. Alison Bateman (“**Mrs Bateman**”), a long-standing member of the congregation and member - and former leader - of the group in charge of providing flower arrangements for the church, echoes the concerns of the other objectors which I have outlined above regarding the proposed removal of pews to the right of the entrance doors. Mrs Bateman details her objection by commenting that these particular pews are in constant use, that the space provided by their removal is disconnected from the large (and relatively unobjectionable) new welcome area to be created on the opposite side and urges reconsideration of the proposals once the works to the left-hand side of the entrance doors have been prioritised and completed;

7.5. Juanita Mann (“**Ms Mann**”) has written to the Registry, both on her own behalf and on behalf of Joan Wright (“**Ms Wright**”<sup>2</sup>). A thoughtful observation is made by Ms Mann that, as well as having a detrimental impact upon the appearance of the church interior, the proposed removal of the pews on the right hand side of the entrance would leave no space for “quiet access” for latecomers and for those who prefer to sit where they can hear the service, but not necessarily see the active participants;

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<sup>2</sup> Another Aldbury resident, involved for many decades in church flower arranging, cleaning and other activities, who wished her views to be recorded, but who has no internet access.

7.6. George Alliott (“**Mr Alliott**”), although no longer a regular church attender, writes both personally and in his capacity as President of the Aldbury branch of the Royal British Legion (the “**Legion**”). The Legion plays an important role at the annual Remembrance Day service and has canvassed the views of its membership as to the proposed works. Mr Alliott helpfully purports to encapsulate the objections in summary in his letters of objection. The following are the key points: unlike the objections expressed by other members of the public, the objections of Mr Alliott and those members of the Legion draw no distinction between the proposed removal of pews to the left hand side of the entrance and the two pews on the right hand side of the entrance; the objections are to the works as a whole and relate to the perceived impact upon the character of the church and its appearance, a perceived lack of need for the proposed works, a concern about the impact upon seating capacity and the idea that there are other, more pressing issues which the church could spend money on (including a reference to fixing the church clock (N.B. for the avoidance of doubt, I accept the explanation offered by the incumbent on that point, that the clock is in full working order and is serviced annually by Smiths of Derby, and have not considered this point any further). The objections which Mr Alliott expresses extend beyond the removal of pews and encompass “visual detriment” which it is thought is likely to follow from the inclusion of wall mounted display boards to display work from children of the parish primary school and other proposed changes relating to storage and the introduction of bookshelves.

8. None of the above amenity society or local consultees have chosen to become party opponents in this matter, but I have considered their careful, thoughtful, often passionate, views and observations with great care in reaching my decision in this matter. I am grateful for the balanced and detailed approach that has been taken in correspondence on this matter. I will deal, where appropriate, with the points raised by way of objections, in my consideration of this matter under the *Duffield*<sup>3</sup> questions, below.

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<sup>3</sup> *St Alkmund, Duffield* [2013] Fam 158; together with the guidance on interpretation of the *Duffield* questions given by the Court of Arches in *St John the Baptist, Penshurst* [2015] Court of Arches (Rochester) para 22 ff.

## **The Duffield approach**

9. Out of the evidence and objections before me, I need to be able to distil and assess the impact the plans will have on the building and the benefits to the mission and worship of the church. Careful evaluation using the *Duffield* questions is designed to guide my decision-making and accordingly I have applied careful thought to this question using that framework.
10. The *Duffield* questions are (in summary) 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; (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 the strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit outweigh the harm<sup>4</sup>?*
11. Taking each of these in turn, I have reached the following conclusions.

***Questions (1) (2) and (3): would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?; 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; if “yes”, how serious would the harm be?***

12. At the heart of the works envisaged in this Petition is the proposed improvement of the welcome and the increasing of available space in the entry area around the south door (now used as the main entrance to the church). This hinges upon the removal of a limited number of half pews in that area (together with the shortening of some others) and the installation of a wooden ramp and wooden floor covering to provide level access. The proposals, together with the related plans to introduce storage, bookcases and wall mounted noticeboards, will impact upon the appearance of the interior of the church in a noticeable way, albeit that there seems to be little dissent (with the notable exception of Mr Alliott and

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<sup>4</sup> In answering question 5, the more serious the harm, the greater 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.

the views of the Legion) that the overall effect is likely to be one of improvement to the appearance of the interior as the reordering will provide a much needed decluttering effect and open up the entrance area in a positive and welcoming way.

13. The half pews affected by these proposals appear to date from a mid-19<sup>th</sup> century restoration of the church interior and are of pine and oak in a plain design. There has been no challenge to the conclusions of the expert who was called in to inspect and evaluate the pews in this case, John Bly FRSA, that the pews in question are “...of no historical or artistic significance...” However, I note the observations of HE and the Victorian Society (which finds echoes in the representations made by Mr Alliot) that the pews in the interior nonetheless form a “*complete set and it is unusual to find a church which is still so fully pewed*”. (NB Neither HE nor the Victorian Society rely upon this as a reason to object to the removal of the half pews to the left as one enters the church in the south-west corner, but they do query whether the proposal should extend to the additional removal of the two half pews on the (east) side of the cross-aisle. The majority of members of the public who have objected have similarly found little difficulty with the removal of the pews on the left-hand side to create space, but have found the proposal for the removal of the two half pews on the opposite (east) side of the cross-aisle to be an extension of the plans which would have a visual impact out of proportion to its suggested benefits.)
14. It is important to note that the vast majority of pews in the interior are to be left in place and are unchanged by the proposals before me. The church will therefore broadly retain its “fully pewed” appearance and character, because despite the removal of the limited number of half pews in the discrete areas proposed, the body of the church will be unchanged. Although the pews themselves are not of note and do not contribute to the artistic or historic significance of the interior by reason of their design or craftsmanship, the quality that the pewed appearance lends to the interior is an important factor in the way in which the church is appreciated and read by visitors and this, I find, will not be substantially impaired by the proposals.
15. Nonetheless, the impact of even the limited removal of pews will still have, as I have observed, some noticeable impact on the interior appearance. I also agree with the consistently expressed views of those members of the public who have taken the trouble to write in and articulate their concerns, that in particular the loss of the two half pews on the

east side of the cross-aisle is likely to have an unbalancing effect on the interior as it is presently laid out.

16. I consider that those aspects of the plans relating to the removal of pews will, therefore, have some harmful impact upon significance, but I conclude that, given the limited extent of the proposed removals, the lack of significance of the pews themselves, the retention of the majority of pews throughout the church and therefore the presentation of its pewed character and the limited sightlines to and from the affected areas to other areas in the church, that the seriousness of any detrimental impact upon the church is properly characterised as minor.
17. Turning to the other aspects of the proposed works, it is an important precept of the works that the improvement in welcome must offer accessibility to all visitors and in particular that this is to be achieved through ensuring level access. I accept the observations of the amenity societies concerning the proposed method of providing level access (namely by the installation of raised platform flooring, including a ramp for wheelchair access). They express concern that this will cover (albeit preserve) handsome mid-19<sup>th</sup> century decorative floor tiles and as such it is likely to have a negative impact upon the appearance and significance of the interior.
18. I agree with HE and the Victorian Society that something of the character and personality of the church will be lost by covering these tiles, and although not specifically mentioned in the listing as items contributing to the significance of the church, nonetheless they undoubtedly add to the style and beauty of the church. Covering the tiles will impair that element of the church's appearance and the way in which the interior is perceived.
19. However, in assessing the extent of the harm that is likely to be caused by the introduction of floor covering and ramp, I take account of the fact that the area affected is contained and relatively limited. Furthermore, the works are reversible and the tiles will be protected<sup>5</sup> (whereas other options, including some of those proposed during earlier iterations of the works, involved the removal and loss of some of the tiles). I note too that the petitioners and architect have carefully considered alternative options, taking into account the expert observations offered to it by the amenity societies and by the DAC. Taking all of these

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<sup>5</sup> Provided that there is proper ventilation incorporated within the wooden covering.

factors into account I consider that any harmful impact is minor in terms of its seriousness, in particular having regard to the preservation of the tiles beneath and the reversible nature and limited area of the proposed floor covering.

20. The next element of the works to consider is the proposed shortening of pews on the south side of the nave so that they are level with the outside<sup>6</sup> (as amended following the Victorian Society's comments) of the arcade. This will not, in my judgment, have any harmful impact on the interior. The original proposal, to shorten to a length inside of the arcade, was the subject of dialogue with the Victorian Society, which objected on the basis that the shortening would then be very substantial in nature and impact upon the symmetry of the internal seating and therefore adversely affect the character and appearance of the interior. This point was properly followed up by the petitioners and the architect's consequent modifications, reducing the proposed shortening to the outside of the arcades, appears to me to obviate the concerns properly and helpfully raised by the Victorian Society, and indeed there have been no further comments or issues raised in response to the modified plans submitted to me for approval on this new basis.
21. This conclusion regarding the proposed pew shortening requires me to consider question 2 of the *Duffield* questions, namely that because the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable I must decide whether it is rebutted, given the particular nature of the proposals. In this case I am satisfied on the basis of the evidence before me that the relatively limited alterations proposed regarding pew shortening will result in benefits (including increased space for activities and worship and an increase in the flexibility and ease of use of the interior more generally) which are sufficient to rebut the presumption in favour of retaining the *status quo*.
22. The installation of notice boards on south and west walls, the installation of bookcases and the introduction of storage cupboards is also proposed as part of the works in this reordering. Historic England and the Victorian Society have queried the need for introducing storage and bookcases within the church when there is a Chapter House. This has been answered, I find, comprehensively by the Petitioners, who observe that this was

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<sup>6</sup> Originally the proposal was more extensive shortening, level with the inside of the arcade, but this has been amended following the Victorian Society's comments on this point.



considered but is not a viable alternative to the designs now submitted to me for consideration because the Chapter House is already used to maximum capacity for storage.

23. Mr Alliott, on behalf of the Legion, raises some concerns that the proposed use of noticeboards for the display of local schoolchildren's artwork may result in display of materials of "juvenile art of variable quality" possibly resulting in an "inchoate mess" which may then affect the dignity and sanctity of the church immediately upon entry. I am, though, satisfied by the Petitioner's response to this point, namely that display of artwork produced in RE lessons by children attending Aldbury Church of England school is an important part of a flourishing relationship between church and school, that it reflects mission and is an existing and important way in which some church visitors engage with theology. I also consider that aesthetic difficulties arising from the display of children's artwork are often traceable to the manner of presentation rather than the content or appearance of the art itself (I take judicial notice that the majority of viewers immediately contextualise such work and will perceive and appraise it appropriately). I consider that where there is a neat, well-presented mode of displaying such works, the innocence and vibrancy it imparts may, indeed, be of benefit to the way in which visitors interpret the church, engage with the topics depicted and perceive the church's role in the local community. In this case I am told that the current mode of display for such artwork is to attach pictures directly to the wall, in a relatively inaccessible place in the church, with the result that the wall is prone to damage and the pictures frequently fall off. The proposal to formalise the display on suitable and well-designed boards will, in my judgment, be an improvement to the existing arrangements and will not impair the significance of the church.
24. Turning to question 2 of the *Duffield* questions in respect of the introduction of storage, bookcase and noticeboards (namely that the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable and whether it may be rebutted given the particular nature of the proposals), I am satisfied that these are well-designed proposals which will provide space-saving benefits and orderliness which is currently lacking and will therefore enhance the appearance of the church interior. This is sufficient, in my judgment, to rebut the presumption in favour of retaining the *status quo*.

***Question 4: how clear and convincing is the justification for carrying out the proposals?***

25. In the case of the introduction of storage, bookcases and noticeboards, both the need and the likely benefits have been considered above and in my view these plainly justify the introduction of these items in this case.
26. As to the partial covering of some areas of the Victorian floor tiles, the evidence before me indicates that there has been careful consideration of the possibility, mooted by consultees and explored in greater depth with the DAC, of levelling the difference in floor heights that arises by reason of leaving the majority of the church pewed (the pews being set upon platforms) by leaving the tiled floor exposed, but lowering the heights of the pew platforms. However, as all of the pews throughout the church are on a single level, the work involved to do so would be much more extensive and costly than the proposed route. There would also be potentially significant excavation and archaeological implications in such extensive lifting and reduction of pew platforms.
27. Covering the limited area of tiled floor ensures that when chairs are placed upon the platform during mass-attendance events, those will be on a level with the pews. It also addresses a further issue arising from the need (which I accept, given the importance of introducing wheelchair access) to introduce a ramp. The evidence before me, and this is not challenged, is that any ramp created will, by necessity of design, extend into the centre aisle, almost to the centre, in order to provide a gentle enough slope for easy use. This will inevitably involve the covering of tiles. Similarly, in order to ensure that access to what is proposed to be the newly opened floor space in the south aisle and the ramp remain on a level, the covering of tiles in that area will also be required in order to preserve a uniform height across the areas.
28. Taking all of the foregoing factors into account, I am satisfied that there is a clear and cogent justification for the proposed approach to floor covering and ramp access in this case.
29. There is no controversy either, as regards the justification for the limited removal of pews, save for the proposed removal of the two end pews to the east of the cross aisle, which is strongly opposed. With the exception of Mr Alliott and the Legion, all of the other objectors and the statutory consultees accept that there is a well established need to provide more,

and better organised, space at the entry point to the church and that to that end the proposals to remove the limited number of half pews from the south-west corner to the west of the cross-aisle are well justified. I agree with that approach and am satisfied both that there will be a significant improvement in the quality of visitor welcome and that there is a need for such improvement, as well as an increase in flexibility of space and use of the interior, by the removal of the half-pews to the left of the entry point (i.e. west side of the cross aisle) in the south west of the church.

30. I am, however, not persuaded that the justifications apply as strongly, or indeed at all, to the proposed additional removal of the two end pews on the right-hand side of the entrance (i.e. the east side of the cross-aisle). The space created by the removal of these additional pews does not present as a cohesive part of the space created by the larger removal on the opposite side of the cross aisle. Nor does it appear from the plans and documents before me that the limited additional element of space it would create would add in any significant, or notably useful, way to the welcome that it is accepted will be created by the more extensive removal of the half pews opposite, nor to the practical use of that area.
31. It is said that these pews provide little value to the interior, that they are rarely ever used and that if they are used, it is not possible for those seated in them to see to the front of the church. However, even it is correct that the pews are not particularly useful or well placed seating, this would not of itself be a sufficient justification for their removal. There is no evidence that these pews are either detrimental to the use or appearance of the church as it stands (as opposed to being perceived to adding little to it), nor that there is any particular benefit to be achieved by their removal.
32. I have reached the conclusion that the case for removal of these two half pews on the east side of the cross-aisle has not been sufficiently well justified. In reaching this conclusion I have considered the points above and have also paid close attention to the careful and thoughtful representations by members of the congregation and public who have articulated their concerns in notably clear and measured terms. The “lack of sightlines to the front” point was not contested in any of the letters of objection, but both arguments regarding the alleged lack of use and the lack of utility of the pews are disputed by the evidence of objectors. In addition to commenting on what is felt to be a negative aesthetic impact by removal of these pews, several people writing in to the Registry have commented that they

choose to sit in these pews. It is said by some of the objectors that the lack of vision of the “action” at the front of the church is, in fact, a positive and important attraction of seating in these areas for some, that the lack of sightlines turns attention inwards and leads some members of the congregation to value the opportunity to sit in this area for the ability to listen but not see, with a heightened sense of atmosphere that comes with the restricted view.

33. I have not only had regard to the lack of clear and specific justification for the proposed removal of these two pews, but also to the split in the DCC vote on the specific question of the removal of these two half-pews (which saw five people vote in favour but three vote against) and to the response of the incumbent, who, in answering one of the objections received, noted very fairly that *“It would not be the end of the world if the part of the plan which has been opposed – the removal of the two end pews to the right as one enters the church (i.e. east of the cross-aisle) – did not happen”*.

34. In these circumstances, I am not satisfied that a sufficiently clear and cogent justification for the proposed removal of the two half pews on the east side of the cross-aisle has been advanced in this case.

35. Save for the above element of the works, all other elements of the works set out in the petition are, in my judgment, well justified.

***Question 5: bearing in mind the strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit outweigh the harm?***

36. In my judgment there is clear and strong public benefit in carrying out the majority of these proposals as detailed above. There is a need to provide a more flexible and attractive welcome and to improve the storage and organisation of display spaces within the church for use by the congregation and the wider community. The order, appearance and accessibility of the church interior will be improved by the proposals. These factors outweigh the minor harm I have found in this case.

## **Conclusion**

37. In these circumstances I grant the petition for a faculty as sought, save for the removal of the two half pews on the east side of the cross-aisle, which is not permitted.

38. The works must be completed with 18 months and is conditional upon:

38.1. Ventilation being provided to the timber ramp and infill platforms;

38.2. A chain and sign being placed across the bottom of the parvise steps to indicate no access;

38.3. Surplus pew material should be reused to provide storage furniture within the church, or disposed of by sale or donation to members of the congregation or local community, or by transfer to another church or by appropriate alternative disposal agreed with the DAC.

**Lyndsey de Mestre KC**

**Chancellor**

**10 October 2023**