

## **In the matter of St Peter, Chailey**

### **Introduction**

1. St Peter, Chailey Green, is a Grade II\* listed medieval church in a rural setting in the Chailey Green Conservation Area. It underwent significant alteration and expansion in the 19<sup>th</sup> century, first in the 1840s and then more substantially in the late 1870s, under the direction of the eminent architect John Oldrid Scott.
2. Further alteration and modernisation is desired for the 21<sup>st</sup> century, by way of a two-phase reordering project. Phase 1 was implemented pursuant to a faculty granted in 2014. This entailed the removal of some pews and the installation of a new kitchen and lavatory.
3. This judgment concerns phase 2 of that project, for which a petition for faculty was submitted in 2017. The petitioners were the Priest-in-Charge (the Rev'd John Miller-Maskell), Peter Smith and Teresa Wenban. Anthony Meadows, the current Chair of the PCC, has since replaced Mr Miller-Maskell as petitioner, following the latter's sudden retirement on health grounds. The party opponent is Captain John Robert Tillard, to whom I shall henceforth refer – without intending any discourtesy – as Mr Tillard.
4. The petitioners' proposals and the views of Mr Tillard and other consultees on those proposals may be summarised as follows.

### **The proposed works**

5. The form 4A public notice dated 1<sup>st</sup> May 2018 describes the proposed works as follows:

“The second phase of reordering proposals including formation of a new meeting room/children's area by the introduction of a new timber-framed screen and glass roof and chapel; removal of pews in the nave, the nave aisle and the south aisle, lowering the raised pew platforms in these areas. Disposal of a timber screen to the St John's Chapel, which was introduced in 1979. Associated alterations to heating and electrical systems including the replacement of the existing boiler with a new oil fired boiler. To be carried out in accordance with the revised specification of works by Richard Crook, dated 2017.

Specification revised March 2018 to include the retention of ten pews in two banks of five in the nave of the Church; the replacement of those pews which have been removed with Theo chairs

by Chorus; and the replacing of the floor with good quality oak floor, which will also replace the floor put down in phase 1 (for which faculty was granted in 2014).”

6. As that description indicates, the petitioners’ proposals for phase 2 have evolved over time, pursuant to dialogue with (in particular) the Victorian Society and Historic England. Some of that dialogue was at my behest, by way of directions I issued on 14<sup>th</sup> November 2017. I acknowledge that very substantial additional work has gone into the refinement of the petitioners’ proposals. I record my thanks to Mr Miller-Maskell in particular for his shouldering of much of that work, as well as to the Victorian Society and Historic England for their invaluable input into this case. The fruits of that dialogue are as follows.
7. First, the proposed renewal of the heating system (and associated electrical work) has been uncontentious throughout. I have no hesitation in granting faculty for this aspect of the proposed works, and need say no more about it.
8. Secondly, the removal of pews would necessitate some replacement flooring, in particular because the raised pine platforms on which the pews currently sit (which are in any event in poor condition) would need to be removed. Historic England has stressed the need for suitable, high-quality replacement flooring (as explained in its letter of 14<sup>th</sup> March 2018). The petitioners have agreed to abide by that recommendation; this is acceptable to the Victorian Society, and Mr Tillard has expressed no concerns about it. I therefore need say no more about this aspect of the proposed works either.
9. Thirdly, as regards the removal of the pews themselves, the petitioners’ initial proposal was to remove all pews from the aisles and nave (though not the chancel). That remains the petitioners’ preference. Historic England has, however, argued that the removal of all those pews would be unjustifiable, and that ten pews – in two blocks of five – should instead be retained in the nave in slightly truncated form (see again its letter of 14<sup>th</sup> March 2018). The Victorian Society agrees, as indicated in its letter of 23<sup>rd</sup> April 2018. The petitioners have accordingly agreed to compromise on this point and to retain two blocks of five pews in the nave, as confirmed in the final paragraph of the extract from the public notice set out above.
10. Fourthly, the petitioners also wish to form a new chapel/meeting room by enclosing – with timber and glass – a smaller chapel (currently used as a store room) and an open area immediately to the west of that chapel (currently used mainly as a children’s area). The design and materials of the proposed new room will accord with the kitchen and lavatory installed under phase 1. This, however, will involve the disposal of a Victorian screen that currently encloses one side of the chapel. That screen was installed in 1979, having been adopted from the redundant church of St James, Camberwell. The Victorian Society considers the loss of the screen to be regrettable, and made sensible suggestions as to how it might be

retained and incorporated into the proposed works. The petitioners then explained that this would not be practicable, and the Victorian Society confirmed by email on 25<sup>th</sup> April 2018 that it did not wish to maintain its objection to the removal of the screen.

### **Mr Tillard's participation in these proceedings**

11. Mr Tillard completed a Form 5 Particulars of Objection form on 8<sup>th</sup> May 2018. His form and accompanying letter explained his objection to the third and fourth aspects of the proposed works as outlined above.
12. Mr Tillard expressly accepted the proposed removal of pews from the north aisle. His objections as regards pews were to the proposed removal of some of the pews in the nave and the south aisle, and to the proposed alterations to the pews that will be retained in the nave. As to the latter, Mr Tillard said in his letter of 8<sup>th</sup> May 2018 that “I think it absurd that the end of our pew is to be truncated to make a space to store chairs” (this sentence was written in bold and underlined in Mr Tillard’s letter). The reference to “making space to store chairs” is a partial misunderstanding: the petitioners explained in their Form 6 Reply that chairs would only be stacked in the south aisle on a temporary and occasional basis, when they need to be moved for the hosting of certain events.
13. Mr Tillard also objected to what he described as the “demolition” of the chapel. He did not criticise the design or material of the proposed replacement scheme as such. Instead, his objections were to the removal of the screen and the enlargement of the current chapel.
14. In his letter of 8<sup>th</sup> May 2018, Mr Tillard described the chapel as having been paid for by a Mrs Christine Peckitt and “consecrated and dedicated to her husband, Cyril”. In his reply letter of 17 July 2018, Mr Miller-Maskell explained that Mr Tillard was incorrect about the chapel: it has never been consecrated, had not been not paid for by Mrs Peckitt and had not been dedicated to her husband Cyril. The petitioners’ proposed works will in fact allow the space (which is currently only used for storage) to be used as an enclosed (albeit enlarged) chapel again, as well as a room for meetings and/or for children’s activities.
15. Nonetheless, Mr Tillard stood his ground on the two issues that remain in dispute, namely (1) the pews (removal of pews from the south aisle; removal of some pews from the nave; alteration to remaining pews in the nave), and (2) the chapel/meeting room (removal of the screen; enlargement of the chapel/meeting room). Mr Tillard also requested an oral hearing.

## Subsequent developments

16. The petitioners were concerned about the implications of Mr Tillard's stance. They convened an emergency meeting of the PCC on 22<sup>nd</sup> June 2018, at which they resolved to withdraw their current petition rather than incur the costs associated with these contested proceedings. Mr Miller-Maskell informed the Diocesan Registry of that decision four days later.
17. The PCC very sensibly decided in the interim to invite Mr Tillard to a meeting at the church so that the petitioners' proposals and reasoning could be explained to him in person. That meeting was arranged, and took place on 6<sup>th</sup> July 2018.
18. According to the petitioners' note of that meeting, Mr Tillard set out his three "red lines", namely (i) no truncation of the pew in which Mr Tillard and his wife habitually sit, (ii) the chapel should not be used as a storeroom, and (iii) no further pews should be removed without the agreement of all those on the electoral roll. According to the same note, the meeting ended acrimoniously after approximately 30 minutes.
19. Mr Tillard also referred to that meeting in a letter to the Registry dated 7<sup>th</sup> July 2018, in which he criticised those chosen to attend the meeting, one of whom he described as a "church toady". In that letter, Mr Tillard reiterated the third of his "red lines" as outlined above. He said that he would "certainly go to court" if that condition were not met.
20. On 18<sup>th</sup> July 2018, the petitioners contacted the Registry again, explaining that they had reconsidered their position (including the associated costs of pursuing their petition) and wished to resurrect their petition. They were informed that they were entitled to do so, and arrangements were put in place for the oral hearing requested by Mr Tillard.
21. In a letter to the Registry dated 30<sup>th</sup> July 2018, Mr Tillard said that he intended to take formal steps to compel the Bishop of Chichester, the Bishop of Lewes, the latter's secretary, and the wife of Mr Miller-Maskell to appear as witnesses at the hearing. Mr Tillard seems to have thought better of those proposals, as the Court heard no more about them.
22. I issued directions for the filing of evidence and submissions. The petitioners complied with those directions, seeking an extension where necessary.

23. Mr Tillard did not comply. When contacted about his failure to submit any evidence by the deadline on 4<sup>th</sup> October 2018, Mr Tillard explained that he had been on holiday in the Alps, that he was 94 years old and that he had no experience of legal matters. He said he would do his best to comply with directions, and accordingly sent a statement dated 15<sup>th</sup> October 2018. I directed that this document stand as his evidence. I also directed that no further communication would be accepted as evidence in the proceedings, other than skeleton arguments filed in accordance with my previous directions. Nonetheless, Mr Tillard indicated by email to the Registry on 21<sup>st</sup> November 2018 that he envisaged other (unnamed) witnesses attending to give evidence on his behalf. While that suggestion came to nothing, Mr Tillard did seek to introduce further evidence at the hearing (see further below).
24. The Court also received further input from the Diocesan Advisory Committee (“DAC”) in advance of the hearing, further to my directions. The DAC explained that it supported the petitioners’ proposals. For completeness, I add that the Church Buildings Council (“CBC”) was also consulted, and, though it offered different ideas about the retention of some pews, it raised no objections.

### **The hearing**

25. The oral hearing requested by Mr Tillard was duly held at the Church on 30<sup>th</sup> November 2018. The petitioners were very ably represented by Dr David Willink of counsel. I heard evidence from Mr Meadows, who had provided two witness statements and who answered questions from Mr Tillard and from me. Mr Tillard then gave evidence and was questioned by Mr Willink. I then heard concise closing submissions from both sides. I am very grateful to Mr Willink, Mr Meadows and Mr Tillard for their input, and to the church community for hosting the hearing.
26. Despite my directions, referred to above, Mr Tillard also sought to introduce fresh evidence at the hearing. In particular, it transpired that Mr Tillard had launched his own polling exercise of residents of North and South Chailey, entailing a flyer headed “Save Chailey Church” with tear-off voting slips to be deposited in boxes at locations designated by Mr Tillard. Mr Tillard brought one of the boxes with him and told me that the voters had overwhelmingly opposed the petitioners’ proposals.
27. Unsurprisingly, Mr Willink took issue with that new material, because it was late and unheralded and in any event inherently unreliable. Mr Willink submitted that the flyer was tendentious and misleading in a number of respects. He also pointed out that numerous voting slips appeared to have been completed by the same individual, a point apparently corroborated by a Facebook post in which a third-party individual sympathetic to Mr Tillard’s campaign had volunteered to complete voting slips on behalf of

others. I entirely agree with Mr Willink. In my judgment, Mr Tillard's additional evidence is inadmissible, but in any event of no assistance to the Court whatsoever.

28. That point aside, I was mindful of Mr Tillard's status as a litigant in person and therefore expressly checked with him – both at the lunch break and at the close of the hearing – that he was content with the procedure being followed, and that he felt he had been able to make all of the points he wished to make. He confirmed that he was content in both respects.
29. I turn now to summarising the parties' cases and my judgment on the two issues in dispute, namely the proposals as regards the pews and the chapel/meeting room.

### **The pews**

30. This aspect of the proposed works has a number of facets. The petitioners wish to remove pews from the north aisle, the south aisle and the nave, and to retain ten pews (in two blocks of five) in somewhat shortened form in the nave. As I have indicated, Mr Tillard does not oppose the proposal as regards the north aisle, but he does otherwise maintain his objections.
31. I begin by assessing the proposed removal of pews against the tests set down in *Re St Alkmund, Duffield* [2013] Fam 158 at [87].
  - (1) In my judgment, the proposed removal of pews would result in harm to the significance of the church as a building of special architectural or historic interest. The pews date from the substantial remodelling of the church in the 1870s. That was a very important milestone in the life of this church, which has shaped the character of this church over approximately the past century and a half. The proposed removal of pews would diminish the church's continuity with this aspect of its history.
  - (2) Next, I have considered the seriousness of that harm. I note that the heritage statement and impact assessment document on which the petitioners rely describes the pews as "rather generic stylistically and in their construction details". As the same document explains, the ends have trefoil poppy heads, but are otherwise featureless. In contrast, the pews in the chancel (to which no alteration is proposed) are more ornate. I concur with this description of these pews. This goes some way to mitigating the harm that would be caused by the proposed works.

- (3) In my judgment, the crucial factor in assessing the seriousness of the harm that would be caused by these works is that a block of ten pews will be retained. This will preserve a “critical mass” of pews which – together with the pews in the chancel – will maintain a meaningful sense of the church as it was after the works of the 1870s. According to Mr Meadows’ evidence, the retained pews will be able to seat approximately 30 people; at present, the pews can seat approximately 60.
- (4) In my view, the removal of pews of a rather generic and featureless nature – *in light of the retention of that critical mass* – will result in harm to the church’s special architectural and historic interest that can fairly be characterised as “moderate to low”.
- (5) Nonetheless, I have borne in mind the strong presumption against causing such harm. I have carefully assessed and weighed the petitioners’ justification for doing so, as set out in the statement of need accompanying their petition, and as further explained by Mr Meadows in his evidence at the hearing. In my judgment, the petitioners have made out an adequate justification for causing this moderate to low degree of harm.
- (6) The main factor here is that, according to Mr Meadows’ evidence (which I accept), the church currently hosts a successful and well-attended lunch club. This is over-subscribed; some attendees have to be seated in the chancel on occasion, away from the main group at the back of the church and in the north aisle. I accept Mr Meadows’ characterisation of this lunch club as an important aspect of this church’s mission and outreach, which extends beyond Chailey itself, and beyond the churchgoing community. Mr Tillard’s evidence, submissions and questioning of Mr Meadows do not detract from this assessment. I am satisfied that the proposed partial removal of pews is reasonably necessary for the flourishing and growth of this significant aspect of the church’s work.
- (7) The petitioners have also cited the need for more flexible space for other purposes: a toddler group, an art group, a Christmas market, concerts and visits from members of a group called “Chailey Heritage”, many of whom are in wheelchairs that cannot be easily accommodated in the current configuration of pews. I have given some weight to these factors, though – based on the evidence presented to me – none weighs decisively in the petitioners’ favour.
- (8) Viewing the petitioners’ justification in the round, however – and giving weight to the views of Historic England, the Victorian Society and the DAC – I am satisfied that the justification for the proposals outweighs the degree of harm they would cause. Notwithstanding the

presumption against causing such harm, the overall balance tips in the petitioners' favour. The proposals are likely to deliver sufficient public good to outweigh this degree of harm.

32. My judgment is therefore that, by application of the *Duffield* tests to the facts of this case, faculty should be granted for the proposed removal of the pews as outlined in the revised petition. I add the following points on this issue.
33. First, in addition to questioning the need for a more flexible space, Mr Tillard has also argued in favour of his own counter-proposal, whereby at least some pews could be altered so as to be movable. Mr Tillard says he has obtained his own quotes for this work, and that it would allow for a more flexible space without the need to remove pews (at least from the nave). Mr Tillard's preferred approach could conceivably be workable, at least in respect of some of the pews that currently inhibit the use of the church for the activities referred to above. This, however, is not the proposal for which faculty is sought. For the reasons given above, I am content that the petitioners' revised proposal is appropriate in this context.
34. Secondly, as I have indicated, Mr Tillard objects not only to the proposed removal of some of the pews (other than those in the north aisle), but also to the truncation of the pews that will be retained in the nave. In my judgment, this truncation and reconfiguration will cause no harm to the significance of the church as a building of special architectural or historic interest. This is because of the rather generic and featureless nature of these pews, and because the overall outcome will be to preserve a coherent "critical mass" of Victorian pews. Even if I were wrong about that, the truncation of the remaining pews would cause a very low degree of harm, which would readily be outweighed by the public benefits of the reconfiguration, as discussed above.
35. Thirdly, I am satisfied that the Theo chair by Chorus is an appropriate choice of replacement seating here. That is the view of the Victorian Society, as well as the DAC. Mr Tillard maintained that he thought a folding chair was proposed, despite repeated references in the documentation and correspondence to the Theo chair. The point was clarified at the hearing, and Mr Tillard made no criticism of the Theo chair.
36. Finally as regards pews, I reiterate that the retention of a block of pews in the nave, in accordance with the recommendations of Historic England and the Victorian Society, is crucial in striking the right balance. The petitioners have consistently stated that their own preference is to remove *all* pews (other than those in the chancel); at the hearing, I was invited to consider granting faculty permitting them to do so. I unhesitatingly refuse that invitation. But for the retention of the "critical mass" of pews, the

harm to the significance of the church would be much more serious, and the petitioners' justification for inflicting that harm would have fallen short. In other words, my judgment is that Historic England and the Victorian Society got the balance right in this case. The compromise solution is the right one.

### **The chapel/meeting room**

37. The north aisle contains a small chapel, currently used as a storeroom, which is fronted by the Victorian screen that was installed in the church in 1979. Adjacent to this chapel is an open space currently used as a children's area. The proposal is to combine those two spaces into a larger room that will double as a chapel and a meeting room that can be used for PCC meetings and children's activities. The new room will be walled in timber and glass, the design according with the kitchen and lavatory installed under phase 1.
38. Mr Tillard does not object to the design or materials for the proposed new room as such. However, there is before the Court a letter of objection dated 9<sup>th</sup> May 2018 from a Mr J R Smith, which contends that the "large glass screen would look out of place and the overall effect would disfigure the north aisle".
39. I have considered Mr Smith's point – and indeed his letter in its entirety – but my view is that it does not fairly characterise the proposal, which combines glass and timber. I am also satisfied that there would be no overall "disfigurement". That view is fortified by the positions of the DAC and the Victorian Society. The north aisle is large (much larger than the south aisle) and can accommodate the enlargement of the current chapel room. Moreover, the proposed design will cohere with the successful works already undertaken in phase 1. My view is therefore that the new room would not result in harm to the significance of the church as a building of special architectural or historic interest.
40. I am in any event satisfied that the petitioners have advanced a sensible and sufficient justification for an enlarged room that can serve as both a chapel and a multi-purpose meeting room. I accept the petitioners' arguments that (a) there would be significant benefit in a room that can be used for this variety of purposes, and (b) a smaller room (e.g. of the size of the current enclosed chapel) would not deliver that benefit.
41. Mr Tillard's objection is in part to the proposed removal of the screen, which he has persistently but incorrectly described as "medieval". As indicated above, the screen is Victorian, and was installed in this church in 1979.

42. The Victorian Society's position, set out in its email of 25<sup>th</sup> April 2018, is that the removal of the screen will cause *some* harm to the significance of the church as a building of special architectural or historic interest. I agree: the screen may only have arrived in this church in 1979, but it has since complemented the Victorian interior. That said, the degree of harm is in my judgment very low indeed, and is outweighed by the benefits of the new chapel/meeting room. There is a sufficient case for an enlarged multi-purpose room, and the proposed design – which will accord with the other recent works – cannot realistically incorporate this screen, for both functional and aesthetic reasons. I have indicated earlier in this judgment that the Victorian Society took this point on board and took the entirely reasonable decision not to maintain its objection on this issue.
43. I am accordingly satisfied that, by application of the *Duffield* tests to the facts of this case, faculty should be granted for the proposed chapel/meeting room, both as regards the removal of the screen and as regards the construction and design of the enlarged room proposed by the petitioners.
44. Finally on this issue, my reading of Mr Tillard's case is that his primary concern is with the *use* of this room, rather than its creation. Specifically, he objects to the use of a chapel for storage purposes. I prefer the petitioners' evidence that the current chapel has never been consecrated or dedicated (see paragraph 14 above); Mr Tillard has submitted no documentary evidence to support his assertions to the contrary. This point, however, scarcely matters. As to the use of this room, the petitioners' skeleton argument says this:
- “... the chapel is used as a store room now. After re-ordering, it will be returned to its proper use as a place for quiet prayer, and display of the Roll of Honour, as part of an enlarged and insulated space.”*
45. I trust that Mr Tillard will take some comfort from that commitment on behalf of the petitioners, which is an important part of their justification for this aspect of these works. In any event, concern about how a room is currently used is not a valid ground for refusing faculty aimed at improved use in future.

## Conclusion

46. For those reasons, I have decided to grant faculty in respect of the revised petition, which accords with the views of Historic England and the Victorian Society.
47. I am grateful for the expert input of those bodies, as well as the DAC and CBC. I am also grateful to the petitioners – including Mr Miller-Maskell – for all their work in complying with my directions and in

engaging with the external consultees. As I have indicated, those efforts have delivered a thoughtful and proportionate compromise.

## Costs

48. Finally, I need to address the issue of costs. The petitioners have submitted that Mr Tillard has behaved unreasonably in his pursuit of his objection. They invite me to order Mr Tillard to pay “such costs of the court and of the petitioners as are attributable to [Mr Tillard’s] unreasonable conduct” (paragraph 29 of the petitioners’ skeleton argument). At my request, the petitioners developed their case on costs in an email dated 21<sup>st</sup> November 2018, upon which Mr Willink expanded at the hearing. I am satisfied that Mr Tillard was given timely and fulsome notice of this application, and that he was able to make any points in response at the hearing.
49. In the circumstances, it is appropriate for me to determine this application here. In doing so, I have taken into account the Ecclesiastical Judges’ Associations’ guidance note on costs on faculty proceedings (as revised and reissued in January 2011; “the Costs Guidance”) and its discussion of the principles set down in *Re Abbey Church of St. Mary the Virgin, Sherborne* [1996] 3 WLR 434.
50. As regards court fees, the Costs Guidance states inter alia that:
- (1) *“As a general rule the petitioners will be ordered to pay the court fees even when they are successful in obtaining a faculty in opposed proceedings”* (paragraph 5.2).
  - (2) *“An order that the whole or part of the court fees, or particular court fees, should be paid by an objector or objectors is unlikely to be made, unless there is clear evidence of “unreasonable behaviour” by an objector or objectors, which has unnecessarily added to the procedural costs prior to the hearing”* (paragraph 5.3; my emphasis).
51. As regards costs between the parties, the Costs Guidance states inter alia that:

*“... the general practice in the consistory court is that the parties are expected to meet their own legal expenses. This means that the Chancellor will generally not make any order in respect of costs as between the parties. An award of costs does not depend upon nor follow automatically from the “success” of a party to the proceedings. This*

*is because it is important that all the issues for and against the grant of a faculty are fully examined. Neither petitioners nor objectors should, as a general rule, be penalised simply because they are unsuccessful in the whole or part of their case” (paragraph 5.7).*

52. There is no dispute as to my jurisdiction to make a costs order, by virtue of section 63 of the Ecclesiastical Jurisdiction Measure 1963. The issues are (i) the extent (if any) to which Mr Tillard has conducted himself unreasonably, and (ii) how, if at all, any such unreasonableness should sound in an order for costs.

53. On the first issue (unreasonableness), I find as follows:

- (1) Mr Tillard should not be required to make a contribution to the petitioners’ costs simply because his objections have not been upheld.
- (2) I also find that Mr Tillard’s decision to become a party objector was not of itself unreasonable, given the nature of the petitioners’ proposals and their potential impact on the character of this church as it has been over approximately the past century and a half.
- (3) The petitioners were content for disposal by way of written representations. Mr Tillard was not. My overall view is that it was not unreasonable for Mr Tillard to ventilate his views on the proposals as regards pews at an oral hearing. However, as regards the chapel/meeting room issue, written representations would have been the reasonable course. Mr Tillard has proceeded on the basis of inaccurate facts as to the age of the screen and the consecrated/dedicated status of the chapel, and has failed to engage with the petitioners’ written explanations of those inaccuracies. In addition, as indicated above, Mr Tillard’s primary objection has been to how the current chapel is used at the moment, rather than to the petitioners’ actual proposals. Written representations would have been more suitable for resolving such points. I find that Mr Tillard’s unreasonable approach to the chapel/meeting room issue has unnecessarily expanded the hearing and associated work for the Registry, the Court and the petitioners.
- (4) I also find that Mr Tillard unreasonably failed to comply with the Court’s directions, as discussed above. A decision to contest proceedings, and indeed to do so at an oral hearing, heightens the importance of compliance with the Court’s directions. Mr Tillard appears not to have properly attended to the directions in this case, because he was away on holiday. He also prays in aid his age and his unfamiliarity with such proceedings. I acknowledge those points,

but I note his references in correspondence to his retention of solicitors to assist him with other related matters. In the circumstances, I find that Mr Tillard's failure to comply with some of the Court's directions was unreasonable, and that this has caused additional work for all concerned.

- (5) The petitioners also argue that Mr Tillard's conduct more broadly has been unreasonable. I agree, based on the following examples. One is Mr Tillard's initial threat to summons witnesses, including two Bishops; this came to nothing, but to my mind it indicates an intention to exert unfair and unreasonable pressure on the petitioners.
- (6) Another example is Mr Tillard's submission of an essay by him entitled "The Church in Crisis", in which he ventilates his views on the nature of the resurrection, including commentary on transgender issues and their application to souls. Mr Tillard has conceded that this aspect of his case has nothing at all to do with the petition before the Court. While this did not absorb very much additional time, it is indicative of Mr Tillard's use of these proceedings to address issues on which he has personal views, but which have no bearing on the case. That is unreasonable.
- (7) To that list of examples, I must also add Mr Tillard's repeated use of inflammatory and at times deliberately denigrating language. He has described one representative of the petitioners as a "church toady". His written and oral submissions are persistently dismissive of anyone who has not lived in Chailey for as long as he has; he has also repeatedly invoked his own military service as grounds for according his views greater respect. He has repeatedly accused the petitioners (and Mr Meadows in particular) of "disgraceful hostility" and deliberately "unchristian" behaviour. He maintained in response to my questions that the petitioners were being *deliberately* insensitive to the memory of veterans of the First and Second World wars (some of whom had sat in the pews affected by these proposals). At the hearing, Mr Tillard also embarked upon a speech in which he traduced the now recently retired Priest-in-Charge, Mr Miller-Maskell, on grounds that appeared to have no direct relevance to this petition. I find that all of this conduct by Mr Tillard was unreasonable. I also find that Mr Tillard's approach to these proceedings has been motivated or at the very least coloured by personal animus.
- (8) I also find that Mr Tillard has been culpably misleading and inaccurate in some of his communications. One examples is the material underpinning his polling exercise (see paragraphs 26-27 above). Another is that, in an email to the Registry dated 21<sup>st</sup> October 2018,

Mr Tillard floated *his* proposal (summarised at paragraph 33 above) for a carpenter to adapt some of the pews so as to make them movable. Then, in an email to the petitioners on 25<sup>th</sup> October 2018, Mr Tillard suggested that *the Registry* had invited the petitioners to consider that proposal. Mr Willink questioned Mr Tillard about this correspondence at the hearing. I agree with Mr Willink that, on a fair reading of these emails, Mr Tillard sought to pass off his own idea as if it had the endorsement of the Registry.

- (9) The unreasonable conduct described at subparagraphs (5)-(8) above has been unpleasant and, in certain instances, distressing to some of those involved. It has also had a bearing on how these proceedings have played out. The petitioners have worked hard, amid strong feelings and robust dialogue, to achieve a compromise with Historic England and in particular the Victorian Society. The result was that those expert bodies were content with the revised proposals. I find that Mr Tillard's approach as outlined above was almost guaranteed – and perhaps designed – to preclude such a compromise, despite the petitioners' efforts at dialogue. In other words, Mr Tillard's unreasonable animus and intransigence (see for example his "red lines", as discussed above) made a contested oral hearing almost inevitable, when it *might* otherwise have been avoidable.

54. I turn then to the second issue, namely how, if at all, the unreasonableness I have particularised above should sound in an order for costs. Assessing matters as a whole, I find and order as follows:

- (1) The petitioners are to pay all of the Court costs with their petition and these proceedings.
- (2) Within 21 days of the petitioners' payment of those costs, Mr Tillard is to reimburse the petitioners as follows.
- (3) The petitioners are liable in full for the Court costs that would have been payable had the petition been dealt with by way of written objections only, without proceeding to an oral hearing.
- (4) Mr Tillard is liable for 50% of the incremental Court costs attributable to the progression of this matter to an oral hearing. This is because of my findings as to his motivation for seeking an oral hearing, his failure to comply with the Court's directions, his reliance on irrelevant issues and his adoption of a stance that effectively precluded compromise without an oral hearing.

(5) Mr Tillard is also liable for 50% of the petitioners' *inter partes* costs, namely their counsel's fees. This is for similar reasons to those given at subparagraph (4). An oral hearing (and thus counsel's fees) might have been required in any event, but Mr Tillard's stance effectively guaranteed this outcome. In addition, his failure to comply with the Court's directions and his persistence with irrelevant issues expanded the work required of the petitioners and their counsel to a significant extent.

55. When circulating this judgment to the parties, the Registry will include details of the above figures, i.e. the Court costs that the petitioners are required to pay, as well as the amount that Mr Tillard must pay to the petitioners to reimburse them in accordance with my order above. If the parties have any questions about this costs order, they should raise them with the Registry, who will revert to me if further directions are needed.

ROBIN HOPKINS  
Deputy Chancellor

18<sup>th</sup> January 2019