

In the Consistory Court of the Diocese of Chichester  
In the matter of Holy Trinity, Hurstpierpoint

No 1127

Between:

- (1) George Baxter
- (2) Robert Price
- (3) The Reverend Jane Willis

Petitioners

and

The Victorian Society

Party Opponent

Mr John Gallagher of counsel, instructed under the Bar Direct Access Scheme, for the Petitioners

Mr Philip Petchey of counsel, instructed under the Bar Direct Access Scheme, for the Party Opponent

## Judgment

1. By a petition dated-stamped 18 December 2019, the rector and churchwardens of Holy Trinity, Hurstpierpoint seek a faculty for:
  - i. the internal reordering of the nave, aisles and transepts with the removal of fixed pews, alterations and resetting of distinctive pews and the provision of chair seating;
  - ii. the provision of audio visual facilities by way of smart screen within the chancel with back projection and wall mounted monitors set within the openings between the chancel and vestry and consultation space;
  - iii. frameless glass door within the existing opening between the tower porch and welcome lobby.

The hearing of this matter took place via Zoom on 28 October 2020 and I would wish to put on record the gratitude of the Court and the parties to the registry staff for making the necessary technical arrangements, and to counsel for their focussed questioning of witnesses and their economical oral submissions. All references hereafter in square brackets are to pages in the hearing bundle or, prefixed AB, the additional bundle.

### **The issues for the court**

2. The Victorian Society elected to become a party opponent, and filed a Form 5 [204] identifying (a) the substantial loss of the historic bench seating and (b) the installation of the glass projector screen, as the parts to which they objected. Rather than particularising their objections and/or offering alternative suggestions within the Form 5, the Society merely annexed their letters of 11 November 2019 [206] and 30 January 2020 [210].

3. On the afternoon before the hearing, the Victorian Society withdrew its objection to the glass screen on the basis that its introduction were limited to a fixed period of five years, a condition which the petitioners were prepared to accept. Thus, the only contentious element of the petition relates to the pews.
4. Much time and energy in the run up to the hearing had been taken up in respect of expert evidence regarding the significance of the pews. The petitioners had instructed Dr Charles Tracy BA, PhD, FSA a church furniture specialist who produced a report dated 24 October 2018 [40]. His principal conclusion reads: ‘Aesthetically the mid-19th-century pews at Holy Trinity, Hurstpierpoint are of only moderate significance’ [44].
5. This is a conclusion with which the Victorian Society disagreed. Provision was made for the Society to rely upon their own expert. For reasons which are not relevant to this decision, the Society did not serve its evidence until 21 October 2020 [AB 43-62]. It came in the form of a report of Ms Hillary Jane Root, freelance historian, and was expressed to be incomplete due to difficulties accessing certain collections as a consequence of the Covid pandemic.
6. In his written submissions, Mr Petchey, counsel for the Victorian Society, suggested the Court might be in difficulties due to an apparent conflict between the two experts. He would be unable to cross-examine Dr Tracy who was too ill to attend the hearing. In his Note of 25 October 2020 (the second of three documents which collectively make up his written submissions), Mr Petchey, under the sub-heading ‘Narrowing of Issues’, raised the issue of ‘whether, in the circumstances, the Chancellor can place reliance on the expert report of Dr Tracy in preference to that of Ms Root’.
7. However, that concern fell away during the course of the opening. Mr Pritchett, the parish’s inspecting architect, had emailed the Court and the Victorian Society stating: ‘The petitioners accept the report prepared by Ms Jane Root and have no reason to challenge her findings’. Mr Gallagher, counsel for the petitioners, confirmed that Ms Root’s report was accepted unchallenged. In the light of this concession, the Court must prefer the evidence of Ms Root to that of Dr Tracy. Ms Root concludes: ‘Evidence discussed in this report is sufficient to confirm that the seating scheme at Hurstpierpoint is of high significance ...’.
8. It follows that the Court must conclude that the seating scheme at Holy Trinity is of high significance, as Ms Root opines, and that the removal of the pews will result in harm to the building. As to how serious that harm would be, justice requires the Court to be cautious and to assume, in cases of doubt, a higher level of harm. I have been concerned to ensure that the Victorian Society was not disadvantaged by the fact that Ms Root was not in a position to complete her report by the time of the hearing.
9. Mr Petchey, in his skeleton argument contends:

... it is further submitted that the removal of pews of high significance would result in *serious harm* in terms of *Duffield* question 5. If this is correct, such harm should only exceptionally be allowed. The question then becomes whether the need that has been demonstrated is of such exceptional character to override the serious harm.
10. I do not dissent from that broad proposition. By making the concession they have, the petitioners have raised the hurdle that they need to satisfy if the Court is to grant a faculty.

The sensible and pragmatic approach, consistent with the petitioners' concession albeit going a little further, is to proceed on the basis of assumed serious harm. The principal issue for the Court to consider, therefore, is where on the justification axis the case lies. And it is that matter which requires a full examination of the evidence in accordance with the overriding objective.

11. In his written submissions, Mr Petchey reminded the Court that it could of its own volition revisit its previous decision on 16 October 2020 not to adjourn the hearing. I gave Mr Petchey the opportunity in opening to apply for an adjournment if he so wished, but he declined. I assume that, like me, he considered that the petitioners' concession had decisively moved the theatre of dispute from harm to justification.

### **The proposal**

12. For contentious issue is the removal of the pews. The uncontroversial internal glass door, and the glass screen in relation to which the Victorian Society's objection has been withdrawn, will be authorised.
13. The church of Holy Trinity, Hurstpierpoint is a grade II\* listed building which dates from 1845. It replaced a medieval church which had stood on the same site. Its architect was Sir Charles Barry. It has a cruciform plan comprising north west tower with porch beneath; nave with four-bay aisle to north and five-bay aisle to south; north and south transepts; chancel and north and south chapels
14. With regard to the interior, the listing statement reads:

Nave has open trussed roof. Original oak benches extending across north and south aisles (those to transepts and crossing removed). Fleur-de-lys poppyheads to bench ends. Nave and chancel arcades carried on cluster columns with moulded capitals and bases. Spandrels decorated with carvings of heads, foliage clusters or portrait busts. [...]

The new church, dedicated to the Holy Trinity, was built in 1843-45 to the design of the eminent architect Sir Charles Barry, seating 1,030, including 600 free seats.

15. The reason for designation decision states (with underlining added):

It has considerable architectural interest as the last church designed by Sir Charles Barry (1795-1860), a major architect of the early-mid C19, most renowned for the rebuilding of Westminster Palace in collaboration with AWN Pugin. It was the only church Barry designed with the disciplined archaeological approach to medieval form advocated by Pugin, almost certainly reflecting the latter's influence. The external architecture is imposing and cohesive with crisp detailing.

The interior has major interest for its high-quality architectural detailing and craftsmanship, containing a number of good fittings from the date of construction and later. It has a wealth of good C19 and early C20 stained glass, all by leading manufacturers of the time, principally John Hardman & Co of Birmingham who produced much of the glass for the Palace of Westminster and, with Pugin, pioneered the revival of English stained-glass making.

Also of special interest for the numerous medieval and later features preserved from the old church, and imported C16 Continental stained glass.

16. Ms Root's report provides a detailed biographical portrait of Sir Charles Barry and his accomplishments. She states it is important to understand Barry's work at St Mary, Trentham alongside his work at Hurstpierpoint since these are the only known church commissions from this stage of his career, when his work at the Palace of Westminster was already underway. She indicates that the fact Barry retained drawings of the furniture that he designed for Holy Trinity, rather than destroying them, is suggestive that he considered them an important part of his oeuvre. The suggestion is that his designs for Hurstpierpoint were utilised at St Mary, Trentham.
17. Alfred Barry (Sir Charles' son) drew a clear distinction between his father's early churches and his work at Hurstpierpoint:

At a much later period (1843) he erected a church of considerable scale at Hurstpierpoint, in Sussex, [...] The work gave him great pleasure, though it came in the very busiest time of the New Palace at Westminster, and though (as has been said) church architecture was not the work to which his professional life was devoted. With greater care for Gothic detail, with a far more thorough grasp of the principles of the old Gothic architects, he did not, however, lose sight of the fundamental ideas of the Church of England's Service, and secured the effect of space, openness, and unity, which he conceived to be its paramount requirements. (Alfred Barry, *The Life and Works of Sir Charles Barry* (John Murray, London, 1867) pp 134-6.
18. I need not set out further detail regarding the pews in light of the fact that this judgment proceeds on the basis (i) that they are significant and (ii) that serious harm will be occasioned by their removal.

#### **The petitioners' evidence**

19. Turning then to the witnesses. They each adopted their statements as their evidence-in-chief and were tendered for cross-examination.
20. Thomas Dare [300] deposed to the fact that he and his wife, Ruth, run the children and family work at Holy Trinity. He testified as to how the pews allow none of the flexibility suitable for young families. He also pointed to how children struggle with social distancing, sliding up and down pews, but tend to stay put when assigned to a specific chair. Mr Dare uses the term 'malleable set up' and speaks of the possibilities of varied activities such as games, drama and music, which are currently limited to a small glass room at the back of the church. He refers to the capacity for occasional larger events for youth and kids, enhanced by the improved audio visual arrangements, to which the Victorian Society withdrew their objection on the eve of the hearing. A Kids Run activity currently has to end at the nearby free evangelical church, but with the reordering of Holy Trinity, the concluding meeting with a talk and hot dogs could take place there, and the organisers would no longer need to rely on the goodwill of their neighbours.
21. In cross-examination, Mr Dare clarified the use of the building for crèche and other activities, and the plan for a new regular Sunday service for people of all ages, which would best be delivered in the body of the church freed from the rigidity of fixed uncomfortable

pews. In the meantime, they would manage with the restrictions of the pews but the vision could only be achieved with their removal. Covid posed additional challenges in the interim, with the need for family bubbles. The intention for the new service would be for the families to remain in church, with the possibility of some of the adults leaving for other activities. The children would stay. He pointed to other sporting activities (Kick London) which could be initiated with a more flexible space. He indicated that Messy Church was not currently run at Holy Trinity, but takes place at the Methodist Church. Were the reordering to be permitted, he said, Messy Church was one further activity that might be enabled.

22. I found Mr Dare a patently honest and helpful witness. Though evidently nervous at having to give evidence in court proceedings, his answers were clear, thoughtful and measured. He addressed everything that Mr Petchey raised with clarity and care. All his evidence pointed to the clear need for the proposed works. I wondered whether his evidence, as a principal church leader of family and youth work, could be discounted as partial, or coloured, by an excess of personal enthusiasm for the project. But I could find no basis for such a conclusion. It struck me that Mr Dare was straining to be fair and dispassionate and assisting the Court in an objective manner.
23. Next was Mrs Ruth Dare [300], whose evidence was comprised in a joint statement with her husband, Tom which I have just summarised. Particularly poignant is the following sentence:  
Many who come to the church are put off by the formality of the building, continuing to seek worship elsewhere or nowhere.  
Mr Petchey had no cross-examination for Mrs Dare, and did not challenge any of the content of her statement.
24. Ben Murray-Watson came next [302], in a joint statement with his wife, Jane Murray-Watson who was unable to attend. There was no application by Mr Gallagher to admit Mrs Murray-Watson's evidence in written form.
25. Mr Murray-Watson deposed to the help he gave at various ministries at Holy Trinity. He and his family had previously attended St Peter's Brighton, a church which has been revived and become a flourishing witness to the gospel since a plant from Holy Trinity Brompton, coming at a time when its regular congregation had dwindled to a mere handful. Mr Murray-Watson's statement provided first-hand testimony of how a major reordering had been transformative in the mission and witness of St Peter's Brighton. His experience from that informs his opinions of use of space and seating. We have seen the removal of pews at St Peter's providing the following benefits.
26. The removal of pews at St Peter's, said Mr Murray-Watson, provided the following benefits: community focused outreach, use by Tots and Toddlers, larger services with mums, dads, carers and their children, multiple Alpha groups etc. The list is substantial. He also refers to the various commercial activities which have been enabled at St Peter's consequent upon the removal of the pews. He asserted there is no reason why such spiritual and secular activities cannot also happen at Holy Trinity, a statement which was not questioned or challenged by Mr Petchey. He comments on how removal of pews helps create a sense of openness and informality, on which I accept views will differ, and makes the point that clustered chaired seating is more appropriate for what is now the norm for worship in consequence of the pandemic.

27. In cross-examination, Mr Murray-Watson was unable to assist Mr Petchey with what was going on in Hurstpierpoint when he and his family were attending St Peter's Brighton. He commented that parishioners in Hurstpierpoint travelled to St Peter's Brighton or elsewhere for worship. He testified to a real sense of excitement about the new Sunday service that it was intended be started. He knew of four or five families who currently go to St Peter's but who have indicated they will start attending Holy Trinity with the changes afoot. He said people will go where they feel called, and that they love to worship locally. In a local community, children who grow up together should be able to worship together in their parish church.
28. I found Mr Murray-Watson to be an impressive witness. His witness statement had something of an evangelical fervour to it, but Mr Murray-Watson's oral evidence was dispassionate and objective: and his answers were considered and reflective. He did not stick doggedly to a pre-conceived position, but responded with openness and care, giving evidence based on his personal experience at Hurstpierpoint and at St Peter's Brighton.
29. Ian McBain [304] is a governor of St Lawrence Church of England Primary School in Hurstpierpoint. The school has some 630 pupils and nearly 80 staff members. Holy Trinity church is used for its nativity services, several of which are held each year to accommodate the high number of pupils and their families. He states:
- The position of the fixed pews strongly determines the viewing angle and how the nativity is presented. A more flexible seating arrangement would permit a more imaginative use of the entire space and potentially allow for more people to be present.
30. He continues:
- For many families, attending the school nativity is their only venture into the church building each year, and a positive welcoming experience is essential if they are to be encouraged to return on other occasions in the life of Holy Trinity.
31. Mr McBain indicates that there are similar issues at the Harvest Festival, which consists of pupils and staff only. The SIAMS (Statutory Inspection of Anglican and Methodist Schools) report for the school in April 2018, concluded that the school was good with outstanding areas. It noted potential for the parish church to support the school further with its development of Christian distinctiveness and planning of collective worship. His statement concludes:
- With a more accessible flexible space and equipment to aid delivery, Holy Trinity could be used more frequently not just for worship, but in the delivery of other lessons, such as RE, drama, and PHSCE, [Personal Health, Social and Citizenship Education] where a change of location can bring a subject alive.
32. In cross-examination, Mr McBain stated that the children tended to sit on the floor for school assembly and could do the same in church were the pews (which currently limit seating capacity) to be removed. He indicated how with greater flexibility, the children could explore the space in a creative way. As a faith school they would wish to make more use of the church but the fixed pews limit this. By making children familiar with the church building, it encourages attendance by families for worship.

33. I found Mr McBain to be an honest witness, and not one prone to exaggeration or overstatement. His concern for nurturing young minds at school and promoting community engagement came across very clearly from his testimony.
34. Miss Jennifer Brown [306] is a reader licensed to Holy Trinity who has been facilitating its 2020Vision process. This has involved strategic review by the PCC, engagement of the whole congregation in prayer and reflection, rigorous discussion, review and sharing of ideas. She points to the high level of consensus which emerged. I note in passing that this is borne out by the lack of any objections from parishioners as a result of public notice, in marked contradistinction to what had been the case for the controversial 2012 faculty.
35. She states that the parish formed four priorities: two immediate (Worship for All, and Children and Youth); and two more long-term (Welcome and Belonging, and Connections beyond Holy Trinity). It was recognised that these were only deliverable with continuing development of the church's finances and buildings. She continues:

A key element of moving forward will be the internal development of our stunning church building in a way that compliments and facilitates this vision for growth.

36. Miss Brown sets out in detail the manner in which the removal of the pews would enable the achievement of the objectives that were identified. The flexibility of chairs would enable them to set up seating that best suits the occasion. For example, small groups with tables for informal family services or training sessions, circular or semi-circular set ups for communion or drama, fewer chairs for more intimate occasions. Her particular concern is with the youth, which I take to mean children of secondary school age, a demographic which seems particularly challenging:

Flexible seating and the ability to clear the seating to have a large space would open up many opportunities.

She makes particular reference to crib services and other events for what she styles 'the unchurched'.

37. Much of her evidence linked the removal of the pews with the introduction of the screen. They are portrayed as being inextricably linked: the improved audio visual facilities opening up greater opportunities for flexible use of the building which required the removal of the pews. Miss Brown also points to the accessibility advantages of chairs, making access easier for those with mobility difficulties and providing a safer exit in an emergency. None of these elements of her evidence were challenged by Mr Petchey.
38. Miss Brown referred to the narrowness and hardness of the pews which she says are not easy to endure for long.
39. Miss Brown also refers to the need for Holy Trinity to be outward looking, and the need to increase engagement with the local village community. She lists a lengthy range of events, currently not possible, which could be accommodated in the church were more flexible seating arrangements possible.

40. In cross examination, Mr Petchey elicited details from Miss Brown as to how despite the current constraints there had been steady growth in primary age children over the past 5 or 6 years. The planned 11 am family service was aimed at families and young people. Mr Petchey suggested that in most liturgies, the congregation would frequently stand so the uncomfortable nature of the pews did not really matter. Miss Brown replied that not everyone was able to stand for parts of the service, and mentioned by way of example her late mother. Before her death she was not fit enough to stand so sat through the entire duration of the services she loyally attended. The hardness and narrowness of the pews caused her considerable discomfort. Miss Brown mentioned some people who feel anxiety with a feeling of being 'boxed in' in fixed pews.
41. I found Miss Brown to be a particularly impressive witness. Her evidence was given honestly and in an understated manner. It was very measured, particularly her account of the lengthy period of consultation and engagement with the congregation and the wider parish. She was genuine and straightforward in reporting the consensus and to the extent that her evidence represents the collective views of others, I accept the accuracy of her reporting. I have particular regard to how the introduction of the screen and the removal of the pews were viewed holistically as part of a unified vision, rather than separate and discrete projects.
42. Mr Robert Price [310], the second petitioner, is one of two churchwardens and a chartered surveyor by profession. He speaks of his obligations as custodian of a grade II\* listed church, as well as the parish's commitment to the diocese and to its nominated charities. He states:
- I am convinced that it is desirable and necessary to encourage Holy Trinity to be used by the community for purposes other than worship resulting in a regular income to be generated over and above the giving of our congregation.
43. He refers to organisations, musical and theatrical, which have expressed an interest in using the building for concerts, arts projects and other uses but are unable to do so unless it is more adaptable and suitable for their purposes. He continues:
- The main problem is the pews which are inflexible and uncomfortable. Flexible and adaptable seating is required as a matter of urgency.
44. Mr Price speaks of the introduction of chairs as enabling the offer of worship of a variety of traditions, allowing the church to focus on its mission within the village, encouraging the community to make use of the church so that it becomes a focal point of village life. It is also clear from Mr Price's statement that the re-configuring of the interior of the church is inextricably linked to the introduction of the smart screen with its state-of-the-art technology. It is part of a composite holistic vision for the church. This matter was not challenged by Mr Petchey.
45. In cross-examination, Mr Price was asked about the giving of the congregation which he described as 'woefully inadequate'. Mr Price explained how the historic church building was expensive to maintain, and that giving is not enough to cover running costs, let alone maintenance. But he says the church is not merely a place of worship but also a community space. The building must pay its way and future growth is what is needed so it can begin to pay its way. It needs to be more adaptable, something which is not currently possible because of the pews. To date, the concerts and events which have been hosted have been



‘small beer’. He referred to orchestras which would love to use the church because of its excellent acoustics, but cannot do so because the pews are restrictive and uncomfortable, so much so that ‘paying customers’ are very rare. The Hurst Festival currently uses the church, but no charges are levied, other than to cover costs, because the facilities are so poor.

46. Mr Price was criticised by Mr Petchey for not having a formal and documented business case or plan. But I got the clear impression from Mr Price’s testimony that much thought had been given to obtaining income from community and business lettings and that, as an articulate professional, there was no wishful thinking in his evidence. Rather, it was based on hard-nosed business experience applied in a church setting. Again, I found Mr Price to be a truthful and compelling witness.
47. The Reverend Jane Willis [312] has been rector of Holy Trinity, Hurstpierpoint for about six years. Her statement speaks of the existing pew arrangement preventing the church from offering flexibility in terms of available space to a variety of local events and community occasions. She adopts the content of the Statement of Need [316-317] and the Response to the Victorian Society’s Objections [326-329]. She states ‘there is an urgent need to adopt a more flexible approach to worship at Holy Trinity’ and details how that is prevented by the fixed pews. She refers to a number of parishioners travelling to locations outside Hurstpierpoint, including to Brighton, to attend services where other churches can offer a more versatile approach to families and children ‘which the present rigidity and bulk of the pews at Holy Trinity prevents’. Her evidence, unchallenged, was that a number of these families had told her they would return to Holy Trinity if the pews were removed. Mrs Willis makes reference to the difficulties caused by the pews in the current coronavirus pandemic.
48. In cross-examination, Mrs Willis spoke of her affection for the building, and the lengths the parish had gone to in considering how the pews might be retained. She was very keen to retain some physically in the church. She was concerned that people travelled out of the parish for worship, to St Peter’s Brighton or to a school hall where The Point network church now met. She said that the successful reordering of the west end had produced a sense of energy in the congregation who were committing to a new service. She did not agree with Mr Petchey that it was unobjectionable for parishioners to drive to these two other foci. It showed they were dissatisfied with Holy Trinity, and likened it to a village shop: if it ceases to be patronised, it will be forced to close. The village has a population of 6,500. Some 630 children attend the church school. She is keen to ‘grow the church’ and senses excitement in the community at the plans. She believes in parochial ministry and considers that the local church is more important now than ever. People want variety and she feels able to offer different types of service – traditional and modern – with integrity. Locals will not become a part of Holy Trinity unless they offer an alternative to formal liturgy.
49. She said they were disappointed by the Victorian Society’s letter but not completely surprised. She reiterated that they did not contest Ms Root’s report. In the event that a faculty were refused they would of course live with the present circumstances. Part of her doubted that contemporary worship would ever be possible in the church in its present form. The new service would be directed at families with some adult teaching in the gallery. They would not be able to have sitting around tables in the nave because of the pews. She was particularly concerned about being inclusive and welcoming the disabled, and made

mention of a particular individual - Tilly - who used a wheelchair and was physically and mentally disabled for whom the pews posed a real difficulty.

50. Mr Petchey raised other buildings in the village which might be used. Mrs Willis said that Torch no longer met in the village as it had outgrown the premises it had used. The village hall was large and soulless. It was booked up continually and therefore not available even if it had been suitable. He suggested that they might meet in the Methodist Church, a suggestion Mrs Willis completely rejected. Their aim is to grow Holy Trinity and advance its mission and witness: not to enlarge the congregation of the Methodist Church.
51. In re-examination, Mrs Willis expressed the view that there would be a fall in morale if the faculty were refused. She emphasised the reversibility of the proposals as had been the case for the 2012 works in the west end.
52. In answer to questions from me, Mrs Willis emphasised her willingness to accommodate the opinions of the Victorian Society. She repeated their willingness to place all the pews into storage. She was agreeable to ring-fencing money to pay for professional carpentry services to reinstate the pews after five years or whatever period the Court allowed. The cost of storage was a factor, but it was something the parish was prepared to take on. She was seeking to accommodate the Victorian Society. She had learned only the day prior to the hearing that the Society had withdrawn its objection to the screen. Her preference would be to relocate the pews in the transepts as proposed, although this would mean those that were so used would need to be cut to size. However, if the Victorian Society wished all the pews to be put into storage so that the works were then 100% reversible, then she would agree to that.
53. I found Mrs Willis to be an honest witness who gave clear and careful answers to wide-ranging cross-examination. I see no reason to disbelieve what she told the Court as to the opinions of third party parishioners and I accept her evidence on all points. I was particularly impressed at the lengths to which she was prepared to go in order to accommodate the concerns of the Victorian Society. It is unfortunate that there was so little engagement between the parish and the Victorian Society.
54. Finally came Mr Peter Pritchett, [288-290, 10, 226-227, 340] the parish's inspecting architect. His statement dealt with the background to the matter and exhibited the results of a pew survey. He states:

I have advised the petitioners to retain a number of the benches and relocate them within the church in a purposeful and useable location: placing the bench seating within the transepts will enhance these areas which at present have little or no positive use and visual attraction.
55. Mr Petchey had no cross-examination for Mr Pritchett, but I had a few questions for him. He told me that it was feasible for all the pews to be removed and put into storage, such that they could be reinstated after, say, five years (when the permission in relation to the screen would expire) or such other period as the Court might direct. The works would be completely reversible, without any damage to the fabric of the church. This was not Mr Pritchett's preferred option. He would rather the pews be adapted and re-fixed in the transepts since this would retain the history within the building. Mr Pritchett's view was that

he would regret the pews being placed into storage. They have some pleasing features and, re-purposed, would look very attractive in the transepts. As an ecclesiastical architect of some standing, he valued Barry's work and would much prefer to see it retained in the church Barry designed, albeit in a different position.

56. Mr Pritchett informed me that the pews were extremely uncomfortable. The seat was very narrow due, Mr Pritchett ventured, to Barry's desire to cram in so many pews and increase capacity, even though the sight lines were poor. Mr Pritchett explored a number of other options. This included making the pews mobile, but this was impracticable. He also considered whether the pews could be adapted so as to be made more comfortable. But he concluded the seats could not be widened or the backs raked. Such alterations would be difficult to achieve and would not do justice to the pews themselves. I afforded Mr Petchey a further opportunity to cross-examine Mr Pritchett but he declined.
57. Since Mr Pritchett was not cross-examined by Mr Petchey, I need not address his credibility. He is a well-known and widely-used ecclesiastical architect, who enjoys a high reputation in the diocese.

#### **The Victorian Society's evidence**

58. The Victorian Society relied solely on the witness statement of Mr Connor McNeill [AB31-34]. Mr McNeill is the Society's Interim Churches Conservation Adviser. Mr Gallagher had no questions for him and nor did the Court. I mean no disrespect in rehearsing Mr McNeill's evidence very shortly. As his statement makes plain, he started in post just a couple of weeks before the hearing and has limited personal knowledge of the case. His statement largely summarised the information held on file, as did the documentation which he helpfully attached. Of particular relevance is the following paragraph (emboldening and italics in original):

#### **Lack of Justification**

11. The Society consider that the Petitioners have never provided sufficient justification for their proposals. This was first highlighted in **James Hughes' email of 29/05/2018** when he commented on the Statement of Needs that *'no details are provided (beyond vague suggestions)'*. **James Hughes repeated on 11/11/2019** that it was *'inadequate, vague, rather sweeping ... and ultimately fails to justify the extensive and damaging proposals envisaged.'* The Society did not believe these criticisms were sufficiently addressed in the Parish Responses of December 2019 and the accompanying letter by Jenny Brown. In the **letter of 30/01/2020 James Hughes replied:** *'This concern extends to the failings of the Statement of Needs, and it is a concern that we have expressed in each of our previous two letters in this case. ... However, as it stands, this application is fundamentally and unacceptably lacking.'* *'There is, put simply, no articulated need to support the notion that what is proposed is a reasonable or justifiable response.'*

59. At the conclusion of the evidence, the Court rose for an extended lunch adjournment prior to closing submissions. I encouraged counsel to use this time productively to discuss any compromise or narrowing of the issues. I was particularly interested in the alternative whereby the entirety of the pews would be put into storage which had been explored at some length during the evidence of Mrs Willis and Mr Pritchett.

### **Amenity societies and other consultees**

60. The position of the amenity societies and other consultees can be take shortly.

#### *Historic England*

61. In a letter of 15 October 2019 [143-146] Historic England expressed ‘real concerns’ about the removal of the pews which it considered would result in ‘undue harm’ to the building. A further letter of 30 January 2020 [198-201] states ‘The building derives significance from the quality of Barry’s work ... and a number of high quality furnishings from the date of construction and later, which make an important contribution to its architectural and historic values.’ It continues

the nave pews are a rare example of original church seating in a Barry church. Their provenance is unclear – they may be to a design by Barry (Charles Tracy’s report suggests that this could be the case), which would add to their significance, or they may be built to designs of a local architect or joiner. Either way, they undoubtedly contribute to the significance of the church as evidence of its original seating and as good quality furnishings in their own right (they have an unusual fleur-de-lys design which display a high level of craftsmanship). As a major component of the church’s interior they also contribute to the building’s distinctive character despite the loss of the pew platforms and some pews from the nave’s west end ...

62. Historic England indicated that it considers the proposed works to the pews would cause: a moderate level of harm to the heritage significance of the building because it would no longer be possible to appreciate the way in which the seating was originally laid out. Their removal would also harm the building’s architectural character which would be compromised by the loss of its original nave setting.

63. Historic England sought and received an extension of time for lodging its Form 5 but ultimately they elected not to become a party opponent and the form was not lodged.

#### *Church Buildings Council*

64. By letter dated 18 March 2020 [248-249], the Church Buildings Council ‘noted that a stronger statement of needs has been provided to support the proposed works’. It was pleased to note that a timber chair was not being proposed. The CBC’s position was that ‘it will not object to the proposed removal of some pews and the reuse of other ones’.

65. The CBC’s earlier letter of 16 May 2019 [25-27] followed its delegation visit, noting the strong reasons behind the proposal, commenting ‘these were more eloquently expressed on site than in the documentation’. The letter continues:

The Council agreed that the narrow benches and straight backs, coupled with limited leg-room made these pews particularly uncomfortable. It could understand why the parish wanted to replace them with alternative seating. [...]

The parish’s intention to retain some pews in the transepts where they could have a role would allow the features of interest to be preserved, if the pews retained were selected on this basis. [...]

If a compelling statement of needs was provided the Council would not sustain an objection to their removal.

*Diocesan Advisory Committee*

66. The DAC issued a Notification of Advice on 29 October 2019 [173]. The works were recommended without any proviso or reservation relevant to the pews. The DAC report following its site visit on 22 February 2018 [22] comments:

The committee agrees that, in order to provide maximum flexibility, for the variety of services and activities that the congregation would like to be able to hold, it makes sense to remove the remainder of the pews from the nave [...] The Committee suggests that the parish may wish to give consideration to retaining several pews and creating a more traditional space in the lady chapel, at the east end of the north aisle.

*Local planning authority*

67. Mr Petchey drew attention in his skeleton argument to the fact that the local planning authority was not consulted on the proposals. The DAC Notification of Advice stated that in its opinion, the proposed work was likely to affect the character of the church as a building of special architectural or historic interest, but did not recommend consultation with the LPA, citing only Historic England, the Victorian Society and the Church Buildings Council. He observes that consultation ought to have been directed under r 4.5(4)(a) of the Faculty Jurisdiction Rules 2015. The failure to consult is that of the Court, for which I take full responsibility. Although Mr Petchey's skeleton argument floated the possibility of the Court adjourning the hearing of its own volition, when afforded the opportunity to apply for an adjournment on these or other grounds, Mr Petchey declined to do so. The Victorian Society has been a party to several sets of interlocutory directions and on no occasion sought an order directing consultation with the LPA: so the oversight seems to have been widely shared. I note that r 20.2 provides that a failure to comply with any provision of the Faculty Jurisdiction Rules does not render any proceedings void unless the courts directs otherwise. I do not consider that in the particular circumstances of this case, as it has developed, the Victorian Society has been disadvantaged by the absence of consultation with the Local Planning Authority, nor did I consider that justice required the adjournment of the hearing of the Court's own motion.

**Submissions – Victorian Society**

68. Mr Petchey's oral submissions were extremely brief. He contended that the petitioners had failed to discharge the evidential burden that lay upon them and accordingly the petition should be dismissed. Without condescending to detail, he contended that the evidence led by the petitioners, whilst probably sufficient to justify work which would have occasioned moderate harm, was insufficient to justify the categorisation of exceptional, which the Court of Arches indicates is required where serious harm would result. His submission was simple: the petitioners had not made out their case to the required standard.
69. I invited Mr Petchey to address the lesser alternative of placing the pews in storage as had been canvassed in evidence. He stated, presumably on instructions, that he had no submissions to make on the storage option because 'no one was urging that course' and he declined to offer the Court any assistance on the matter. He said all the Court had was an incomplete expert report and he could not express a view.

### Submissions - Petitioners

70. Mr Gallagher's oral submissions were a little lengthier, and at times sought to go behind the concession he had made at opening. I was not prepared to allow that. I disregard his unnecessary criticisms of the Victorian Society for the way they had conducted its case: any misjudgements had been overtaken by the petitioners' concession on the expert evidence. I expressly rejected his submission that I should be wary of the content of Ms Root's report. I disregard his submission that the Court could and should find a lower level of harm. As noted earlier in this judgment, the pragmatic and fair means of achieving justice in this case, is to assume serious harm, and to focus instead on the disputed issue of justification which occupied the vast majority of the hearing.
71. On the issue of need and justification, Mr Gallagher submitted that on the particular facts of this matter, taking the evidence in the round, an exceptional case had been made out. He observed that the more Mr Petchey pressed the witnesses in cross-examination, the greater the evidence of need and justification emerged. He pointed to the DAC and CBC reports which had observed that they had gained a great deal from speaking to the individuals involved in the project. He pointed to the string of witnesses from different church backgrounds who had given compelling evidence. He could not fathom the suggestion that the congregation should leave the building and move to the Methodist church. The pews were extremely uncomfortable. The Community were leaving Hurstpierpoint to worship elsewhere.

### Site visit

72. Mr Gallagher informed me that counsel were in agreement in urging me to visit the church before coming to a decision. Mr Petchey then suggested the opposite and restated his position as it appeared in his skeleton argument that I should not. With the issue of harm resolving in favour of the Victorian Society, the only contentious matter is justification on which I considered myself adequately informed by the evidence. The risk of a site visit, as Mr Petchey rightly warned, was that I might appear to substitute my own view for that of the experts. In the event, I have concluded that I can fairly dispose of this matter without visiting the church.

### The law

73. Only one authority was cited to the Court, namely that of the Court of Arches in *Re St Alkmund, Duffield* [2013] Fam 158. Mr Petchey provided an extract from paragraph 87 comprising the following questions:
- (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*, 26–28, and the review of the case law by Bursell QC, Ch in *In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146*, para 11. Questions 3, 4 and 5 do not arise. { "pageset": "SB2
  - (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 *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 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.

74. Not included in the extract were the introductory words of the Court of Arches which place those questions in context. This reads:

In our opinion chancellors should be freed from the constraints of the *Bishopsgate* questions. We have much sympathy for the view of Chancellor McClean in *Re Wadsley Parish Church* (2001) 6 Ecc LJ 172 at para 24 that there is a danger of imposing an unduly prescriptive framework on what is essentially a balancing process. For those chancellors who would be assisted by a new framework or guidelines, we suggest the following approach of asking:

75. It is clear from this passage, that the questions comprised in the *Duffield* framework are merely a suggestion not a straightjacket. As is often said in other contexts, they are guidelines not tramlines.

#### **Justification and the balancing exercise**

76. Having assumed serious harm, I come to consider the justification for carrying out the proposals. On this I have concluded that the evidence all points in one direction. I might have entertained some doubts had I proceeded solely on the documentation, but hearing the witnesses give oral evidence, exposed to robust cross-examination, made me progressively more certain. I have particular regard to the following:

1. The pews are particularly uncomfortable, and that for the elderly or infirm their discomfort cannot be alleviated by standing for parts of the service. The assertions of discomfort derive not merely from the largely unchallenged evidence of the petitioners' witnesses but from independent bodies who have visited the church such as the DAC and CBC.
2. The unchallenged evidence of the parish's inspecting architect is that the pews cannot be altered or adapted in such a way as to reduce the discomfort.
3. Parishioners routinely leave the village to worship elsewhere. The petitioners' evidence taken as a whole is that there is a causal link between the discomfort of the pews and the decision of parishioners to attend a different place of worship.
4. After a lengthy period of review and reflection - carried out openly and in good faith - the leadership of the church wish to take it in a certain direction in terms of its regular worship and the community use. Having heard the evidence, I consider that direction of travel to be sincere and achievable rather than vague and aspirational.
5. Although the petitioners did not produce a business case in terms of a document comprising financial projections, I am satisfied on the evidence I heard that the future

- planning has been professionally undertaken and that the community use of the church is both realistic and viable.
6. I am also satisfied that the parish's objectives cannot be achieved while the block of pews remains rigid and immobile in the nave of the church.
  7. I reject the contention of the Victorian Society which seemed to be being put in cross-examination that the congregation should relocate to the Methodist church effectively abandoning Holy Trinity whether for a particular service or generally. To my mind this runs contrary to the statutory duty under section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 that:

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.
  8. I am mindful that it is not uncommon for petitioners to put forward a vague assertion of flexibility in order to justify proposed changes. In this case, based on the evidence I have heard, I am satisfied that there is nothing vague or generalised about the practical benefits of the removal of the pews. On the contrary, each and all of the benefits are carefully articulated and evidence-based.
  9. The evidence in this case that its worship and mission is compromised by the presence of the pews is measured, supported by measurable examples, and compelling.
  10. The degree to which collaboration with the church school is compromised by the presence of the pews is clear from the evidence of the school governor.
  11. The unchallenged evidence of several of the petitioners' witnesses attested to the holistic nature of the proposal and how the introduction of the smart screen was seen as a component element in making the church interior suitable for contemporary worship and other secular uses. The withdrawal of the Victorian Society's objection to the smart screen, while in no way being determinative of the petition, strengthens the petitioners' case on justification.
  12. The readiness of the petitioners to engage with the Victorian Society to accommodate their objections, even to the extent of placing the entire body of pews into storage for a finite period, so they could be reinstated at a future date, notwithstanding that this compromised their own wishes and ambitions for the transepts. I consider it unfortunate and regrettable that this outcome was not even entertained by the Victorian Society.
77. In many ways, what impressed me about the evidence of the petitioners on justification was the measured and realistic manner in which it was expressed. The petitioners' case was understated in the documentation, becoming stronger in oral testimony. I detected no hyperbole, nor instances of where passion and enthusiasm had outstripped reason and objectivity.

#### **Lesser alternatives**

78. There is an established practice in the consistory court where harm will be caused to a listed church, of considering alternative less harmful means of achieving the same result. Mr Pritchett had raised the possibility of the entirety of the pews being placed into storage so they could be reintroduced in their entirety at some future date. In other words, the removal would be entirely reversible, which would not necessarily be the case were the pews to be cut and re-fixed in the transepts. This alternative was pursued in the evidence of Mrs Willis and Mr Pritchett. Mr Pritchett stated the ease with which total reversibility could be achieved, and he was not cross-examined on this by Mr Petchey.



79. The Court is in some difficulties in resolving this matter due to the non-engagement of the Victorian Society. The Court is satisfied on the evidence that a faculty should issue for the works as proposed. The Victorian Society has effectively closed the door on a solution which would have left all the remaining Barry pews unharmed and in storage, capable of being returned to their place in the nave at the direction of the Court. Whilst I am not encouraging any such application, if on mature reflection, and having considered the assumed position on serious harm and my findings on justification, the Victorian Society is of the view that it would prefer the pews to be stored, rather than repurposed, there is provision for the Court to amend a faculty under r 20.3 of the Faculty Jurisdiction Rules 2015. I would be prepared to entertain such an application provided it were made within 14 days of the handing down of this judgment. It will be determined on its merits and all parties will be afforded the opportunity to make representations.

### **Disposal**

80. For the reasons already stated, I am driven to the conclusion that in this instance the petitioners have persuaded me on cogent and compelling evidence that the justification for the proposed works outweighs the harm that will result from their implementation. I have come to this conclusion applying the heavy presumption against change where listed buildings are concerned, and adopting the approach that the more serious the harm, the more compelling the justification that the proponents of change must show. I should also add for the avoidance of doubt, that had I applied the test in the more literal and formulaic manner advocated by Mr Petchey, the outcome would have been the same: serious harm to a grade II\* listed church should only exceptionally be allowed, and in my judgment the evidence advanced by the petitioners clearly brings the matter within the exceptional category.

81. A faculty will pass the seal subject to the following conditions:

- (1) That the works are to be completed within 18 months or such extended time as the court shall permit;
- (2) That the works are to be carried out under the direction of the parish's inspecting architect;
- (3) That in respect of the 'smart glass' screen, permission for its retention will lapse five years after completion of its installation. The PCC is to make provision within its accounts for a ring-fenced sum sufficient to pay for the removal of the screen and all associated paraphernalia and for making good in an amount advised by the parish's inspecting architect. In the event that the petitioners wish to apply for an extension of the five year period, an application is to be lodged six months in advance with a copy served on the party opponent.
- (4) The pews are not to be removed until the Chancellor has approved a detailed proposal for their adjustment and reuse in the transepts, ensuring that the best examples of Barry's work are preserved.
- (5) No contract is to be placed for replacement chairs, nor are any to be introduced into the church, until the make and design has been approved by the Chancellor. For the avoidance of doubt, upholstered chairs will not be permitted.
- (6) The glass door is not to be commissioned until any design, etching or inscription has been approved by the Chancellor.

- (7) The works are not to commence until the petitioners have satisfied the Chancellor that the parish has sufficient funds, in hand or pledged, for their completion.
- (8) The works are not to commence until the Court's order for costs has been satisfied in full.

**Costs**

82. My provisional view on costs is that there should be no order for costs *inter partes*, and that the court costs should be paid by the petitioners, save as previously ordered otherwise. Whilst I considered that the Victorian Society's pursuit of its objection to the glass screen right up until its withdrawal at the virtual court door might be said to be unreasonable, it is difficult to identify any particular costs which relate solely to that issue. I will allow the parties seven days to make representations on costs, absent which the provisional disposal will be made final.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

10 November 2020