

**In the Consistory Court of the Diocese of Derby  
In the Matter of St Alkmund Duffield and in the matter of two petitions dated 20<sup>th</sup> July  
2011**

Before the Chancellor, His Honour John W. Bullimore  
Hearing 21<sup>st</sup> December 2011

**Judgment**

1. The church, which stands a little way outside the centre of Duffield, a few miles from Derby itself, is a listed building of Grade 1. It is therefore placed within only 3% or so of all listed buildings and considered by the Secretary of State to be of exceptional architectural and historic interest.

**The petitions**

2. I have two petitions to consider, both dated 20<sup>th</sup> July 2011, presented by the Vicar, the Reverend Mark Pickles, and the wardens, Mr Stuart Holmes and Mr Michael Stanier. The following brief verbal description of the works proposed, is more clearly seen by reference to the architect's drawings of Mrs Elizabeth Walker of Anthony Short and Partners, ('ASAP'), numbered T62-22A and 23.
3. The **first petition** seeks permission to relocate the chancel screen into the Bradshaw Chapel that lies to the north-east of the nave, and to make changes to raised platforms that are positioned at various points in the church. The petitioners want to remove a pew platform at the east end of the south aisle, which presently accommodates the music and singing groups, and another that is partly located within the Chapel and extends southwards into the area to the east of the north aisle. This contains three or four rows of pews, facing to the south, and behind them, rows of chairs, similarly placed. Finally, the petitioners wish to carry out minor modifications to the dais, so as to eliminate a potential tripping hazard by the console of the organ, which stands just to the south side of the dais. Overall, the petitioners wish to have the music and singing groups to the front of the nave, facing the congregation, but somewhat to the south side of the dais. As this is a relatively limited space, they would seek to use the area opened up by removal of the screen, of about two feet in depth to the line of the chancel furniture, and they hope in addition to further utilise the space in the gap between the facing choir pews. Removal of the platform on the south side of the church would increase the area for seating, where chairs would be introduced. The removal of the platform to the north, would allow level access through the centre of the re-located screen, where it would stand in the arch of the Chapel itself.
4. The **second petition** relates to the replacement of audio-visual equipment and the introduction of a central projection screen into the area from which the chancel screen is to be removed; no changes are sought to the arrangements for projection that serve those sitting in the areas of the nave to the north and south sides. *It is accepted that the specific plans here depend on removal of the chancel screen.* As permission to do so is being refused, as appears below, and as the petitioners are already aware, further thought will need to be given to how best the present central screen can be replaced.
5. The **Diocesan Advisory Committee** considered the main petition on 13<sup>th</sup> June 2011 and stated that it has *No Objections* to the proposals, subject to details of how the floor is to be made good, and the design of the new chairs, being agreed by the DAC before work began. There is in fact no request for approval of new chairs in the petition, although that is implicit in the case as presented.
6. The **Parochial Church Council** formally considered the matter on 18<sup>th</sup> July and, of the 17 members, 12 were apparently present, and all supported the proposals. I suspect there had been earlier approval by the PCC, because the **public notices** were

displayed from 12<sup>th</sup> July. No objections were received. Objection however has been made by those consulted in accordance with the requirements of the **Faculty Jurisdiction Rules 2000**, namely, English Heritage ('EH'), the Victorian Society ('VS'), and the Society for the Protection of Ancient Buildings ('SPAB'), but their objections related solely to the re-location of the screen. They did not require a hearing, but asked that their comments and objections be taken into account by me, in coming to a decision. At my direction, a notice under FJR 13(4) was placed in a local newspaper. The Church Buildings Council ('CBC') eventually agreed to the proposed re-location of the screen.

7. As to **the adjudication process**, the petitioners would have been content to have the case decided on the written materials available, and, as I say, none of the bodies objecting to the proposals wished for a hearing. However, it seemed to me this was a case where there ought to be a hearing, so that they had a full opportunity to explain what they wanted, and why, and I would be able to put questions to the petitioners and clarify any points of uncertainty. It would not have been satisfactory in my view, simply to put questions to them in writing, although they expressed their willingness to answer any queries I had. In the result we were able to have a hearing in the church just before Christmas, and, as is my usual practice, I said I would give my decision in writing.
8. Unhappily, for various pressing reasons, it became clear that a full judgment could not be ready as soon as I had intended, and I knew the petitioners' contractors were due to begin work around mid-January in respect of various projects authorised under separate faculties, and the petitioners hoped to instruct them in relation to the work under the first petition, so it could be carried out at the same time. I therefore communicated to the petitioners through the Registrar, the substance of **my decision**, on or shortly after 3<sup>rd</sup> January, namely, that I dismissed the application to re-locate the screen, but granted the rest of the petition (see the Second Appendix to this judgment). My reasons for that decision appear in what follows, and I shall also refer to the reaction to my decision, and comment on it.
9. The Registrar and I had initially paid a **visit to the church** a couple of weeks before the hearing, in order for me to familiarise myself with the layout, and of course, I was able to see the church again on 21<sup>st</sup> December.
10. At the hearing, I heard **evidence** from Mr Kim Jeffery, who was managing the project, Mr Pickles, the two wardens, and Mrs Taulbut, a long-standing member of the congregation. I also had two drawings, a couple of photographs, and, of course, the documentation one would expect, together with correspondence. I have considered all of this, even if it is not referred to expressly in what follows.
11. It will I think, be most helpful to 'clear the ground' by dealing with the parts of the petition that do not involve the screen, which seems to be the only contentious matter. The proposed removal of, or alteration to, the platforms and dais are matters of little consequence in themselves and will have no adverse effect on the character or appearance of this listed building. They are all allowed. I recognise however that removal of or changes to the platform extending into the Bradshaw Chapel are part and parcel of, and put forward because of, the proposal to move the screen. A faculty is generally permissive rather than mandatory, and the petitioners have permission, as I have indicated, to remove the platform in this area if they still wish to do so, notwithstanding my decision about the screen itself. I also give permission to dispose of or re-arrange existing pews or other furniture in the area of the various platforms. Further, the petitioners may introduce new chairs, *provided the DAC are content with the design and appearance*. If there is continuing dispute about those matters, the issue is to be referred back to me for decision.

12. I turn now to **the screen** itself. It was introduced in the extensive re-ordering of the fixtures and fittings that took place around 1897, which was undertaken to designs by and I believe, under the direction of Mr J. Oldrid Scott. These changes followed *'an earlier extensive restoration in 1847, when the roofs of the north and south aisles were raised to a high pitch'*, according to J. Charles Cox in 1877 in his *Notes on the Churches of Derbyshire*, Volume III at page 135, that earlier restoration being undertaken by Mr St Aubyn. Cox's researches set out much of the earlier history of the building, the first church being mentioned in the Domesday survey of 1086, and parts of the present building dating to the C12th. A guidebook to the church (available at 50p to visitors), undated but published prior to 2007, and with no author attribution, shows the additions and alterations to the building over the ensuing centuries in pictorial format, which is in fact repeated in the Statement of Significance. As recently as 1992, a large parish hall complex was built to the south, connected at present to the church by an open walkway. Mr Cox wrote, of course prior to the Scott re-ordering.
13. I have been provided with two reports prepared by Scott of December 1895 and April 1896, which respond to questions put to him by the church authorities, presumably the incumbent and churchwardens, relating respectively to the chancel and nave. These reports include his observations on the stages through which the building has evolved. He comments in the earlier report that the upper part of the chancel arch was rebuilt *'at the same time or a little later'*, (which must refer back to the words *'in the C13th'*), *'greater height being given to the earlier jambs'*. Having given his description, he says: *'I hope no structural changes will be made in the chancel. It has much character, and each part is consistent with the rest. At the same time there can be little doubt that in some respects the present condition of the chancel is very unsatisfactory...the fittings quite unworthy of the church....'* He commends in particular on the intention to provide an east window in standard glass by Kempe and, after referring to new chancel steps in marble, goes on: *'the stalls should be new, and in style should follow the later features of the chancel. They should be fairly rich in detail....A new altar table seems very desirable... On the south side some seats for clergy should be designed...and also a credence table .... The present pulpit is placed so as to interfere with the view into the chancel from some parts of the church. It has no merit architecturally, and a new one of suitable design seems very desirable...I have had a ground plan of the chancel made showing the new stalls and pulpit.....'* There is no mention in the earlier report of any screen.
14. In the second report, concerning the nave, he again sketches the architectural history, and says: *'The church was restored some forty years since by the late Mr St Aubyn'* – this would put the work around 1855/7, but Cox puts the work earlier, around 1847 – and Scott goes on to regret the placing of high roofs on the aisles and transepts at that time, which blocked up part of the clerestory windows.
15. Scott continues: *'The re-seating of the nave...was evidently carried out with very inadequate funds, and it seems to me very desirable that, if it is now possible (the paving of the passages and the seating), should be again taken in hand and carried out in a way more worthy of the church. The seats should certainly be of oak...'* He goes on to refer to sealing over the vaults below, (which contain numerous burials), new flooring, a new heating and lighting system, and the placing of screens in the chancel and in the arch by the organ, that arch being situated to the north of the chancel arch itself.
16. *'The new pulpit, which I have already designed, will be a great ornament to the nave'* – it stands to the north side of the chancel arch – and *'I will only add here that if it should be desired to erect a chancel screen, its architectural effect will be admirable, and a very striking improvement to the general appearance of the church. It should be very light and open in its design, but should be arranged so as to conceal the inclined jambs of the chancel arch'*.

17. These two reports are of interest in themselves, but they also outline Scott's thinking, which, I presume, he then turned into working drawings, which may or may not survive. That was certainly the position in relation to the pulpit, as he refers expressly to his design for it. It is plain that his ideas commended themselves to the church authorities as the furnishings in fact introduced, including the screen, seem to me to follow his recommendations fully. It was pointed out, that the screen was something of a 'voluntary extra', having regard to how he referred to it in his report, but he undoubtedly envisaged it as part of his overall scheme, he was plainly enthusiastic about its introduction, and he gained the support of the church for it to be included, and it has of course been in place for a little over 110 years. Before preparing this judgment, I had not much noticed Scott's concluding words about the screen '*conceal(ing) the inclined jambs of the chancel arch*', but the author of the little guidebook says: '*the church was furnished throughout in very fine oak and the arches into the North Chapel closed by panelled oak screens and wrought iron grilles. The intrusive 'Oxford Movement' chancel screen was added - **though the reason may have been rather to conceal the leaning pillar on the right** than to separate the people from the celebration*' (my emphasis). There was therefore a practical reason for introducing the screen, although that was perhaps a minor side-effect rather than the main motivation, which, according to Scott, was to introduce an item of admirable architectural effect. I note the use of the word '*intrusive*' by the author of the guide, a sentiment the petitioners would agree with.
18. I see no point in offering my own description of the screen; it appears clearly on photographs provided by the architects ASAP, who are well known for their church work. The woodwork is extensively carved, but is uncoloured. The **Statement of Significance** describes it as follows: '*The screen itself consists of a central arch with two lower linenfold side panels surmounted by tracery and supported by hollow fretwork carved shafts, each one different. It has a substantial loft facing the nave....*' Mr Jeffery provided me with two photographs taken *before* the Scott alterations were effected. One shows the flooring removed, and whether this was during the restoration carried out by Mr St Aubyn or prior to the Scott alterations is irrelevant, but the other photograph shows the open chancel arch (that is, without the screen), and also the St Aubyn pews and other furnishings, which to the casual viewer may not appear totally unlike Scott's furnishings.
19. The drawing T62-22A prepared by Mrs Elizabeth Walker of ASAP shows how the screen, which is some 4308mm wide by 3400 mm high, to the top of the pelmet, would be fitted into the arch of the Bradshaw Chapel, which is somewhat narrower. In short, if re-located, the screen would be turned round, with the 'front' now facing into the Chapel. In this way the decorative mouldings on the pediments would not be obliterated, and the canopy to the screen would be within the Chapel. The rear, but still decorative, elevation of the screen, which previously was visible from within the chancel, would be viewed from the nave. It has to be said that if the proposal were to be permitted, this would be a very good place to re-locate the screen, which would thereby not be lost to the church. I do not however accept the comment on the drawing in relation to the present position of the screen, where Mrs Walker says: '*upper pelmet of screen has been adjusted and cut away on either side to fit into the chancel arch*', which rather suggests that the screen was *modified* to fit into that space, whereas it was built to do so.
20. **The petitioners' case** for removal has two bases: theological or doctrinal, and practical or pragmatic. Mr Jeffery considered the former '*the overriding reason*' and the latter '*quite small*'. Mr Pickles advanced both reasons, but as having more equal weight, and each justifying the proposal. He did not think the pragmatic reasons were '*small*'. In principle, the petitioners are entitled to have their case taken as a whole, but for the

purposes of analysis and comment, it is necessary to look at each area of argument separately, and, further, I have found it in practice impossible to add the two different bases of argument into a coherent whole. In the result, I shall deal with the pragmatic arguments first and then the theological or doctrinal. If the former had justified removal, I suspect I would have dealt with the other line of argument very briefly.

21. The petitioners wish to bring the singing group and musicians from the platform at the east end of the south aisle where they are presently situated, to an area extending from the centre of the dais to its south side up to the organ console, which stands to the south of the dais. The console itself has only a limited range of movement because of the cabling running to and from it. The proposed area to be occupied by the musicians and singers is shown hatched on the drawing T62-23. The dais itself is basically rectangular, (the shape being interrupted by the protruding buttresses at the sides of the chancel arch), and some 22' 6" wide, and it projects from the present screen a distance of approximately 6' 5". The distance from the front of the dais to the two pew fronts either side of the central aisle is about 4' 7". Mr Pickles uses a small movable table for the celebration of Holy Communion, the table being placed front and central on the dais. I do not recall seeing the table itself and I have no note of its dimensions.
22. The number of individuals making up this total music group varies somewhat Sunday by Sunday, from around 8 to a total of 15. Whatever other instruments are used, there is certainly a drum kit that of course takes up a certain amount of room in itself. The object of moving the singers and musicians is twofold: it will give the congregation a better view of them, rather than their being off to one side in what is a broad church, in a physical sense, and enable a more effective lead to be given to the singing, and more modern or informal music during worship.
23. The **Statement of Need**, in its third revision of April 2011, further suggests that this will enable the provision of more seating in the space the musicians previously occupied, sufficient for about 30 people, which will in part off-set the loss of two pews at the rear, which I have authorised in a separate petition, and that has to be seen against the fact the church, unlike most others, is struggling with the large number of those attending. The Statement indicates the current seating capacity is around 260, but the church is said to appear full with say 160-180 in the pews, and such a 'density' can be off-putting to newcomers. Having considered alternative solutions, the PCC is said to be facing the need for two services on Sunday morning. Extra seating space would nonetheless be welcome, but the main reason for moving the musicians, is as stated in the previous paragraph.
24. Moving the screen would give some extra room, so that some of the musicians and singers could stand towards the rear of the dais and into the chancel itself, the dais being at the same level as the chancel, and so they would be behind the present line of the screen up to the chancel furnishings, and possibly even into the space between the facing clergy and choir stalls. As shown on Mrs Walker's drawing, the space liberated for this purpose by removing the screen, would be about 13 square feet, say 1 and 1/2 square meters, although the Statement suggests it would be as much as 4 or 5 square meters. I accept that her drawing is illustrative and does not mark a definite area, like the dais itself, but the Statement does seem somewhat optimistic.
25. **The objections** are contained in various letters. I take them in no particular order. Some of what follows is extracted from correspondence with the architect, Mrs Walker.
26. On 5 November 2010, EH wrote in these terms, describing John Oldrid Scott, the second son of Sir George Gilbert Scott, as himself, '*an important C19th architect*'. His

extensive restoration including *'the chancel furnishings, panelling, reredos, choir stalls, chancel screen and chapel screens...are all of very high quality and craftsmanship and are a key part of the church's architectural and historic interest, especially being "of a piece". The chancel screen is particularly important because of its central position in the church, which helps define the important chancel area, and the exceptional quality of its rich architectural detailing including flowing, 'naturalistic' tracery. The architectural design of the Scott restoration is a major element of the character of the interior, which is extended by the pews which include linen-fold panelling that is reflected in the panelling of the choir stalls across the body of the church'*.

27. *'...the removal of the chancel screen, which is central to the Scott restoration, would damage the significance of the church by causing substantial harm to the architectural and historic interest of this important late C19th scheme'*. After referring to Government guidance in PPS5 and their own published guidance, EH state: *'in our view the strongest justification would need to be made for the removal of the chancel screen and we do not consider that the reasons provided are sufficient to justify the substantial harm caused'*. *'...the removal of the chancel screen would have a major detrimental impact on the significance of the church...'*
28. EH was unmoved by Mrs Walker's response of 6 January 2011, where she said the PCC was keen *'to re-open the body of the church and expose to view, once again, the lovely east window'*, and that the screen, while of high quality, detracted from other features of the church. It has to be pointed out that Scott in his earlier report says: *'the lady who generously offers to fill the east window with glass proposes to place it in the hands of Mr Kempe, who occupies the first place among artists in stained glass. A window of Mr Kempe's would certainly be an immense gain to the church, and I have no hesitation in recommending that this liberal offer should be accepted'*. From this, it is clear that the east window is contemporaneous with the Scott restoration, and was not in some way, at a later time, obscured by the screen.
29. CBC objected initially in January 2011, to the petitioners' reliance on the 39 Articles for removal of the screen (to which I shall refer later); the justification was *'curiously written'* and *'should be focussing on the practical issues rather than disputable principles in relation to screens'*. They suggested proposals be developed for the relocation of the screen. On 4<sup>th</sup> February Mr Pickles emailed, to describe CBC's letter as *'disturbing to say the least...you have to refer back to the formal theological position of the denomination, in our case the 39 Articles....I found shocking...that you disparaged my reference to the 39 Articles as curious and in effect irrelevant.'*
30. Mr Goodchild for CBC replied on 8 February in mollifying tones, but said *'the 39 Articles of Religion are not generally referred to in church re-ordering proposals, and (he does) not recall a case where this has been done.....There is no firm theological or legal position in relation to the position (i.e. placing) of screens in churches'*. Mrs Walker wrote to CBC on 12 May, with revised versions of the two Statements, and drawing T62-23. She pointed out that the screen was not being removed, only moved, that the changes was reversible, and that it was not a rood screen, but installed by Scott *'to give some separation between clergy and congregation, as was the fashion in Victorian times'*, and pointing out that it detracted from the Kempe east window. *'The music group was not dictating the thinking behind the re-siting of the screen....but merely benefits from it...'* If anything, this rather makes the practical outcome of what is proposed a happy outcome of a proposal advanced on the other (theological) basis rather than it being a justification on its own. However, I am sure Mr Pickles does take the view the practical reasons are real and pressing, and I shall approach them on that basis. Mrs Walker also says: *'There is no desire to enlarge the dais as it currently works well with the pews in the nave.... The screen's re-siting will enable the body of the church to be used in a more flexible manner for worship, as well as for performance/concerts.'* There are some more rather argumentative comments, which do not apply to this well attended church, and

I have to say, no other reasons relating to 'performances' were raised by anyone, or advanced to me. CBC responded on 23 May, concluding: 'The Council now agreed to give its support to the scheme'.

31. **SPAB** wrote on 11 November, deferring to VS as to the quality and importance of the screen, but considered that *'in its present position, the one for which it was designed, it is (a) major feature of the church and contributes significantly to the character of the interior. To move it will have a serious impact...'* They expressed concern that if granted, the next step would be a request to remove the choir stalls. The petitioners have made clear that that is not their wish or desire. Further information was given to SPAB, who wrote to Mrs Walker again on 7 March. Although the site for re-location was now clear, they repeated their objection set out above, in identical terms, and were clearly not prepared to accept assurances about the other chancel furniture. Mrs Walker responded on 28 April, using the same arguments that she had put to CBC. SPAB came back on 26 May, saying the idea of turning the Chapel into a place of quiet prayer, was a role the chancel would fulfil and would prove *'a much more attractive and appropriate place for quiet prayer and small weekday services'*. SPAB put forward suggestions for a wholesale re-arrangement of the nave and aisle pews in November and again in May, but that is not what the petitioners are seeking, and I say no more about it. Mrs Walker replied on 2 June.
32. There was also extensive correspondence with **VS**. On 9 November 2010, the Society objected *'very strongly to the proposed removal of the chancel screen'*. It was *'a work of exceptional quality and distinction and its removal would destroy the integrity of the whole ensemble of the chancel fittings and permanently diminish the architectural value of the interior..... None of the reasons put forward justified such drastic intervention. It is difficult to see how this could create more space for the worship group, given that there is little space between it (the screen) and the chancel fittings. The footprint of the screen is small and the gain in space would therefore be negligible'*. Mr Harris on behalf of VS, in fact chose to comment on the theological arguments, but in a later email of 7 January pointed out that *'our role as a regulatory body is primarily to comment on the impact of the proposals on the architectural and historical significance of parts of the fabric that fall within our remit.'* Mrs Walker later stressed that the re-location was reversible and would not involve *'cutting-down'* the screen itself. Mr Harris for VS wrote again on 15 March following discussion at the Northern Buildings Committee. They objected *'very strongly'* to the proposed re-location. *'The screen is a major element in the interior...and an integral part of a high quality set of chancel furnishings by a late Victorian ecclesiastical designer of major importance'*. There is some criticism of the format of the Statement of Significance, and then there is offered some response to the theological reasons advanced, and the suggestion that a faculty would not have been granted initially if its installation ran counter to *'the orthodox traditional theological position of the Church of England'*. *'...the screen forms a symbolic rather than a physical division'*. They rejected the reasoning advanced for increasing the seating capacity, saying it would be nullified by removing the seating by the arch into the Chapel, and raised the possibility of extending the dais to the north, or to the west (nearer the pews). Mrs Walker responded in terms she had advanced to other consultees, and VS replied on 7 June, without either side conceding anything in their position.
33. **On what basis does such an application fall to be decided?** *First*, it is for the petitioners to justify the proposal. *Second*, the wishes of the parishioners (and I add, congregation) are of considerable weight and may be decisive where the evidence is otherwise evenly balanced. I accept here that the congregation is supportive and the PCC strongly in favour, and there was no opposition forthcoming on the public notice procedure from within the wider community of Duffield. However such unanimity cannot be decisive, since that would in itself override any objection from anyone or any body entitled to comment on the proposals under the *Faculty Jurisdiction Rules*

- 2000, and would usurp the function of the consistory court, and the discretion that the Chancellor is required to exercise. (*'Discretion'* means *'judicial discretion'*, a weighing up of a number of disparate factors, and is not to be equated with whim or fancy, or personal preference.) The whole basis of the faculty jurisdiction proceeds on the basis the past and future have a proper interest in what is done in and to the fabric of the building, and that changes cannot be left simply to the wishes and desires of the present minister and congregation, notwithstanding their vital role in caring for and maintaining the building, financially and otherwise.
34. *Third*, this is of course a listed building, and one that is placed by the Secretary of State in the highest category. The correct approach in considering an application affecting a listed building has been confirmed by the appeal court in ecclesiastical cases, the Court of Arches, in the decision in *Re St Luke the Evangelist Maidstone* 1995 Family 1, by applying the so-called *'Bishopsgate Questions'* formulated by Chancellor Cameron QC, who herself was later the Dean of Arches, in her unreported decision in *Re St Helen Bishopsgate* in November 1993.
35. The questions or issues to be decided are:
- a) *have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?*
  - b) *Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest? (That, of course, is the basis on which the Secretary of State has listed the church in the first place.)*
  - c) *If the answer to b) is 'yes', then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all the works? (That is the balancing exercise).*
36. That approach has been *'loyally applied'* by Chancellors over the ensuing years. The addition of a fourth question, as formulated by Chancellor Mynors in *Re Holy Cross Pershore* 2002 Family 1, namely: *'what are likely to be the pastoral consequences, both short-term and looking further ahead, of making a proposed change'*, has not met with general acceptance. The question has been raised whether a time is coming when there will need to be a new formulation of the appropriate test, per the present Dean of Arches extra-judicially in (2012) 14 Ecclesiastical Law Journal 20-42, at p.36. At present however, I agree that the three *'Bishopsgate'* questions *'provide a framework which enables all relevant matters to be considered'*, per Chancellor McLean in *Re Wadsley Parish Church* (2001) 6 Ecc LJ 172. There has nonetheless been some questioning of the order in which the first two questions are posed, because unless a Chancellor is faced with a proposal that *adversely* affects the appearance of the listed building, then the reasons for wanting to make the change only arise to a limited extent (the petitioners having to justify a change to the status quo), and the balancing exercise does not come into play. In the present case, the removal of one or more of the platforms cannot be said to have *'an adverse effect'* on the appearance of the building, whereas in my judgement the removal of the screen will do so.
37. However I think it important to give some greater consideration to the two words *'necessity'* and *'adverse'*. *'Necessity'* is a broad concept; it has been said to *'mean something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary'*, per Chancellor George QC in *Re St John the Evangelist Blackheath* 1998 5Ecc LJ 217. (Chancellor George is now the Dean of Arches.)
38. As for *'adverse'*, as I have already indicated, not every change is adverse and the *'Questions'* only come into play when a proposed change will have *'adverse'* effects. No one of course intends or wishes that the changes they propose, will make the



church in some way 'worse', or damage its appearance; the proposers intend to improve the building in some way (even if others dispute that the changes will have that effect). But whether a change will have 'adverse' consequences, is not to be decided by the Chancellor on a personal evaluation of the proposal, or whether (s)he thinks it is a good idea. It has a narrower focus. When a church is listed as being of special architectural and historical interest, the listing encompasses not only the walls and roof and floor, but also the fixtures and fittings - pulpit, font, pews, choir stalls, windows and so forth - as they are at the time the building is listed. It is not to the point to say that the pews or chancel furnishings are a recent addition in the evolving history of the building, as compared with other older features. The fact of listing in one way 'fixes' the appearance and state of the building at that point in time, and thereafter proposals for changes have to be evaluated against the Bishopsgate Questions. It is obvious that there have been many changes, some of considerable effect, to the fabric of St Alkmund's over the centuries, and we know the present pews and screen were only installed fairly late on in the process, in the last years of the C19th. Nonetheless, the pews and screen were part of the fixtures and fittings at the time when the listing took place. At that point, it seems to me the particular form and layout of the church took on a particular character, not inviolable or immune from any subsequent change (as the introduction of the dais and changes to the south and north aisles, among other changes, convincingly demonstrates), but so that any proposed change must meet the Bishopsgate tests.

39. An 'adverse' effect is one that alters or affects *in a material way*, the appearance or form and layout of the listed building at the time it was listed, or as it has become by subsequent authorised changes. The change may be made by the introduction of some item, or by its removal, as well as by alteration of existing features. The petitioners place emphasis on the fact that the screen is not to be removed from the church, but re-located and used elsewhere, and that they have not also, quite deliberately, pressed for removal of the chancel furniture which serves no present purpose. Both these things are relevant and so need to be taken into consideration, but the re-location of the screen to another place within the building, is not the simple equivalent of the position where it is now. The listing 'fixes' the contents of the building wherever the items are; they are not thereafter simply movable, provided they remain in the building. They are not to be seen therefore as a random collection of items, deployable like pieces on a chess-board, but as a systematic whole.

### Conclusion

40. It seems to me clear on the evidence of EH and VS in particular that the screen is an important part of the whole ensemble of furnishings in the nave. **To move it will undoubtedly be 'adverse' in the sense above, and would be so, on a broader and more natural reading of 'adverse'. It damages the appearance of the chancel, and cannot in any sense be regarded as a minor or trivial interference with part of the furnishings.**
41. Is there a proved need for its removal? **The reason for moving it is bound up with relocating the musicians and singers to a better, more central place**, which is certainly understandable. In my view, every other supposed justification is secondary, and, frankly, is not why the petitioners have advanced this proposal; the extra space for members of the congregation in the south aisle will be largely negated by taking out the seating in front of the Chapel; the argument about the window is a non-starter because it is contemporaneous with the screen, and has not been subsequently obscured by its introduction, and how the Chapel could be used for quiet prayer and reflection, is a result of, and not the purpose behind, the proposal. So it all comes down to the need to accommodate the music providers.

42. I can only say is that the need for further space for this purpose falls well short of the sort of necessity that in my judgment is envisaged under the Bishopsgate tests. To remove the screen would be convenient or helpful or desirable, but it is not in any sense 'necessary'. It would increase the room available by a couple of square meters at most (and I think rather less), and still leave this as a crowded area. The idea of enlarging the dais to the north or west may have disadvantages, but has not, as far as I understood it, been considered, let alone considered and rejected. **I do not therefore find that the petitioners have passed the 'necessity' test.**
43. On that basis, **there is no need for a balancing exercise.** If I am wrong about that, and have underestimated the need for the proposed work, and should have embarked on the balancing exercise, I am clear that the 'adverse' effect on the building as a whole, plainly outweighs, the (hypothetical) necessity. On either basis, **the proposal to move the screen is rejected.**
44. I turn now to **the theological or doctrinal basis** relied on for moving the screen. I shall set out first rather more of the general background, then what the petitioners say in support of the proposal, then try and deal with some of the objections raised to the relevance of this line of argument, move on to what the Canons say about the Articles, and why the petitioners rely on the Articles. The First Appendix to this judgment contains some history of subscription to the Articles.

### General

45. St Alkmund's has a large and thriving congregation. It stands firmly within the evangelical tradition, and is committed to mission and outreach. Teaching is of great concern to Mr Pickles and the church as a whole. In his evidence, Mr Pickles said that architecture is not neutral and the screen '*works against the message we put forward*', which I understood to mean (in part, at least), that there were no places within the building that were more holy or more sacred than others. The screen itself reflected Tractarian influence, a kind of Temple theology, and contributed to the sense of 'holy place' in relation to the chancel, whereas the work of Christ is symbolised by the curtain to the holy of holies in the Temple being torn in two at the time he died. Mr Pickles rejected the notion of the building being 'the House of God' – that was not the New Testament view.
46. Communion is celebrated on the dais from a small movable 'table', not 'altar', and the bread and wine were received by the congregation while standing, and at the front, (not at the communion rail in the chancel). He was a 'minister' not a 'priest'; he wore a cassock, surplice and scarf, rather than vestments.
47. Mr Jeffery stated that the '*overriding reason*' for moving the screen was theological. He had been at the church for some six years. He had been an Anglican all his life, but through the influence of his middle son in particular, he had been encouraged to read the Bible and over a period of 15 to 20 years, he had moved from convention to commitment. As he grew into the church, he always thought the screen a bit odd, as it did not reflect the teaching he was receiving. Mrs Taulbut had been a part of the church since she was 10, but the screen was '*not right*', she had never liked it, it was a quite recent imposition on a very old building, and it blocked off the chancel. Mr Pickles had explained why it should not be there in his teaching. Mr Holmes felt it separated the congregation from the choir and the clergy, although, as I understand it, there is now no choir and the clergy do not position themselves behind the screen. Mr Stanier felt it was time to get rid of an '*us and them way of thinking*'.

48. This aspect of the petitioners' case was found principally in a document prepared by Mr Pickles, headed Appendix 2. In it he says: '*...in considering potential alterations to the building it is vital that we are clear that theological considerations are primary....the formal theological position of the Church of England is still defined by the 39 Articles of Faith (sic). Our desire to remove the screen...is driven firstly by our theological understanding.*' He relies on Articles 7, 11, 15 and 28, which I set out below, and he rejects (as he did in his oral evidence) what English Heritage said at one point: '*The chancel screen is particularly important because of its central position in the church, which helps define the important chancel area*'. This is a '*misunderstanding that we are keen to correct... We do not want to recreate in our architecture anything that may hint of a return to the "holy of holies". It is important to see that this is not merely the "whim" of the present congregation, but rather the orthodox, traditional theological position of the Church of England*'.

49. **Article 7 The Old Testament**

*The Old Testament is not contrary to the New, for both in the Old and New Testament everlasting life is offered to mankind by Christ, who is the only Mediator between God and Man. Wherefore they are not to be heard, which feign that the old Fathers did look only for transitory promises.*

*Although the law given from God by Moses, as touching ceremonies and rites, do not bind Christian men, nor the civil precepts thereof ought of necessity to be received in any commonwealth; yet notwithstanding, no Christian man whatsoever is free from the obedience of the commandments which are called moral.*

Mr Pickles did *not* cite to me the opening paragraph.

**Article 11 Of the Justification of Man**

*We are accounted righteous before God only for the merit of our Lord and saviour Jesus Christ by faith and not for our own works or deservings. Wherefore, that we are justified by faith only is a most wholesome doctrine, and very full of comfort, as more largely is expressed in the Homily of Justification.*

**Article 15 Of Christ alone without Sin**

*Christ in the truth of our nature, was made like unto us in all things, sin only except, from which he was clearly void, both in his flesh and in his spirit. He came to be the lamb without spot, who, by the sacrifice of himself once made, should take away the sins of the world; and sin, as St John saith, was not in him. But all we the rest, although baptized and born again in Christ, yet offend in many things, and if we say we have no sin, we deceive ourselves and the truth is not in us.*

**Article 28 Of the Lord's Supper**

*The Supper of the Lord is not only a sign of the love Christians ought to have among themselves one to another; but rather is a sacrament of our redemption by Christ's death: insomuch that to such as rightly worthily and with faith receive the same, the bread which we break is a partaking of the body of Christ, and likewise the cup of blessing is a partaking of the blood of Christ.*

*Transubstantiation (or the change of the substance of bread and wine) in the supper of the Lord, cannot be proved by Holy Writ, but is repugnant to the plain words of Scripture, overthroweth the nature of a sacrament, and hath given occasion to many superstitions.*

*The body of Christ is given taken and eaten in the supper, only after an heavenly and spiritual manner. And the mean whereby the body of Christ is received and eaten in the supper is faith.*

*The sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up or worshipped.*

50. The argument goes like this:

- ✚ Christian men and women are not bound by the rites and ceremonies of the Mosaic law, but only those parts that are 'moral'.
- ✚ The screen is placed as it is, on an Old Testament understanding of the Temple, i.e. rites and ceremonies that have now passed away.
- ✚ It reflects the view the chancel is more 'holy', because the 'altar' is placed there, upon which the sacrifice of Christ is re-enacted by the priest.
- ✚ The work of Christ upon the cross was a '*sacrifice once made*' by which we are justified by faith.
- ✚ '*Transubstantiation*' is '*repugnant to the plain words of Scripture*'.
- ✚ The Lord's Supper is not 'a re-offering of Christ but the remembrance of Christ's death once for all' – hence the curtain being torn in two when he died.

He refers to the above quoted Articles in support.

51. Mr Pickles relies on the Articles because at his ordination, and on taking up a cure of souls, he is required to make the Declaration of Assent to them. The other witnesses who referred to them do so because they are part of Anglican doctrine, and they accept them as such, although other people may prefer to see them as representing what the Church of England believed in the C16, and they would not necessarily state what the Church of England stands for in C21st in exactly that way now.

#### **Preliminary comments on the theological argument**

52. On any view there are a large number of inter-locking concepts or principles here, but also a good deal is being read into the factual situation. There is a general suggestion that the screen contributes to a faulty and un-Anglican understanding of Holy Communion. The screen is said to reflect Tractarian principles; it is not simply seen as an architect doing what architects habitually do, namely providing and marking off one space from another, (and the two things are, of course, not mutually exclusive). Scott indicated (see para.16 above) that he was seeking an admirable architectural effect, but that, apparently should not be accepted; the screen was introduced for doctrinal reasons.

53. We are asked to assume that the celebrant is 're-enacting' Christ's sacrifice and 're-offering' the same to the Father. I have to say, that many of the clergy who have ministered in this church over the years since the screen was erected, would have been far more knowledgeable about the Articles than the vast majority of today's clergy, (and would have subscribed to those Articles in a stricter sense than today's clergy are required to subscribe). Apparently we cannot assume that they in fact accepted and subscribed the Articles in the same sense as Mr Pickles. There is in my view, nothing in having a screen, which leads to the supposition that 'transubstantiation' is in the mind of any of those clergy when they celebrate. 'Priest' is a Book of Common Prayer word, and the BCP, like the Articles, is foundational for Anglican doctrine. (I accept that 'altar' is not used there as opposed to the word 'table', in connection with the celebration of the Lord's Supper).

54. 'Sacrifice' is a multi-layered concept and far more nuanced in its Christian meaning than the objection allows (see, for instance, Bishop Stephen Platten's recent article *Re-animating sacrifice?* In *Theology* Jan/Feb 2012 at p. 26. The abstract is in these terms: *'The language of sacrifice in relation to the Eucharist has had a controversial history in Christian theology. This article suggests that it remains an important and central concept in the Church's eucharistic rites. It contends that we need to hold in creative tension the concepts of memorial and sacrifice as a way of understanding Anglican thought on this subject.'*)
55. As to something being 'holy', the root idea is of being set apart. Is there anything wrong with the idea the pulpit is set apart for the preaching of the Word, or the lectern for the reading of the Scriptures?
56. Overall, I sense that a particular view or interpretation or perspective is being set up, and created, so it can then be objected to; the objections are not necessarily inherent in what we have before us.

#### **Should I consider these objections at all?**

57. Comments from the amenity societies suggest that such concerns are in effect irrelevant, but I am satisfied it is right that I should consider such reasons. To rule out such points as a matter of principle would be incongruous; it would in effect say that in considering a Christian church, and Christian people's wishes and desires, Christian considerations are not to be included, but only reasons of an architectural or historical nature. If any justification is required for the position I am taking, I would start with the early Christian affirmation '*Jesus is Lord*', which is not to be seen principally as a creedal affirmation that Jesus Christ is part of the Godhead, but rather as an affirmation by the believer that '*Jesus is my Lord*', to whom I give my allegiance, and whose life, words, example and Spirit will rule in *every* aspect of my life, my actions, words and thinking. However far we fall short in our discipleship of living that out, it is nonetheless the basis on which God's people individually *and collectively* are to live. It is impossible therefore to discount at the outset reliance on such reasoning. To do so would in effect declare that Christ is to rule in every part of our lives (except faculty matters).

#### **Use of theological and doctrinal arguments in faculty matters**

58. However, having said that, I have to say that the use of such arguments in a context such as the present, is very rare. I do not recall their deployment before me in over 30 years. I think one has to ignore those cases, mainly in the C19th, which turn largely on interpretation of the rubrics in the Book of Common Prayer and which lead to disputes about candles, aumbries, the mixing of water with the wine at Communion, the elevation of the elements, making the sign of the cross, genuflection and the like, that were not only unedifying and unprofitable, but seem to turn on an understanding of liturgy as dictated by the Act of Uniformity, to which the BCP was annexed. If you like, the arguments of the petitioners are free standing appeals to a more basic part of the Church of England's beliefs.
59. I recall one instance where such points were taken, possibly by the Chancellor himself. Chancellor Garth Moore declined to approve an application for the introduction of a plaque near the font, which might have led to the view Christ was baptised as an infant; unhappily I have not tracked down the name of the case or its reference, so my

recollection may be faulty as to the detail, but that certainly turned on a doctrinal matter.

60. Further over the last 25 years, the Court of Ecclesiastical Causes Reserved, ('CECR') to which appeals lie where a faculty matter involves matters of doctrine, ritual or ceremonial, had occasion to sit only twice, in 1984 and 1986, but did not sit at all from 1963 when it was created, until 1984, nor from 1987 to 2011. (I am indebted for that information to the Dean of Arches' recent article in the ELJ cited above.) Only two such appeals in a little under 50 years must be some indication of how little reliance is placed on such arguments. In the case of *Re St Stephen's Walbrook* 1987 Family 146, Chancellor George Newsom QC was asked to approve the introduction of a solid circular stone altar, by the celebrated sculptor, Henry Moore, which had been first introduced into the church under licence. The Chancellor would have been regarded as one of the two most experienced and learned Chancellors of that period, and was the author of the first edition of the *Faculty Jurisdiction of the Church of England* (Sweet and Maxwell 1988), on which Chancellors relied heavily, as they continued to do with the second edition of 1993 revised by him and completed by his son Mr G.L. Newsom.
61. The Chancellor took the view the petitioners were not entitled to introduce an 'altar' as opposed to a 'table', (a view Mr Pickles would endorse), and that the 'beautiful sculpture' was not a table as defined by the Shorter Oxford English Dictionary. Therefore 'this petition must fail, not as a matter of discretion but of law' (p.154). The CECR took a different view; the 'altar' could be regarded as a table and a Holy Table, and a faculty could and should be granted, incidentally (and surprisingly) over-turning the Chancellor's adverse conclusions on aesthetic and architectural considerations. That certainly, qualifies as a decision on doctrinal grounds, not simply etymological.
62. Doctrinal issues, on a broad view, have also been invoked in relation to exhumation and the Church of England's understanding of the nature of burial, although the Court of Arches expressly declared that exhumation cases do not 'involve a question of doctrine, ritual or ceremonial' (*Re Blagdon Cemetery* 2002 Family 299 at para. 22). The court explained that the basis of the 'general presumption of permanence arising from the act of interment' lay in the Christian theology of burial (paras. 20-21) so that special circumstances had to be shown before a petition for exhumation could be allowed. However the factual situation in such a case is obviously so far removed from the present, that it is difficult to derive any help from such applications.
63. In the past, proposed inscriptions on memorials sometimes gave rise to controversy in that they included requests for prayer for the deceased in such terms as to imply the doctrine of purgatory condemned by Article 22 of the 39 Articles of Religion. A particular memorial was refused on that ground in *Dupuis -v- Parishioners of Ogbourne St George* 1941 P. 119, but Chancellor Ellison held in *Re Parish of South Creake* 1959 1 Weekly Law Reports 427, in an exhaustive judgment, that the custom of the church since at least the days of St Ambrose, was to pray for the souls of the departed, and this does not necessarily import the forbidden doctrine. Here at least we have reliance placed on one of the Articles.
64. However, one clear distinction between any of these instances which may otherwise be considered of relevance, is that here, doctrinal arguments are deployed to justify removal of an item, which must originally have been introduced under faculty, and not its initial introduction into the church.

**What place do the Articles of Religion have within the Church of England?**

65. The safest and most obvious place to start is by a consideration of the Canons (a new and revised 7<sup>th</sup> edition being due for publication by CHP at this very time.) The Canons themselves were revised after World War 11 in the light of the *Report of 1947*, of the Archbishops' Commission on Canon Law, that had been set up in 1939. The revision was also a lengthy process, and the Revised Canons Ecclesiastical now in force are those of 1964 and 1969, as subsequently added to and amended. They are 'binding on the clergy in ecclesiastical matters. As regards their application to the laity in general, it is still the position that the Canons are not of their own force binding upon them, but they may, it seems, form the basis of legal obligation in the case of lay persons who have accepted office in the Church' (Halsbury's Laws of England Volume 34 Ecclesiastical Law para.10).
66. **Canon A2** states: *the Thirty-nine Articles are agreeable to the Word of God and may be assented unto with a good conscience by all members of the Church of England.*

**Canons A3 and A4** refer to the Book of Common Prayer and the Ordinal.

**Canon A5** states: *The doctrine of the Church of England is grounded in the Holy Scriptures, and in such teachings of the ancient Fathers and Councils of the Church as are agreeable to the said Scriptures.*

*In particular such doctrine is to be found in the Thirty-nine Articles of Religion, The Book of Common Prayer, and the Ordinal.*

**Canon C15** sets out the Declaration of Assent, which is to be made by anyone to be ordained deacon or priest, or instituted to a living or licensed as a curate, or consecrated as a bishop. The Declaration is made in response to the Preface, which is generally spoken by the archbishop or bishop.

***Preface***

*The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-nine Articles of Religion, The Book of Common Prayer and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make will you affirm your loyalty to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making him known to those in your care?*

***Declaration of Assent***

*I, A B, do so affirm, and accordingly declare my belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness; and in public prayer and administration of the sacraments, I will use only the forms of service which are authorized or allowed by Canon.*

(The declaration is not generally required of lay people, save Readers, Deaconesses, Chancellors and Registrars, although the latter do not make that part of the declaration after the word 'witness').

67.

I have no doubt that in making the above Declaration, on taking up his present cure of souls, Mr Pickles did so with the utmost seriousness, and without any of those qualifications or caveats that others would conscientiously wish to make, based mainly perhaps on a sense that the Articles reflect an earlier age rather than what the Church of England believes today.

## Conclusions

68. There are three aspects of this line of argument that strike me.

First, as noted, Mr Pickles did not refer me to the opening paragraph of Article 7, which begins: *'The Old Testament is not contrary to the New...'* That, surely, is the controlling principle, and the second paragraph sets out an exception to it, in relation to rites and ceremonies under the Mosaic law. That principle is not addressed in his written submission. The use of the Old Testament in the New is a subject on which many books have been written: it is not only a question of the use of direct quotation but allusion and perspective – see, for example, *Commentary on the New Testament Use of the Old Testament* edited by Professors Beale and Carson (Apollos 2008), or *The Old Testament in the New* by Steve Moyise (T & T Clark 2004). Professor Bray (see my First Appendix, at p. 50 of his work cited there) says: *'How the church should make use of the Hebrew Bible is a question around which the entire history of Christianity can be written. The New Testament is essentially a commentary on the Old, insisting that the promises of law and the prophets had been fulfilled in Jesus Christ. This claim made Christianity a different religion from Judaism, even though they both used the same Scriptures, and it obliged the church to adopt an interpretation of them which would justify the claims made for Christ'*. I do not think Mr Pickles's argument deals with the continuities between the Old and New Testaments, but rather he chooses to drive a wedge between the two. If he is going to appeal to Article 7, then he must take the whole Article, and that course is forbidden.

67. Second, the idea that somehow the architectural layout of this church teaches, or at least indicates, that God is located at the altar at the east end of the building, (which is therefore specially holy), and that this runs counter to what Mr Pickles believes and seeks to teach the congregation, is, as a proposition, clearly undermined not only by what I assume he preaches, but by his practice. He certainly does not celebrate the Lord's Supper (only) at that place. By using the movable table on the dais, he demonstrates clearly by his actions that the sacrament is not to be regarded as located in a 'holy of holies'. The screen ceases to be a barrier to anyone wishing to enter a special place, but is simply a backdrop to the Eucharistic action.
68. Third, it seems to me the submission rests on too narrow a view of the Anglican doctrine of the Lord's Supper, and I go back to the decision in *Re St Stephen's Walbrook* 1987 3 WLR 726, referred to above (the Henry Moore altar case), before the Court of Ecclesiastical Causes Reserved. The court consisted of five members, namely Dr Eric Kemp, (the Bishop of Chichester), the Bishop of Rochester, Bishop Kenneth Woollcombe, (the former Bishop of Oxford) and two Court of Appeal judges, Sir Anthony Lloyd and Sir Ralph Gibson. They and Dr Kemp each gave a reasoned judgment, and the other two agreed. I refer in particular to what Dr Kemp said in the first judgment delivered. Although he is obviously a Bishop, his judgment was given as a member of a court constituted in order to bring theological learning to bear on the points at issue – that is why three bishops were included in its membership – and it is a court whose decisions are binding on me. Further, Dr Kemp was recognised as the leading canon lawyer on the episcopal bench, and was the first President of the Ecclesiastical Law Society.
69. At page 729G of the report, the Bishop set out the issues on the appeal: *'The first concerns the question of what constitutes a Holy Table and involves a consideration of whether the Eucharist or the Lord's Supper is in any sense a sacrifice'*. He referred to the Holy Table Measure 1964 (subsequently repealed) and Canon F2, and found that the *'convenient and decent table'* required to be provided by the Canon in every church for the celebration of Holy Communion, could be of stone and need not be movable. The Moore sculpture fell within what could reasonably be called a Holy Table.



70. At page 731E he criticised Chancellor Newsom QC's view that 'to call the Holy Table an altar means that it is a place of sacrifice, and to speak of sacrifice in relation to the Eucharist means "a repetition at every Mass of the sacrifice of our Lord at Calvary". But no Anglican theologian of whatever churchmanship would maintain that the celebration of the Eucharist is a repetition of the sacrifice of Calvary and it is highly improbable that any Roman Catholic would do so either'. He quoted Bishop Gardiner of Winchester, defending the traditional faith against Cranmer, who wrote: 'The oblation and sacrifice of our Saviour Christ was, and is, a perfect work, once consummate in perfection without necessity of reiteration....'
71. He next referred to the BCP Communion Office and the prayers after the distribution of Holy Communion. which spoke of 'this our sacrifice of praise and thanksgiving'. He next referred to the important response of the Archbishops in 1897 to the condemnation of Anglican Orders by Pope Leo XIII, when they expounded that rite, and in particular the prayer just quoted, as follows : 'we think it sufficient in the Liturgy which we use in celebrating the holy Eucharist, - while lifting up our hearts to the Lord, and when now consecrating the gifts already offered that they may become to us the Body and Blood of our Lord Jesus Christ, - to signify the sacrifice which is offered at that point of the service in such terms as these. We continue a perpetual memory of the precious death of Christ, who is our Advocate with the Father and the propitiation for our sins, according to His precept, until His coming again. For first we offer the sacrifice of praise and thanksgiving; then next we plead and represent before the Father the sacrifice of the cross, and by it we confidently entreat remission of sins and all other benefits of the Lord's Passion for all the whole Church; and lastly we offer the sacrifice of ourselves to the Creator of all things which we have already signified by the oblation of His creatures. This whole action, in which the people has necessarily to take its part with the Priest, we are accustomed to call the Eucharistic sacrifice'. This passage uses 'sacrifice' of three different aspects of what is contained in, or signified by, the Holy Communion.
72. Having referred to other authorities, he went on at page 732E to state: '*It is clear, in my view, that a doctrine of the Eucharistic sacrifice which is not that of a repetition of the sacrifice of Calvary can lawfully be held in the Church of England and consequently that the Holy Table can lawfully and properly be called an altar*' (my emphasis.)The two judges did not refer to the question of 'sacrifice' in their judgments.
73. I said that Mr Pickles's submission rested on too narrow a view of the Anglican doctrine of the Lord's Supper. I do not doubt the views Mr Pickles put forward are within the wide spectrum of Anglican teaching on the subject, but they are not the sole or only views that can properly be held. They are certainly too narrow for me to treat them as definitive such as to justify removal of the screen. Further, Bishop Kemp's judgment is binding on me as a matter of law, and I cannot go behind it even if I were otherwise minded to do so - which I am not.

### **Result**

74. Having considered Mr Pickles's points, and reached the three conclusions above, together with the preliminary observations I made, I am not persuaded that I should find the screen is contrary to Anglican teaching and should therefore be moved. On this ground also, this part of the main petition is dismissed.

### **After the hearing**

75. As described above, on 3 January I informed the Registrar of my decision (see the Second Appendix to the judgment) and this was relayed to the petitioners. I have

subsequently had three contacts with them: a letter from Mr Jeffery, a letter dated from Mrs Walker dated 11 January and on 20 February, Mr Jeffery spoke to me by telephone, accepting that his contact was 'irregular'. In the first letter, Mr Jeffery said he thought, and much regretted, treating the hearing too casually, and not calling Mrs Walker. Mrs Walker said the PCC was 'shell-shocked' by my decision and regretted the petitioners had not been advised to call herself as a witness, as the architect. She set out a number of reasons why, in her view, the removal of the screen should have been allowed. I can only say that I did not consider the petitioners were treating their application in a casual fashion; indeed, they were strongly committed to moving the screen and articulate about it. Mrs Walker's main reasons are matters that were well understood by me, although her comments about bats in the chancel, come as something new. I do not believe I lacked a 'complete' picture. The petitioners had a full opportunity to put their case to me, and I probed their evidence so that I felt that they had fully deployed their arguments to me. The comments and strongly expressed views of the amenity societies and EH are not to be ignored (nor indeed accepted at face value), even if the DAC is supportive. Everything has to be weighed up.

76. In the final contact Mr Jeffery told me that the contractors were now nearing the end of their work, and that, if there were any possibility of my changing my decision, it would be helpful to know so that the workmen could re-locate the screen before leaving site. He stressed that the change would be reversible, and wondered if the DAC might be requested to review the decision in say 12 months time. He regretted again that perhaps the petitioners and he had approached the whole matter too lightly, having 'persuaded' the DAC and CBC, and that, having formed the view that was the difficult part, that there was a hearing simply to dot the 'i's' and cross the 't's'. It seemed as if the VS who had not visited the church, had the controlling voice, which came down essentially to one person's decision (i.e. Mr Harris's). I told him that I did not intend to vary my decision, and I would try to finalise the judgment shortly, and would address his concerns in it.
77. It is plain, and understandable that the petitioners are disappointed by my decision, but it is *my* decision, having weighed up the arguments put to me. No one else has the decisive voice. My responsibility, apart from seeing that the formalities are complied with, is to assess the evidence and resolve the point at issue within the proper legal framework, which I have described at length in the preceding paragraphs. The opposition came not only from VS, but also, in strong terms, from EH and SPAB. It was not limited to comments from Mr Harris on behalf of VS.
78. If the petitioners are contemplating an appeal against my decision, they should refer to the *Faculty Jurisdiction (Appeals) Rules 1998*; there are short time limits for an appeal and they need certificates from me.

### **Closing Comments**

79. None of what follows is to be taken as comment about or criticism of the individuals in this case or the arguments advanced, but is rather a brief reflection on the use of theological or doctrinal argument in faculty matters.
80. a) In principle, arguments based on theological or doctrinal grounds are deployable in faculty matters, either by petitioners or objectors.  
b) However their usefulness diminishes where they are not clearly focussed, or their practical outworking within the context of the particular case, is not clear, or where the conclusions aimed at are debatable (in that many other thoughtful, well-informed and theologically literate Anglicans would not accept them without serious qualification).

- c) Their use is not to be encouraged; they are likely to lengthen correspondence, and the process of consultation where it is required by the Faculty Jurisdiction Rules 2000, and lead to longer hearings and judgments. Chancellors should be robust in using their case management powers to rule out the use of such arguments unless persuaded that they may have an important effect on the outcome of the case.
- d) Faculty matters generally centre on questions of fact, and the resolution of issues about the effect of proposed changes on the appearance or architectural or historic interest of a building, and an assessment of the need for such changes, together with judicial judgment in weighing those (competing) factors; theological or doctrinal issues are unlikely to throw light on those disputes.
- e) Chancellors are trained in the law, and experienced in resolving legal disputes; few are experts in theology. To require the parties to provide expert evidence on theological or doctrinal issues raised by them, or thrown up by the circumstances under consideration, is likely to be difficult and expensive, and lead to delay and unnecessary complication. Opinions on such issues are not all of equal weight or value, and Chancellors are unlikely to be assisted by generalised submissions by those untrained in theological argument.
- f) The Articles form part of the doctrinal basis of Anglicanism. However their application to the issues arising in a faculty matter is likely to be controversial and disputable, and reliance on them may generate more heat than light.

**Order in accordance with letter of 3 January.**

John W. Bullimore  
Chancellor  
2 March 2012

### **First Appendix Note on Subscription**

The present form of the Preface and Declaration came into force on 1 September 1975.

The Articles reached their final form in 1571. Subscription was first generally required in 1604. In translation the form eventually became: *'I... do willingly and from my heart subscribe to the 39 Articles of the United Church of England and Ireland...and to all things therein contained'*.

In 1865, as the result of a Royal Commission, Convocation obtained leave from the Crown to revise the Canons, and a simpler declaration of Assent was drawn up by the Convocations and confirmed by royal letters patent. Section 1 of the Clerical Subscription Act, replaced the previous wording with: *'I...do solemnly make the following declaration: I assent to the 39 Articles of Religion, and to the BCP and of the ordering of bishops, priests and deacons. I believe the doctrine of the...Church of England...as therein set forth, to be agreeable to the Word of God...'*

At the time, it was thought by some, including speakers in the parliamentary debates, that the replacement of *'willingly and from the heart'* with *'assent'*, somehow made the assent required only general, but in law it can be argued that *'assent'* must mean

'complete legal acceptance.' Presumably 'assent' must mean something different from the original phrase, otherwise there was no point in replacing it. The following authority plainly thought so.

Professor E.J. Bicknell's *Introduction to the Thirty-nine Articles* was first published in 1919, with a third edition in 1955, revised by the Bishop of Oxford 'to make the book more useful to those embarking on theological study in the middle of the C20th' (p vi), (which is in itself a sobering thought!). Bicknell says at p 21: 'The change of language in the form of subscription was deliberate. We are asked to affirm today, not that the Articles are all agreeable to the Word of God, but that the doctrine of the Church of England as set forth in the Articles is agreeable to the Word of God. That is, we are not called to assent to every phrase or detail of the Articles but only to their general sense. This alteration was made of set purpose to afford relief to scrupulous consciences.'

However 1865 did not mark the end of the process of revision. By the late 1960's, there was growing anxiety within the Church about the requirement of assent to the 39 Articles. The practice was attacked by the Dean of St Paul's, Dr W.R. Matthews, in his *The Thirty-nine Articles: A plea for a new Statement of Faith* (Hodder and Stoughton, 1961), and by David L. Edwards in *The Modern Churchman* in January 1967, but defended by others, including D.B.Knox in his *Thirty-nine Articles: the Historic Basis of Anglican Faith* (Hodder and Stoughton 1967). A variety of approaches was shown even among those who might be reckoned to be of 'one school' of thought. For instance, the four lectures to the Conference of the Evangelical Fellowship of Theological Literature held at Wycliffe Hall, Oxford in July 1963, by Canon John de Satge, Dr Jim Packer, Canon H.G.G. Herklots and Professor Geoffrey Lampe, which were subsequently published by Mowbrays in 1964, with a foreword by Canon H.E.W. Turner, as *The Articles of the Church of England*, showed significant differences of view.

The Archbishops' Commission on Christian Doctrine was set up in 1967, and its first task was 'to consider the place of the Thirty-nine Articles in the Anglican tradition and the question of Subscription and Assent to them'. It reported in July 1968, in time for the Lambeth Conference. There is no indication of dissent among the members, which included Dr Packer and Canon Turner among a membership reflecting the whole spectrum of Anglican belief. Chapter 4 set out evidence of 'two diverging tendencies in contemporary Anglican thinking: one was to express growing dissatisfaction and disquiet at the present requirements; the other is to regard attacks on the Articles and subscription as part of a general erosion of doctrine within the Church of England which endangers the locus standi of certain groups within the Church' (para. 51). This latter comment is undoubtedly a reference to those on the Evangelical wing.

The Commission (at para. 89) considered that a new formula of assent must satisfy certain criteria if it was to win wide acceptance:

- a) it must recognise that the Articles are an historic document and should be interpreted only within their historical context
- b) it must leave room for an appeal to the Articles as a norm within Anglican theology
- c) it must not tie down the person using it to acceptance of every one of the Articles of 1571
- d) it must preserve the comprehensiveness characteristic of the Church of England
- e) it must not put the Articles in isolation, but must acknowledge that Bible, Creeds, Prayer Book, Ordinal and the developing consensus of Anglican thought also have their own contribution to make to the doctrine of the Church of England. It must also indicate that these possess different degrees of authority
- f) it must not only declare in what ways the Church of England is distinctive, but must indicate the doctrines she shares with all Christians

- g) the possibility of fresh understandings of Christian truth must be explicitly left open.

In the light of these considerations, which in my view gave something to everyone of whatever position on the spectrum of belief about the value and status of the Articles as expressions of Anglican doctrine in the C20, the Commission proposed a Preface and Form of Assent, which are set out in paragraph 97 of the Report. The final form eventually approved by the General Synod in February 1975, which appears in full in the judgment above, is not very far from the Commission's draft, although doubtless all the changes were seen as of (vital) importance by those who proposed them. The story of events between publication of the Report and the final adoption of the present Preface and Declaration is set out in an article by Mr Colin Podmore, entitled *'The Church Of England's Declaration Of Assent'* 5 Ecc L J 241 (July 1999).

It would be impertinent for me to criticise a Declaration which I have myself made, but the central ideas are of *'a faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds'*, and that the historic formularies of the Church of England, including the Articles, *'bear witness'* to this faith. The declaration is an *'affirmation of loyalty to this inheritance of faith'*. The faith is located *within* the Scriptures, and the Articles bear witness to that faith, but where exactly the limits of that faith may be, are not closely defined. It seems to me inescapable that there has been some further loosening of what the Declaration in fact requires of those who make it, or what exactly they are binding themselves to, but I am not a trained theologian.

I therefore quote two passages from *The Faith We Confess* by Professor Gerald Bray of Beeson Divinity School, Birmingham, Alabama, published by The Latimer Trust 2009, in which he considers the Articles one by one. Professor Bray's general theological position is reflected in his editorship of the conservative evangelical quarterly journal *Churchman* published by Church Society.

His view of their importance is reflected at p 2, where he says: *'The Articles...have not been revised or supplemented but if anything they have suffered an even more drastic fate – they have been sidelined or ignored instead! It is true that official church statements continue to make occasional references to them, but these are for the sake of form more than anything else. Few people, even among the clergy, have ever read them properly and almost nobody who is now active in church life has ever studied them seriously.....that does not mean they can simply be ignored by modern Anglicans. What they say remains of key importance to us, and in the current identity crisis that we face as a worldwide Communion, the Thirty-nine Articles of Religion give us a clear picture of the framework within which we are called to operate.'*

As to the effect of the present Preface and Declaration, he says this at page 223: *'By this form of words the Church of England has been able to satisfy those who still uphold the authority and integrity of the Thirty-nine Articles, whatever that means (not to mention the other sources of doctrine and worship listed in the Preface) without allowing them to hold other members of the church accountable for their failure to do the same. For example, the revised oath allows the person taking it to dissent from the view that the Bible is the written Word of God; all that is necessary is to believe the 'faith which is revealed' in it, whatever that means...'*

*'A little later he says: 'In this context affirming that the 'historic formularies of the Church of England bear witness' to the faith revealed in the Holy Scriptures is not as weak as it may sound at first sight (sic). We know exactly what the formularies are and according to the declaration, we are also expected to affirm that they really do reflect Biblical revelation, though in what way or to what extent is unclear....'*

*For the time being, assent to the Articles of Religion.....must rely on the conscience of the person making the affirmation'.*

His support for the Articles playing a more central role in the life of the Church of England is plain, and Professor Bray appears to regret the amount of what is now known as 'wriggle room', by anyone making the Declaration of Assent.

## **Second Appendix**

### **Chancellor's letter to the Registrar**

3<sup>rd</sup> January 2012

Dear Mrs Waldron

#### **St Alkmund Duffield**

As you will recall, at the hearing on 21<sup>st</sup> December, I reserved my decision so I could put my reasons into writing. I find that I am facing several matters with deadlines, and I will need more time than I anticipated to finalise my judgment.

However it was made clear at the hearing that the parish were having contractors in in January to begin the lighting work, and, I think, the removal of the back pews, which have both been authorised already under separate petitions. The parish wanted to carry out any further work under the two current petitions at the same time, if possible, (for obvious reasons), and were therefore anxious to have my decision as soon as possible. Although my judgment is not finalised, I have nonetheless come to a decision, and it seems to me the parish ought to have that now, so they have some time to decide what they want their contractors to do.

In the result,

#### **First petition**

##### **I refuse permission for:**

Removal of the chancel screen (and its location in the arch of the Bradshaw Chapel).

##### **I grant permission for:**

Removal of the platform within (and extending from) the Chapel, and removal of the south-facing pews and disposal thereof, if the parish wish to continue with that aspect of their proposals;

Modification of the dais and repositioning of the organ;

Removal of the pew platform at the front of the south aisle;

Making good as required;

Introduction of chairs for the area in the south aisle, subject to the approval of the DAC as to the design thereof;

All in accordance with the drawings numbered T62-22A and 23 submitted with the petition.

Permission to the petitioners to carry out any authorised works before issue of the formal petition.

#### **Second petition**

Decision adjourned generally;

Permission, if so desired, to submit amended plans for the audio-visual equipment to be introduced, following refusal of the proposed removal of the chancel screen, but without payment of the normal fees for a petition.

**Costs of the hearing on 21<sup>st</sup> December (limited to the Registrar's fees) and possibly an enhanced correspondence fee in respect of both petitions,** to be paid by the petitioners.

\*\*\*\*\*

I appreciate for the petitioners that the lack of a full judgment is frustrating, and I will provide it as soon as I can, but it is important for their planning, and instructions to their contractors, that they know the essence of the decision I have reached.

Yours truly,

John W. Bullimore