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IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of Harbury : All Saints

Faculty Reference 2020-057033

JUDGMENT

1. The church of All Saints in Harbury, Warwickshire, has 13th century origins. The tower is late 13th century with an upper part possibly around 1811. The church was extensively restored and extended in 1873. It consists of a nave, a two-bay chancel, a five bay aisle and south-west tower with choir robing chamber beneath. Adjacent to the Church and accessed through the North door is the Tom Hauley Room, used for numerous community activities. The Church has a Grade II listing.

2. By a petition dated 10th May 2022 the priest-in-charge for the benefices of Harbury, Ladbroke and Ufton (Revd Andy Batchelor), a churchwarden for All Saints (Michael Vincent) and the Chair of the Harbury Fabric Committee (Philip Mayer) seek a faculty for (1) installation of audio visual equipment, (2) upgrade to lighting within the Church building, and (3) upgrade to heating for the Church and the adjoining Tom Hauley Room. The Church community is committed to exploring sustainable and environmentally friendly solutions and has already been adjudged worthy of a Bronze award as an Eco-Church under the A Rocha scheme. The 'green' aspect of the proposals has clearly been a primary consideration in planning the proposed works.

The Extent of the Proposed Works.

3. The installation of the audio visual equipment and the up-grade to lighting in the Church building are not contentious and those parts of the faculty will be granted with only limited conditions attached. It is the heating proposal that has caused disquiet, both in concerns expressed by email from The Victorian Society and scepticism as to how effective the scheme will eventually prove, as expressed by heating advisors from the Coventry Diocesan Advisory Committee. The background is that these proposals seem to have arisen from the irreparable breakdown of the old gas-fired boiler in late 2019 at a time when the Parish was considering the need for stonework repairs, highlighted in a quinquennial inspection report, and when some of the electrical system was

urgently replaced. This led to a fundraising effort, launched in June 2020, to pay for what became known as the Heat, Light & Stone Project. (I should state that I was impressed by how the Church utilised its website and other forums to keep the local community and other interested parties updated on developments in fundraising and the project details)

4. **Audio Visual Proposal**

Following the urgent replacement of some 'dangerous' electrical installations and wiring the Parochial Church Council determined there was a need to re-wire the whole Church at the same time as providing audio-visual facilities that would afford a more flexible use, not just in worship but for other activities in the benefice. The proposed audio-visual installation includes :-

- replacing the temporary manually lowered projector screen with a power controlled 3.5m screen,
- installing a laser source 6500 lumens projector,
- installing a fixed camera,
- the addition of 2 portable LED screens around the church,
- enhancing the current sound system with the addition of 2 side aisle speakers,
- bringing an internet connection into the church.

5. **Lighting Proposal**

The current lighting within the church is reliant upon fluorescent tube fittings. A 'greener' alternative was inevitably to be considered to replace these now obsolete fittings. Following advice from the Chartered Institute of Building Services Engineers (as regards recommended lighting levels), and from a number of lighting specialists, the Parochial Church Council has proposed a LED solution to provide the flexibility and optimum efficiency with minimal impact on the immediate look of the architecture of the church. The proposal includes a mixture of both high level illumination and adjustable 'mood' or 'feature' lighting. A Diocesan Advisory Committee lighting advisor was involved in consultations as to the most appropriate installations. The proposal would also include replacement of fluorescent lighting in the Tom Hauley room with LED batons.

6. **Heating Proposal**

The boiler that stopped working in December 2019 was over forty years old and is connected to a heating system dating back to the 1860s, using iron water-filled pipework that has apparently developed numerous leaks. The Parochial Church Council consulted with the Church Buildings Council, which led to a detailed consideration of needs and aims. The ultimate aim was found

to be a system that was adjustable to provide comfortable temperatures at services for the increasingly aging congregation, with as short a pre-heat time as possible, but also keeping a minimum core temperature sufficient to avoid condensation, and - of course - providing for a reduced fuel usage. Without going into too much detail, the benefice had effectively addressed the 5Ws of the heating options appraisal in the document called 'Church Heating' issued by Churchcare on behalf of Archbishops' Council in February 2021 (Who are you heating? What type of event? When are you heating them (when and for how long)? Where are you heating them (which part of the building)? Which parts of the building fabric, interiors, or objects need special care?) [see https://www.churchofengland.org/resources/churchcare/advice-and-guidance-churchbuildings/heating].

7. Numerous heating options were considered, including radiant heating, gas fired water-filled radiators, under floor heating and electric fans. However, electric fans were discounted from both aesthetic grounds and expensive running costs. No form of underfloor heating was considered cost effective given the foreseeable usage pattern of the main building, which also has a block wood flooring. Such systems were also considered very likely to cause considerable disruption through necessary re-configuring of the church furniture, including the Victorian pews. The Parochial Church Council did consider space heating using convector/fan coil heating radiators on the side aisle walls and alternatively ceiling mounted hot water radiant panel heating. Gas or electric fan coil radiators providing warm air heating on the outside walls were thought likely to have a major negative visual impact and would necessitate significant modification to the pews and the configuration of the church. Such heaters were also thought to be noisy and, being at ground level, would be immediately noticeable to visitors to the church. This all led the Parochial Church Council to decide that the main options were electric or water filled radiators mounted on the outer walls and/or roof mounted electric or low temperature water radiant panel heating.

8. The initial proposal for installation of the radiant panel heating system was reviewed by a former heating advisor to the Coventry Diocesan Advisory Committee, who prepared a critique on the proposal (which document I have not seen, presumably because it referred to an earlier draft scheme). The Victorian Society similarly expressed concern that the angled siting of radiant panels would obscure and detract from views of the roofing structure to the chancel and nave. The Victorian Society recommended that the Church Buildings Council be consulted, which may have led to the input from Church

Buildings Council mentioned in the Statement of Needs (and above). Subsequently the project team has met and received further advice from two current advisors from the Diocesan Advisory Committee, which has led to the amendment of the scheme in a way the Parish representatives hoped had addressed the concerns specifically raised by The Victorian Society. A revised scheme arose from consultation with the Diocesan Advisory Committee advisors, dated May 2022. That is the scheme I must consider.

9. The May 2022 heating scheme comprises radiant ceiling panels, adapted to modify the heat output to c80% radiant and c20% convection heating. It is hoped that these panels (mounted high in the roofing structure and parallel to the floor, coloured so as to blend in with the background) would provide 'line of sight' radiant heat to the users of the Church building. These radiant panels would need gas boilers, but the Church and, in fact, the local community have shown a considerable commitment to 'green' energy. 'Green' gas supplies will be implemented as soon as possible and the scheme would use hydrogen-compatible boilers with adapted supply infrastructure to permit the change to 'green gas' then hydrogen to run smoothly and without much further amendment. The Parish ultimately accepted advice that proposals for utilising an air source heat pump in the Tom Hauley Room would be inefficient and expensive, given the heating requirements and usage patterns of the space, which could also be catered for with the proposed hydrogen-prepared boilers.

Representations.

10 At their meeting on 9th December 2021 the members of the Diocesan Advisory Committee considered the November 2021 scheme and issued a certificate of No Objection. It was stated that the Committee members principal reasons for approval or not objecting to the works or proposals being approved were that "*it was originally proposed to fix the radiant panels lower and at an angle of 45 degrees. The Committee objected to this and, after some discussion between our advisers and the parish, it was decided that moving the panels up and angling them flat would be acceptable and not harmful to the significance of the building*". Since then, of course, the scheme has been modified further, at suggestion of the Diocesan Advisory Committee heating advisors. Explanation of the recommendation was given to the members of Diocesan Advisory Committee in a report by one of the heating advisors :

"*To our knowledge, this is the first installation of low temperature hot water radiant panel heating in a church. For the reasons set out in this paper, the DAC is concerned that the system will not meet the needs and expectations of the parish and is not therefore able to recommend its adoption.*

However, since there are no known examples to refer to, it is acknowledged that an experimental demonstration of the technology will be informative. The parish appears keen to proceed with this experiment and has the funding available to make it a reality. Therefore, the DAC has taken the view that it will not object to the plans."

The Parish representatives have actually given details of eight other churches utilising radiant heating systems and carried out a site visit, together with two heating advisors from Diocesan Advisory Committee, at St Mary, Chalgrove, in Oxfordshire.

11. The comments from The Victorian Society on the earlier scheme were stated to be concerns, not an objection. Even though a copy of the Public Notice was sent to The Victorian Society, with no response, I directed that special notice be given to that particular amenity society. No response was received within the prescribed period. The original comments from The Victorian Society focussed on the visible impact of the originally proposed angled radiant heating panels, set at the lower end of the roofing beams. The comments provided included the following '*Our view is that this [scheme] could only ever be acceptable as a last resort, and having convincingly ruled out less assertive and [less] damaging alternative systems*'. Since then, of course, the scheme has been amended at recommendation of the Diocesan Advisory Committee heating advisors to have the panels at a higher level, parallel to the floor and coloured so as to blend in with the background. It was the expressed view of members of the Diocesan Advisory Committee that "*moving the panels up and angling them flat would be acceptable and not harmful to the significance of the building*."

12. The public notice was duly displayed from 10th May 2022 to 9th June 2022 (inclusive) on a notice board inside the church and outside the church on a notice board where it could be read by the public. There has been no response to the public notice.

The Relevant Legal Principles.

13. The proposed heating works will lead to an alteration in the appearance of a listed church although whether this will have an impact on its character as a building of special architectural and historic interest is not agreed. The Victorian Society asserted that the originally proposed scheme would have such an impact, the Members of Coventry Diocesan Advisory Committee concluded that the revised scheme would not. Therefore, in respect of each aspect of the proposed works and overall I must ask myself a series of

questions derived from ***In re St Alkmund, Duffield [2013] Fam 158 (Arches Ct)*** The questions to be asked in such circumstances (see paragraph 87 of the reported judgment) are as follows:-

> (1) Would the proposals if implemented result in harm to the significance of the church as a building of special architectural or historic interest?
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> (2) If the answer to question (1) is not, 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.
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> (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?
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> (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listing building, will any resulting public benefit (including matters such as liturgical freedom, pastoral mission, opportunities for mission, and putting the church to viable uses that are consistent with its rôle as a place of worship and mission) outweigh the harm?
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> 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 be particularly the case if the harm is to a building which is listed Grade I or II* where serious harm should only exceptionally be allowed.

14. The *Duffield* questions have subsequently been considered on an appeal in the case of ***Re St.John the Baptist, Penshurst (2015) 17 Ecc LJ 393 Court of Arches)*** where some guidance in how to interpret the *Duffield* questions was given at paragraph 22:

> (a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church … noting that there had been a material error in failing to identify what was the special character and historic interest of the church as a whole … and then to consider whether there would be an overall adverse effect by reason of the proposed change.
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> (b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned.

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of 'need or necessity'…. it is not confined to needs strictly so-called.
(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.

15. The specific Architectural and/or historic significance of the Church is perhaps best considered by looking to the information given in the description of the listing for the building :-
Church. C13. Tower later C13, with top part possibly 1811. Restored and enlarged 1873: nave largely rebuilt, south aisle widened, north aisle and organ chamber/vestry added. Chancel, south aisle and tower of squared coursed limestone rubble. Chancel has some sandstone and sandstone dressings. South aisle has ironstone dressings. Upper part of tower of Flemish bond brick. Nave, north aisle and chapel of regular coursed limestone with ironstone dressings. Tile roofs have coped stone gable parapets with weathering and kneelers and remains of cross finials. Stone stack. Aisled nave, chancel, north chapel and south-west tower. 2-bay chancel, 5-bay nave. Buttresses of 2 offsets throughout. Chancel has splayed plinth. Diagonal buttresses. C19 geometrical and bar tracery and hood moulds with block stops throughout. 3-light east window. Small studded plank south door in chamfered surround. 2 straight-headed 2-light traceried windows. Small C13 low-side chamfered lancet. C13 north lancet. South aisle has diagonal and south buttresses. 3-light east window. C19 Early English style double-leaf south door in angle abutting tower has inner continuous roll moulding and roll moulded arch on nook shafts. Two 3-light windows. Nave has shallow south-west and large north-west buttress. 4-light west window. Organ chamber/vestry has 3-light east window. Chamfered north doorway. Lateral stack with offsets. North aisle has east angle, west diagonal and north buttresses. Doorway in fourth bay, similar to south side, has moulded arch with nail head. 3-light windows; second bay has reticulated tracery. 3-light west window. Tower of 3 stages has massive west setback buttresses of 4 offsets. South buttress has painted sundial. South east clasping buttress. South and west lancets. Second stage, partly of 1811, has south clock face of c.1835 set in lozenge panel. Small round-arched window, largely of brick, above. Small blocked west window. Moulded string course. Third stage has clasping buttresses. Small round-arched bell openings with wooden louvres and cut-out quatrefoils. Plain cornice. Crenelated parapet.

Interior: chancel has C19 hammer-beam roof. Wide segmental-pointed arch of 2 chamfered orders to organ chamber and vestry. Wide chancel arch of 2 continuous chamfered orders. 3-bay south arcade of c.1300, of 2 chamfered orders with bar stops, and octagonal piers with moulded capitals. Similar 5-bay north arcade of 1873. Wide south tower arch of 3 chamfered orders, the outer segmental-pointed and the inner with moulded imposts. Nave, aisles and chapel have arched braced queen strut roofs of 1873, with wind braces to nave. Organ chamber has arch to aisle of 2 chamfered orders, the outer segmental pointed. South aisle has timber internal porch. Renewed west arch to tower of 3 chamfered orders, the inner with moulded imposts, the outer segmental pointed. Fittings: mostly of c.1873. Carved stone reredos. Chancel has encaustic tiled floor. Octagonal font. Timber octagonal pulpit, north aisle screen and benches. Chancel and south aisle have mid C18 communion rails with column-on-vase balusters, those in aisle possibly imported from elsewhere. Early C17 carved chest. Stained glass: east and chancel north windows c.1873. Chancel south east 1890, centre 1899, south-west 1897. Tower south c.1873. Monuments: tower east: early C18. Wall monument with Corinthian pilasters. The work carried out in 1873 cost £4,000. (V.C.H.: Warwickshire, Vol.6, p:106; Buildings of England: Warwickshire, p.307; Kelly's Directory of Warwickshire, 1892, pp.l03-l04).

I further remind myself that the Church holds Grade II listing.

Will some or all of the works harm the character of the church as a building of special architectural and historic interest?

16. The current heating proposal has been reassessed at suggestion of the heating advisors to the Diocesan Advisory Committee. Those advisors have suggested that the radiant heaters be placed high in the structure, coloured so as to blend in with the surroundings and be parallel with the floor, instead of angled. A computer generated representation has given a good impression of the resulting structure. Although the hammer-beam roof of the Chancel, and the arched braced queen strut roofs of the nave and aisles, are mentioned in the listing information for the Church, having considered the computer generated representation, and the views expressed by the members of the Diocesan Advisory Committee, I conclude that the proposal is unlikely to harm the character of the church. I am also mindful that the entire scheme should be almost entirely reversible when a different scheme is considered necessary at a later date.

17. For the avoidance of doubt, I have also considered both the lighting scheme and the rewiring with addition of AV and sound equipment. There has been no objection to these two schemes and I similarly conclude that neither will harm the significance of the Church (and, in effect, the lighting scheme will improve the appearance and character of the Church interior compared with the current fluorescent tube lighting scheme).

Have the Petitioners established a clear and convincing justification for the proposed works (by reference to public benefit or otherwise)?

18. Although my conclusion above means that I am not obliged to consider the fourth and fifth questions under *Duffield* I have in any event, and when considering the second question under *Duffield*, concluded that the petitioners have shown a convincing argument for each part of the scheme, considering throughout the benefits to the public, the impact on the carbon footprint of the Church and the particular needs of regular users of the building.

Other considerations

19. In issuing a certificate of No Objection the members of the Diocesan Advisory Committee expressed reservations that the heating proposal will not be as efficient as the petitioners believe and they express concern that the scheme may prove more expensive in fuel usage than the Parochial Church Council hopes. However, it was also acknowledged that the Church membership is keen to try out this 'experiment' (as the members of Diocesan Advisory Committee referred to the heating scheme) and is willing to take the risk that fuel costs may be higher than anticipated. I will not produce an obstacle to the Parochial Church Council on the basis that there is a risk of higher fuel bills. The members of the Parochial Church Council are those charged with responsibility for the financial affairs of the Church. It is their choice whether to take on the risk of potential further expenses. I am specifically concerned with whether their proposed schemes can, in law, be implemented should they decide to progress further.

I direct the grant of the faculty as sought in the light of the reasons set out above. Several conditions will be applied to the faculty.

Duration

To permit the works to be undertaken and completed the faculty will endure for a period of two (2) years from issue. Any application for an extension of time must be made before that time period has expired.

Conditions to be applied to this faculty

1. The petitioners shall ensure that the radiant heating panels are coloured so as to blend in with the surroundings;
2. No works involving access to high levels will be carried out until the Church insurers have been advised of the works and have provided their consent in writing (an email will suffice);
3. The petitioners must ensure that any reasonable condition requested by the Church insurers is complied with (and if dispute arises as to any condition required by the insurers the matter shall be returned to this court for further directions);
4. The wiring and piping runs necessary for the electrical and heating works must be agreed with the Church architect prior to installation;
5. All visible wiring, ducting and pipework within the Church must be coloured so as to blend in with the surroundings;
6. The petitioners shall ensure that full details of the works carried out, including the contractor involved and the costs occasioned, are entered into the church log-book within one month of completion of the works.

Glyn Samuel
Chancellor
6th July 2022.