

**Neutral Citation Number: [2023] ECC Swk 6**

**IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK**

**IN THE MATTER OF ST ANSELM’S CHURCH, KENNINGTON CROSS**

**AND IN THE MATTER OF A PETITION BY REVD ANGUS AAGAARD, MS  
SUSANNAH WILTSHIRE and MR MILES FREEMAN**

## **JUDGMENT**

### **Introduction**

1. This is a petition dated 21 June 2022 by Revd Angus Aagaard, Ms Susannah Wiltshire and Mr Miles Freeman. They are, respectively, the Team Rector, one of the churchwardens and the Director of Operations of St Anselm’s Church, Kennington Cross. By it, they seek a faculty for a major scheme of re-ordering. I detail the works further below but the core of what is proposed is to use the space at the east end of the church to provide room facilities on three levels. The east wall of the new facilities will become a reredos for the remaining space, which will continue to be used for worship.
2. St Anselm’s is a listed building (Grade II). There has been extensive discussion and consultation as the scheme has been developed over the years. The PCC of St Anselm’s passed a resolution to seek a faculty for the works on 22 April 2022. The formal requirements for petitioning have all been observed. No-one appears as a party opponent but English Heritage, the London Borough of Lambeth and the Twentieth Century Society have all identified harm to the listed building and the Twentieth Century Society maintains an objection. The consequences of that harm (i.e. whether it is outweighed by public benefit) fall to be assessed by reference to the “Duffield” guidelines<sup>1</sup> which accordingly I address in this judgment. The proposals require the removal of two murals in the church which are church treasures as well as fixtures; I have to consider this in the light of the guidance given in *In re St Lawrence, Wootton*<sup>2</sup> and *In re St John the Baptist, Peshurst*<sup>3</sup>. Planning permission has been granted for the external works<sup>4</sup>.

### **History**

3. St Anselm’s has an interesting history. A church presence at the junction of Kennington Lane and Kennington Road was first established in 1887 by the construction of a mission hall<sup>5</sup>; this hall still exists and is used as a nursery and work space for start-up projects for disadvantaged local residents. In the period before and after the First World War, what had evidently become slums around the mission hall were developed by the Duchy of Cornwall, employing the

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<sup>1</sup> I.e. the guidelines supplied by the Court of Arches in *In re St Alkmund, Duffield* [2013] Fam 153.

<sup>2</sup> [2015] Fam 27 (Court of Arches).

<sup>3</sup> (2015) Court of Arches.

<sup>4</sup> The Twentieth Century Society had some reservations about the design of the external works. In considering the application for planning permission Lambeth LBC were required to have special regard to the desirability of preserving the building (see section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990). In doing so it took into account the views of the Twentieth Century Society. I do not think that there is any need for me to seek to go behind the decision of the planning authority that what was proposed as regards external works was acceptable.

<sup>5</sup> In a Gothic revival style, it is not listed although on the list maintained by Lambeth LBC of buildings of local heritage value.

architects Stanley Adshead<sup>6</sup> and Stanley Ramsey. The Church used the same architects for a vicarage next to the mission hall and for a new church on the same site. The original plan was for a basilica in the style of fifteenth century Italy surmounted by a large dome. The result, if built, would have been spectacular. In the event, work stopped upon the commencement of the First World War and when it began again upon the cessation of hostilities a smaller (and less expensive) building was constructed. Still in the form of an Italian basilica, it had no dome. Inside plain whitewashed walls were lit by lofty side windows and the focus of the church was upon a Holy Table in front of a plain wall but beneath a large baldachino. The result was impressive but austere. The building was consecrated in 1933.

4. What works for one congregation at one point in time may be less effective at a later period. In the late sixties a second Holy Table was installed in a position west of the choir stalls, so the baldachino would have been in the background, not the focus of worship. When the question of redecoration came up, the thought of Vicar and PCC was whether by a new colour scheme, the church could be made to seem “warmer”. A new colour scheme was proposed, which involved various shades of brown and yellow. The DAC were opposed and there were also objections by individuals. The Bishop<sup>7</sup> heard the petition sitting in his own court. In a compromise, he permitted the east wall to be painted brown but required the side walls to be off-white.
5. The new colour scheme had been promoted in the context of another scheme of the Vicar and PCC to introduce colour and interest into the interior. This was to provide murals on the side walls. To this end, they approached the Edward Austin Abbey Memorial Fund<sup>8</sup>. This funded the entire cost of the provision of two murals in the church, which were executed by Norman Adams RA and installed in 1972.
6. There have been no further major changes in the church, although the south aisle has been enclosed to provide a room.

### **The Church**

7. The Church is listed (Grade II). The listed description reads:

*1932-33 by Adshead and Ramsey, built on foundations of earlier church whose building was interrupted by World War I. Simple Early Christian basilica of stock brick with corbelled eaves cornice of shaped bricks and pantiled roof. Low, pent aisles, not full length. Chamfered, round-arched window openings. Church is disorientated with large east portal having carving of St Anselm with lion and lamb in tympanum. Tall, barn-like interior has timber king post roof trusses, gallery over entrance, baldacchino<sup>9</sup> over altar. Arcade capitals of cushion shape and carved with plants and animals by A H Gerrard. Carved font by Derrick Frith.*

8. The font, which evidently is of high quality, is rather tucked away on the south side of the church, somewhat close to the wall of the narthex. The Statement of Significance suggests that it has been relocated. It lacks room “to breathe”.

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<sup>6</sup> Adshead is famous as the first Professor of Town Planning (in the University of Liverpool).

<sup>7</sup> Rt Revd Mervyn Stockwood.

<sup>8</sup> This was a fund, administered by the Royal Academy, in memory of Edwin Austin Abbey RA (1852 -1911) for the commission of new murals in public buildings.

<sup>9</sup> The word generally used in English for what is meant is *baldachin*, namely *a structure in the form of a canopy, either supported on columns, suspended from the roof, or projecting from the wall, placed above an altar, throne, or door-way* (OED). However the form *baldacchino* is found. Used in the listing, the word *baldacchino* was used by the Petitioners and then subsequently by others commenting on their proposals.

9. The listing does not mention the murals by Norman Adams but this may simply be because it was written before they were installed.
10. The murals, which are not figurative, are nonetheless based on John Bunyan's *Pilgrims Progress*. In the swirling painting, the viewer can find represented the Wicket Gate, the Hill of Difficulty, the Slough of Despond and the battle with Apollyon. There are two murals, one on each side of the nave, facing each other. Each is seventy feet in length; beginning at a depth of ten feet they expand at a point two thirds along their length to fourteen feet (i.e. at the point where the nave arcade comes to an end) and there is thus greater space available. They are not murals in the strict sense but *marouflages*. A marouflage is an unframed painted canvas on frame which is attached to a wall.
11. Outside the church, to side of the main entrance is a flower and coffee stall. As well as providing a valuable local service, this has the effect of drawing people to the church site.
12. The Church sits in the Kennington Conservation Area. This area derives its character from the fine terraced housing nearby; the housing designed by Adshead and Ramsey for the Duchy of Cornwall and built before the First World War; and from St Anselm's itself (by the same architects).
13. The significance of St Anselm's has been assessed in a Statement of Significance prepared by Dow Jones, the architects for the scheme. It was prepared using the following categories as defined:

***Exceptional** - important at national to international levels **Considerable** - important at regional level or sometimes higher **Some** - usually of local value only but possibly of regional significance for group or other value **Little** - of limited heritage or other value **Neutral** - features which neither enhance nor detract from the value of the site **Negative/intrusive** - features which detract from the value of the site<sup>10</sup>.*

14. It will be seen that the architects have adopted essentially the same approach as recommended by the Church Buildings Council in its *Guidance Statements of Significance and Statements of Needs: Major Projects* (January 2014). The CBC guidance suggests:

***High** – important at national to international levels **Moderate-High** – important at regional or sometimes higher **Moderate** – usually of local value but of regional significance for group or other value (e.g. vernacular architecture) **Low-Moderate** – of local value **Low** – adds little or nothing to the value of a site or detracts from it.*

Thus in the Statement of Significance prepared by Dow Jones, Exceptional = High, Considerable = Moderate-High, Some = Moderate, Little = Low-moderate<sup>11</sup>.

15. One recalls in this context – and it is important to keep it mind – that all listed buildings are of national importance and words seeking to articulate the comparative value of such buildings should not beguile the decision maker into underestimating the value of any listed building<sup>12</sup>.

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<sup>10</sup> These categories are derived from the authoritative *Conservation Plans: A Guide to the Preparation of Conservation Plans for Places of European Cultural Significance* (7<sup>th</sup> edition; 2013) by James Semple Kerr. The first edition dates from 1982.

<sup>11</sup> As far as I can see Historic England has not given advice as to the categorisation of significance and the language to be used.

<sup>12</sup> I have particularly in mind the suggestion that anything less than of *considerable* or *moderate* /*high* significance is principally of local value.

16. The Statement of Significance makes the following assessments:

Archaeological: considerable<sup>13</sup>  
Historical: some  
Architectural and artistic: some  
Sculpture: considerable  
Marouflages: some  
Communal interest: some  
Place of worship: some  
Setting: considerable.

17. This is all readily understandable. The archaeological significance of this whole area is great; and the setting is a fine one. The Church is evidently of architectural and historic interest without being outstanding; it is, after all, listed Grade II (not Grade II\*). The Statement then identifies the carved capitals and the font as being particularly fine<sup>14</sup>. As regards the murals it observed:

*While Norman Adam's marouflages have qualities in and of themselves, and in spite of the fact that they were designed for the building, they sit uncomfortably within the church. They do not respond to the architecture, and in their complexity compete with the austerity of the space. They are detracting elements within St Anselm's, and they could be better appreciated if re-located.*

18. In seeking to assess the communal interest and significance of the building as a place of worship I think that the architects were straying outside the sphere of the assessment of significance of buildings as listed buildings but I have noted their comments<sup>15</sup>.

19. The assessment by Dow Jones was that of architects. The Church Buildings Council advised that expert advice be obtained as to significance of the murals from an expert in painting. The Petitioners obtained the advice of Professor Frances Spurling. Professor Spurling is an art historian and critic. She has written the authoritative *British Art since 1900* (1986) and *The Real and the Romantic: English Art between Two World Wars* (2022), which has been widely praised. I cannot imagine anyone better qualified to evaluate the significance of the murals.

20. Norman Adams RA (1927 – 2005) was called up at the end of the war but having refused to attend his medical, as a conscientious objector he spent seven “terrifying weeks” in Wormwood Scrubs before being allowed to serve as an agricultural labourer. During this time he discovered the Pilgrim’s Progress and made some illustrations for it. Although never an orthodox believer (and never a member of the Church of England), he also came to Christianity at this time when watching a film of the life of Christ based on the paintings of Giotto. He wanted to paint religious pictures and succeeded; after his death, the then Bishop of Oxford, Rt Revd Richard Harries described him as *a painter of profound spiritual significance*.

21. Professor Spurling wrote:

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<sup>13</sup> This is a very historic part of London, forming the manor of the Black Prince. The archaeological significance of the site (which ought not be adversely affected) can be protected by condition.

<sup>14</sup> The setting is unaffected by the proposals, save by the substitution of a kiosk for the flower and coffee stall.

<sup>15</sup> Historic England identify four aspects of value making up architectural and historic interest, namely evidential, historic, aesthetic and communal (see *Historic England Conservation Principles, Policies and Guidance* (2008)). The guidance of the Church Buildings Council asks that the significance of the church for mission be assessed. This will be a very useful exercise but it is a matter separate from its significance as a building of architectural or historic interest.

*The mural is of national significance because it represents a sudden outburst of new sacred art in Britain in the 1970s; because of its size, scale and energy; because it boldly seeks to evoke the tough thinking that has brought Pilgrim's Progress so many readers since it was written in 1678. It is also a work of art by an artist who for some years represented the top end of his profession, as both an artist and teacher.*

### **The proposals in detail**

22. A “tower” structure is to be built within the space at the east end<sup>16</sup> of the church. This is to span the width of the church and provide rooms on three levels: on the ground floor, on the first floor, on the second floor. There will be WCs on the first floor. The first and second floors are to be serviced by a lift. The eastern wall of the tower is to be made to form a reredos to the area of the church retained for worship. As a consequence of this it is necessary to remove both the baldacchino and murals<sup>17</sup>. There are to be new entrance doorways to the north, south and east elevations, including a new street-facing entrance from Sancroft Street. The interior of the remainder of the church is to be refurbished, including removal of the internal aisle partition; new flooring; new internal storage and ‘plant’ areas; upgraded/replacement heating, lighting and PA/AV. The font is to be relocated to a position at the east end of the south aisle. There are new furnishings for the church interior, including seating and liturgical items. The narthex at the west end is to be reconfigured with the inclusion of a kitchen and WC. A kiosk is to be constructed at the corner of Sancroft Street and Kennington Road, connected to the church building via a new doorway which will provide better accommodation for the flower and coffee stall. There are to be alterations to the main Kennington Road entrance and its forecourt to provide step-free disabled access into the church.
23. The proposals have been designed with the target of the Diocese to achieve net carbon neutrality by 2035 very much in mind. The current heating is provided by an oil fired boiler. This will be replaced by the provision of heating and hot water through air source heat pumps. These will be located inside a plant enclosure, which will sit on a new flat roof over the south aisle corridor. This will provide a heat source that is low carbon, and as the electricity industry de-carbonises over the coming years the position in this regard will only improve. Solar panels do not form a part of this project for budget reasons, but they could be retrofitted and used to power the heat. The building will be provided with secondary glazing and the doors made more airtight. There will be some insulation provided in the roof. The use of embedded carbon in the construction will be minimised.

### **The need for the new works**

24. St Anselm's is the “rectorial church” for the North Lambeth Team Ministry which also includes St Peter's Lambeth. (St Anselm's and St Peter's have separate PCCs but of course work closely together). In this inner city area there are great challenges but also great opportunities for the Team Ministry led by Canon Aagaard. They are doing excellent work.
25. Until recently some of the “outreach” work of St Anselm's was at the nearby Centenary Hall. This has now been sold so the activities carried on there have either ceased or moved elsewhere; the Petitioners would like to see them carried on in the proposed new facilities. The Petitioners did not own the Centenary Hall but the trustees who did are willing, and indeed, keen to see this happen and are in a position to contribute substantial funding towards it. In particular the charity *Into University* – helping students from disadvantaged areas - used the Centenary Hall and could provide a core use for the new facilities. There are other community groups committed to coming into the church if the new provision is achieved. The new facilities would

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<sup>16</sup> I.e. liturgical east end, “actual” east being liturgical west. In this judgment I shall use liturgical orientation.

<sup>17</sup> It would theoretically be possible for each of the murals to be cut, only the sections on the easternmost walls being removed. However this would destroy their integrity and is not an option.

also provide first rate accommodation for the Church's groups for children and young people, which, it is good to note, are flourishing at St Anselm's.

26. This project is all about enhancing all the facilities at St Anselm's. Thus the worship area, which currently has a rather "tired" feel, would be revitalised by the provision of the new reredos, redecoration and new fittings; access would be made easy for those whose mobility is impaired; there would be good provision of WCs; there would be good quality kitchen facilities; there would be excellent meeting rooms both for the church community and more generally. The vision in the jargon of today is that the church would become a "hub" – that is, a centre for mission and ministry. Prominent and well located on a site at an important road junction, one can see why the parish have this vision for the church; and want to bring that vision to fruition.

### **Law and policy**

27. As I have indicated, the Court of Arches set out guidelines as to the approach to be adopted in respect of proposals that affect a listed building in *In re St Alkmund, Duffield*. The guidelines require Chancellors to address the following questions:

1. *Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*
2. *If the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see Peek v Trower (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in In re St Mary's, White Waltham (No 2) [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.*
3. *If the answer to question (1) is "yes", how serious would the harm be?*
4. *How clear and convincing is the justification for carrying out the proposals?*
5. *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see St Luke, Maidstone<sup>18</sup> at p 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed<sup>19</sup>.*

28. I considered the meaning of serious harm in *In re Holy Trinity Church, Clapham*<sup>20</sup>. In that case I suggested that serious harm should be interpreted by reference to substantial harm as explained in paragraph 018 of National Planning Guidance<sup>21</sup>. This provides as follows:

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<sup>18</sup> [1995] Fam 1 (Court of Arches).

<sup>19</sup> See paragraph 87.

<sup>20</sup> [2022] ECC Swk 6.

<sup>21</sup> Paragraph: 018 Reference ID: 18a-018-20190723.

*Whether a proposal causes substantial harm will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.*

*While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later additions to historic buildings where those additions are inappropriate and harm the buildings' significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm, depending on the nature of their impact on the asset and its setting.*

29. It seems to me that, interpreting what *serious harm* means in the *Duffield* guidelines, it is legitimate to look at what Government means by *substantial harm* in the NPPF both because the concept of serious harm is derived from the NPPF and also because although the approach of the ecclesiastical courts is not the same as that of the secular planning system, the former is informed by the latter. The State is content that the ecclesiastical exemption should continue to exist on the basis of the “principle of equivalence”<sup>22</sup>.

30. Section 35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provides that:

*A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.*

31. This provision does not apply to Chancellors but, it has also been held that, if it had done, it would have added nothing to the existing duty and practice of Chancellors<sup>23</sup>. In reaching my decision I have had due regard to the role of the church as a local centre of worship and mission, a matter which must be highly relevant to a case of this kind.

## **Church Treasures**

32. Some of the fixtures and fittings of a church will be “treasures” that is items which are valued not simply for what they contribute to the appearance of the church – if indeed they do contribute to it<sup>24</sup> - but because of their intrinsic worth. Very often that intrinsic worth is reflected

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<sup>22</sup> See paragraph 30 of *The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England* (DCMS) (July 2010). Note however that in *In re St Alkmund, Duffield*, George QC, Dean, said ... *the concept of “equivalence” does not necessarily require that the same result will be achieved as if the proposal were being determined through the secular system, nor that listed building considerations should necessarily prevail. What is essential, however, is that these considerations should be specifically taken into account, and in as informed and fair a manner as reasonably possible* (see paragraph 39).

<sup>23</sup> See *In re St Luke, Maidstone* at p 7 (referencing the same provision, then being section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991).

<sup>24</sup> For example, church silver will be kept in a place of safety for most of the time and, even when in use, will not contribute to the appearance of the building.

in a monetary value. It is not relevant to a consideration of whether permission should be given for a treasure whether it is a fixture or moveable item<sup>25</sup> There is a strong presumption against sale<sup>26</sup>. Where a treasure does not have a monetary value there is still a heavy onus on those who seek its removal<sup>27</sup>.

### Consultation

33. The consultees (Historic England, Lambeth LBC, the Twentieth Century Society and the Church Buildings Council) all recognise the significance of the church and all identify harm to the listed building from what is proposed.
34. Historic England expressly acknowledged the current challenges facing the church, and recognises the benefits of this scheme in securing sustainable uses for the building and providing enhanced community facilities. However it identified harm generally to the interior and regretted the loss of the baldacchino. (It does not expressly regret the loss of the murals but it follows that it does since it does expressly take the view that their loss would *weaken the aesthetic value of the church*). It expressed the view that it would be for the DAC to be satisfied that the harm that it had identified was justified.
35. The London Borough of Lambeth recognised that the proposals had the potential to enrich the existing building and add a new and interesting layer to it. It identified benefit from the removal of the murals but overall took the view that it would be harmful. It would prefer both the murals and baldacchino to be retained within the site but recognised the need for the removal of the baldacchino. Overall, it expressed the view that harm should be minimised and, where it occurs, robustly justified.
36. The Twentieth Century Society did not object in principle to some sub-division of the interior volume of the church. It considered both the baldacchino and the murals should be retained inside the church, in a sensitive manner. If retention of the murals on site could not be achieved, a suitable home for them elsewhere should be found before proceeding<sup>28</sup>.
37. The Church Buildings Council observed, on the principle of what is proposed, that:

*... the proposed introduction of the tower into the east end of the nave was an appropriate way to provide additional accommodation into the building. It was convinced that the present arrangement did not provide a satisfactory focal point to the nave, and that the proposals would provide a more dignified setting for the altar and provide much needed additional accommodation.*
38. As regards the murals it said:

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<sup>25</sup> See in *In re St John the Baptist, Peshurst* at para 27. In the present case it seems to me that the murals are fixtures so that, in any event, an argument that some lesser test applied to them because they were not fixed (or sufficiently fixed) to the wall does not arise.

<sup>26</sup> See *In re St Lawrence, Wootton* at para 60.

<sup>27</sup> See *In re St John the Baptist, Peshurst* at para 87.

<sup>28</sup> In responding to Lambeth LBC in respect of the application for planning permission, the Society said: *the Society welcomes the attention to detail with which the applicant has approached this project and considers that proposals to enliven the church and retain it in ecclesiastical use should be applauded. A great deal of care has evidently gone into enhancing the understanding of many of those involved in the significance of the church building and its setting, and considering the best ways in which to increase the beneficial impact that the church can have on the local community.* It is heartening to read these comments, which I echo.



*Given the significance of the murals the Council would need to see a strong case made for their removal, with a positive suggestion for an appropriate new home. It is not convinced that a case had been made for their removal in the proposals before it.*

39. It welcomed the move to a lower carbon heating system. On other points the CBC deferred to the DAC.

40. I asked the Registrar to ascertain the views of the Edwin Austin Abbey Memorial Fund<sup>29</sup>. Vanessa Jackson RA, the Chair of the fund wrote:

*... as in so many cases with wall paintings dating back decades, it becomes no longer feasible to maintain their upkeep or reinstallation when buildings need to be refurbished. The best practice is to keep records, including written records and cover them with quality protective board to be saved for the future, or to make efforts to re-home the work in a public collection. As funders we offer support and encouragement but there is little we can practically do to help with this<sup>30</sup>.*

41. I have also received a letter from Benjamin Adams, who is the son of Norman Adams. He emphasised the intrinsic importance of the murals and the risk and cost of removing them. Against this background he urged that the murals should be retained within the church.

#### **The position of the Petitioners as to the murals**

42. When the Petition was lodged in June 2022, the Petitioners had not formulated proposals in respect of the murals although they will have appreciated that if they could not find a new home for them, the only alternative solution was to store them.

43. The assessment of the significance of the murals as high will have helped them in seeking to persuade a museum or gallery to take them into their collections. However, they have written to 11 museums or galleries to see if they might be interested in acquiring the murals. None have expressed interest<sup>31</sup>. The V & A was not able to help; the Tate has not positively closed the door on acquisition but on the other hand four months have now passed and they have not responded positively.

44. Accordingly the Petitioners necessarily now have had to pursue the possibility of storage and conservators were instructed to consider the feasibility of taking the murals down and storing them.

45. It is fair to record that the firm instructed (Opus Conservation) was unenthusiastic about the project it was asked to assess. Accordingly, it gave as its opinion that the murals should be removed only if

- the architectural work makes it absolutely necessary
- a viable method of redisplay has been identified, ideally within the church

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<sup>29</sup> Now the E A Abbey and E Vincent Harris Mural Fund.

<sup>30</sup> The Director of Collections and Learning at the Royal Academy has assisted the Petitioners in contacting galleries and museums in trying to find a new home for the paintings. I am grateful for her help.

<sup>31</sup> Three did not reply.

- the funds for storage, treatment and redisplay are ringfenced before detachment begins<sup>32</sup>.

However, the advice makes it clear that the murals could safely be taken down and stored. The cost of storage would be £2,500 per year.

### Consideration

46. I begin by considering the petition in the context of the *Duffield* guidelines.
47. It is clear - I think self-evident - that the insertion of a tower at the east of the church will harm the interior of the church as a building of architectural and historic significance.
48. The murals are part of the church and are of high quality. Accordingly their removal would harm the interior of the church as a building of architectural and historical significance. However, I do agree with the Statement of Significance that they sit uncomfortably within the church. Accordingly, there would be a benefit to the interior of the church as a building of architectural and historic significance from their removal<sup>33</sup>. It may be that, in so holding, I am disagreeing with Historic England so it may be helpful briefly to elaborate my conclusion. I think that the reason why the murals do not “fit in” is because they are at odds with what an observer perceives as the intended austerity of the church<sup>34</sup>; also because they are not murals, incorporated within the walls of the church, but discrete (if large) panels which are obviously not integral to the church.
49. A visitor entering St Anselm’s today will see a fine if not outstanding church. He or she will consider it unsympathetically decorated and, in architectural and historical terms, regret the introduction of a second Holy Table in front of the baldacchino. He or she will appreciate the murals but consider them to detract from planned simplicity of the church. He or she will be able to envisage the austere beauty of the church upon its consecration in 1933 (and as shown in the pictures published in the *Architects Journal* of that year). If he or she is in sympathy with the Church, they will understand why what they see falls short of what, from a heritage point of view, they would like to see; and will readily appreciate that there is no practical prospect of restoring it to the way it looked upon its consecration in 1933.
50. Nonetheless the components of the original church are all essentially untouched. If the east end is developed as proposed that continuing integrity of the original will be lost. There will be very significant change, which will be irreversible.
51. I think that there will be major adverse change to a building of moderate<sup>35</sup> significance. That harm will be offset, to a degree by the provision of a new reredos. In this assessment of harm, I consider the loss of the murals as causing little or no harm the historic character of the building; and as beneficial to the architectural character of the building.
52. Is the harm that would arise offset by the public benefit?

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<sup>32</sup> It is helpful to understand their concerns but it is for me to decide whether a case for taking the murals has been established (and the basis for deciding that question) and, if so, any requirements that are imposed upon the Petitioners as a condition of such removal.

<sup>33</sup> Although it must be the case that from an historic sense, it can only be a matter of harm (albeit the murals have only been in the church for fifty years).

<sup>34</sup> For this reason also the painting of the east end of the church in brown was detrimental to the architectural character of the church.

<sup>35</sup> I remind myself here of my comment in footnote 12 above.

53. I think that it is. I readily appreciate that the petitioners and the PCC want as much going on on the site as possible, both church and community related, and, in this inner City area, there does seem considerable scope for the provision of multi-purpose space. Ideally it seems to me that additional space within a church would be on one level of course the “tower”; but of course the upper floors would be readily accessible by lift.
54. The wider context for this petition is the Church’s ministry in the inner city. It is doing well in places like St Anselm’s and the congregation here would not give up if I were to say *No* to these proposals. But it does need encouragement. It seems that the Church of England has, over many years, faced challenges to its ability to sustain its parochial ministry; and, with slowly declining church rolls, those challenges will not go away. The point of saying this is that an alternative scenario which sees this church turned into, say, a pub or carpet warehouse is not unrealistic; and such an outcome would be much worse for the building than anything that I might permit.
55. In cases of this kind, the question arises as to whether the same benefit could be achieved but with less harm resulting<sup>36</sup>. Looking at the matter broadly, if the east end of the church is to be utilised to provide new usable space then, inevitably, the baldacchino and the murals cannot be retained nor the proportions of the church maintained. There does not appear to be any other way by which space of the quality and extent proposed could be provided within the Church. In 2011 the Church achieved planning permission for a scheme which would have involved, within the body of the church, both horizontal and vertical divisions. The scheme was not economically viable. What is now before me is a scheme which, because it is smaller, is unlikely to deliver as many public benefits as those earlier proposals but which does preserve more of the church; as well as in some ways enhancing it. Thus the current scheme may be seen as a compromise; and it is difficult to envisage a scheme that achieved the same or similar benefits without loss of the baldacchino and the murals. No-one has suggested such a scheme, even in outline.
56. Thus, although I think that the harm would be serious I think that it is clearly outweighed by the public benefits that the proposals will achieve. In reaching this judgment I remind myself that the fifth *Duffield* guideline does not require the harm to be exceptional; also that the serious harm is to a building which is Grade II and thus not of the intrinsic value of a Grade II\* or Grade I building. It also seems to me to be relevant that, if I were to refuse a faculty, there is no prospect of the building ever being returned to the appearance it had when first consecrated in 1933. And the public benefit, whether articulated in terms of the church as a local centre of mission and worship or, in the secular language as a “community hub” is equally apparent.
57. Thus, considering just the *Duffield* guidelines, it is clear that it is appropriate that a faculty should issue.
58. However, this does not address the separate issue of the murals considered as a church treasure.
59. Given the significance of the murals, it would not be appropriate to grant a faculty on terms which did not protect their future.
60. I do not think that it is appropriate to do so by refusing to grant a faculty for the works for which the Petitioners seek permission. If I did so, the murals would be preserved for the time being but their long term future would be very doubtful; and, of course, the public benefits which the

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<sup>36</sup> Consideration of this question is, in an appropriate case, implicit within the *Duffield* guidelines: see e.g. *In re All Saints’, Wellington* [2019] ECC Lic 7.

works would secure would not come about. I could grant a faculty on terms that the works were not to be begun until a satisfactory new home had been found for them. However, there would be a considerable risk that if I were to do so the project might not go ahead (because no new satisfactory home could be found).

61. How then is the future of the murals to be protected?
62. Despite their quality, given the size and configuration of the murals one can readily understand why it has not been possible to find a new home for them.
63. The obvious solution accordingly is to require the murals to be stored.
64. This is an unattractive course. This is both because of the cost (which could extend into the indefinite future) and also because, if stored, an important work of art will not be inaccessible and unseen. However, no other option presents itself. Thus, despite its intrinsic unattractiveness, I propose to grant a faculty on the terms that the murals shall be stored until further order. They will, of course, remain subject to the faculty jurisdiction<sup>37</sup>. In this way they will be protected.
65. What I hope, of course, is that someone<sup>38</sup> or somebody may yet be identified who would receive the murals and be able to display them. It may be that, despite the failure thus far to identify a museum or gallery who might want them, such an institution will be identified. It does occur that a body – concerned for the preservation of works of art – might want to have the murals, even though they would not be on display all the time. In these circumstances the difference between the church organising their storage and a gallery doing so would be that the gallery might be able to organise such storage rather more cheaply and also, perhaps, that the murals would be more readily available for display from time to time.
66. In these circumstances, receiving the murals would be a more attractive prospect if they came with a “dowry”. From the Petitioners’ point of view a commuted sum would be better than a liability stretching indefinitely into the future. Perhaps the Petitioners could consider approaching appropriate institutions with such a suggestion.
67. When the PCC decided to apply for a faculty they did not know that the terms of a faculty would require it to incur the cost of potential indefinite storage. I think that it is important that before it moves forward it considers whether it does want to implement the faculty on these terms. It is intrinsically important that it should do so but also because it does occur that, in the future, its successor might seek an order from the Court that it be relieved of its ongoing liability. The current PCC cannot of course bind its successor but it does seem to me that a resolution to proceed made in the circumstances now arising would be highly relevant to any subsequent application to discharge the liability.

#### **Other matters**

68. I turn now to consider some points of detail.

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<sup>37</sup> See *In re St Lawrence, Wootton* at paragraph 33.

<sup>38</sup> If the murals were cared for I think that there would be no objection to a private person acquiring them. It is, however, difficult to imagine such a person being identified.

### **The font**

69. The Church of England once produced a report with the sort of punning title of which it was fond, namely *Children in the Way*. Canon F1 (2) provides

*The font shall stand as near to the principal entrance as conveniently may be, except ... the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible.*

70. The requirement that a font should be near the principal entrance to a church can mean that sometimes it gets in the way. This is not an argument of itself for dispensing with the requirement of the Canon<sup>39</sup>. If the font is not near the principal entrance to the church, powerful symbolism is lost.
71. I am pleased to learn that the font is used for baptisms<sup>40</sup> and also that there will be at least 12 baptisms in the course of the year. They take place in the context of the 10 am service, so the congregation will either have to move or re-orientate itself when that part of the service occurs. I am not persuaded on the material before me that the font cannot remain located near the principal entrance; or, to put the matter another way, I am not persuaded on the material before me that the convenience of having the font at the east end of the south aisle is so great that the move should be authorised. However, it may be that if the font is to have appropriate spacious and well-ordered surroundings, it does need to be moved; and it may be that the south aisle is the best place. What I would like is for the Petitioners to consider my comments. If they remain convinced that the south aisle is the best place, then I will consider the matter further. I will also be grateful for the views of the DAC on this.

### **The baldacchino**

72. The DAC have suggested that the baldacchino might be taken down and stored, pending finding a new home for it. I would not personally be confident of finding a new home for such an item. However, further, it appears that the baldacchino is essentially made of plaster and, as such, would not realistically be capable of being taken down and stored. I shall impose a condition requiring the Petitioners to submit proposals to the DAC for storage of the baldacchino or, if it considers such storage to be not feasible, to seek the approval of the DAC for it to be disposed of.

### **The WCs**

73. The WCs in the tower are at first floor level. Although there will be a WC for those whose mobility is impaired in the narthex, this struck me as potentially less than ideal. The Petitioners have responded:

*The main toilets are in the Tower accessible by both stairs and lift. In addition, there are three toilets at ground level in the rear addition accessible either by going down a few steps or using the lift. We are considering splitting the toilet provision in the Tower specifically so that the top floor has toilets at this level; this is because the most frequent usage is by children, and we do not want younger children having to be supervised to go to the toilet on a different floor. We do not plan to have further toilet provision at ground level.*

74. I will require the detail of the WC provision to be approved by the DAC.

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<sup>39</sup> See *In re Holy Trinity, Wandsworth* (2012) (Southwark Consistory Court) at paragraph 76.

<sup>40</sup> Sometimes in churches with fonts, the font is not used but a portable bowl.

## Formal order

75. I direct that a faculty should issue as prayed subject to the following conditions:

(1) Before the works are begun,

- (i) the applicants should prepare a record of
  - (a) the sanctuary ensemble prior to its dismantling;
  - (b) the baldacchino as an 'artefact'; and
  - (c) the murals.

The record shall contain appropriate photographs, the existing survey of the items and a written account. A copy is to be provided to the DAC for its records, and copies offered also to the Church Building Council, the Local Historic Environment Record (Greater London), the appropriate Local Studies Library at Lambeth LBC, and the London Metropolitan Archives. A copy should also be placed with the Church's logbook.

(ii) A photographic record shall be made of the interior of the church and copies provided to the DAC and offered to the other bodies identified in condition (1) (i) above. A copy is to be placed with the Church's logbook.

(iii) a written Scheme of Investigation for an archaeological watching-brief during excavation of the foundations is to be provided to and agreed with the DAC.

(iv) the following are to be provided to and agreed with the DAC

- (a) detailed-designs (drawings, schedules, specifications etc) for
  - (i) reredos doors and partition-wall;
  - (ii) Quarry Tile floor design in the Nave;
  - (iii) kiosk and new Sancroft Street entrance (e.g. choice of cladding material);
  - (iv) new furnishings (fixtures/fittings/furniture) for the church, such as design of new Nave congregational seating, stoop, and votive candlestand;
  - (v) new floor access-hatch to existing basement; and
  - (vi) architectural, structural, and M&E proposals generally;
  - (vii) the provision of WCs.

(b) contractor method statements and construction management plans, which would include the works around the organ loft and the temporary works for the new openings in the South elevation;

(c) PA/AV System designs;

(d) proposals for dismantling the baldacchino and for its disposal;

(e) proposals for dismantling and/storage of murals (marouflages)

(2) The works permitted shall not include the re-positioning of the font without the further order of the Court.

(3) Having been dismantled and stored in accordance with the directions of the DAC, the murals are to be stored until further order of the court.

- (4) The works are to be completed to the reasonable satisfaction of the Church's Inspecting Architect.

**Concluding remarks**

76. I hope that this exciting new project will now move swiftly forward even though, as yet, not all the funding has been secured. With the benefit of hindsight, one may regret the installation of the murals in the first place but one can see that this took place with the best of intentions and with a degree of imagination so that, in the event, a very fine work of art was created. This has caused the Church some problems which are not yet resolved. All those who love painting and admire the work of Norman Adams will regret the loss of the murals from the church and I can see that the fund which so generously paid for them and Mr Benjamin Adams will be particularly disappointed. Nonetheless I hope that they will see that their concerns have been carefully addressed. What I hope is that in the light of the publicity surrounding this judgment a new and suitable home will be found for the murals.

PHILIP PETCHEY

Chancellor

25 September 2023