



Faculty – Grade II listed medieval village church (partially rebuilt in the 1840s) – Permanent removal of the wrought iron railings from around the church building – DAC recommending works for approval – No objections raised – **Faculty granted***

Application Ref: 2022-073756

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Tuesday, 15 November 2022

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

All Saints, Mixbury

THE PETITION OF:

THE REVEREND ALICE GOODALL (Rector)

and ALEC HOWARD (Churchwarden)

This is an unopposed petition determined on the papers and without a hearing.

No objections to the petition have been received

The following cases are referred to in the Judgment:

Re St Alkmund, Duffield [2013] Fam 158

Re St Laurence, Combe [2022] ECC Oxf 5

JUDGMENT

Introduction and background

1. This is an unopposed online faculty petition, dated 2 October 2022, by the Rector and the churchwarden of this Grade II* listed, medieval village church, which was partially rebuilt in the 1840s and is situated within the Mixbury Conservation Area, to make permanent the removal of the wrought iron railings from around the church building.

2. In September and October 2020 I granted interim and final faculty permissions for the temporary removal and storage of the railings from around the church building in order to facilitate repairs to the fabric of the building and remedial works to overhaul the surface drainage, and to remove vegetation, which had been causing dampness to the walls of the church at lower level. This had been amongst the priority one repairs identified in the 2016 quinquennial inspection report for the church. The local planning authority had granted planning permission for the drainage works in June 2020; and they had subsequently confirmed that they did not require the railings to be reinstated. Although the application for a full faculty had originally included proposals for the permanent removal of the railings around the church building, during the public notice period a member of the congregation had indicated that he was proposing to object to the permanent removal of the railings (although he appreciated the importance of undertaking the associated drainage works). Wishing to avoid a difficult pastoral situation, and to avoid any delay to the grant of the faculty required to enable the parish to embark upon the essential drainage works, the parish had approved the withdrawal of the permanent removal of the railings from their faculty application with a view to formulating proposals for the long term future of the railings in due course. A faculty therefore issued in October 2020 authorising the installation of new drainage around the church building but (for the avoidance of doubt) excluding the permanent removal of the railings around the church without the grant of a further faculty. This faculty was granted subject to eight conditions, which included (as condition 8): *“The railings are to be retained in secure storage for a period of twelve months (or such further period as the court may allow) to allow consultation as to their future to take place locally, during which time a further petition is to be presented either seeking their permanent removal or their reinstatement. Consideration of this further petition is to be reserved to the Chancellor (if available).”* I have subsequently extended the period for the parish to store the railings, and to apply to the court concerning their future.

3. One of the church buildings officers visited the church during the first full week of June 2022, accompanied by the DAC archaeologist and a DAC architect, and conservation officer for West Oxfordshire District Council, in order to inform herself about a proposal from the parish permanently to remove the railings. The church buildings officer was pleased to see that the church looked smarter than she had ever known it (having visited on at least two previous occasions before the railings were removed). The general feedback from the village community to their removal was reported to have been positive: apparently most local people felt that the

church looked more inviting, and better cared for, since the removal of the railings. None of the three officers could see any practical reason for the railings having been installed in the first place, although there has been speculation that the intention might have been to prevent local children from playing ball games too close to the church. The railings on the south side would have enclosed access to the Victorian stove and the flue ingeniously hidden inside the buttress (dating from major rebuilding works in the 1840s), and this might have been intentional. Alternatively, it could simply have been that the rector of that time had a partiality for railings since the church railings are very similar in design to those on the steps of the adjacent school building, which dates to 1838.

4. The church buildings officer reported that the railings themselves were currently laid down in a slightly overgrown, out-of-the-way area of the north-west part of the churchyard. One of the sections was in quite poor condition, with several parts having almost completely rusted away, but the others were generally in serviceable condition, considering their likely age.

5. All three DAC officers considered that it would be better for the church building, both in terms of maintenance and aesthetics, if the railings were not reinstated. However, it was felt that it would be regrettable permanently to lose a fine heritage asset, and so they asked whether the PCC could adapt (if necessary) and reinstate the railings elsewhere in the churchyard, where they could serve some meaningful purpose. The churchwarden readily agreed to this. The PCC confirmed over the following weekend that they would look to reuse those lengths of railing which are in better condition in two potential areas discussed on site. The PCC has therefore been encouraged to develop proposals for this, and to consult the DAC and the LPA in due course; but as it would be premature to decide now on a precise new location for the railings, the PCC have been invited to revert to the DAC when they are in a position to formulate a proposal for the precise re-positioning of the railings alongside other proposals that are under consideration (for which planning, as well as faculty, permission may be required).

The village

6. The parish of All Saints, Mixbury is in the Archdeaconry of Dorchester. The village is situated in the north-east corner of Oxfordshire, close to the borders with Northamptonshire to the west and Buckinghamshire to the north and east. The entry for the village of Mixbury in the 2nd (2017) edition of the volume of *Pevsner's Buildings of England for Oxfordshire: North and West*, edited by Alan Brooks and Jennifer Sherwood, describes Mixbury (at p 422) as: “A model village created in 1874 by order of the Court of Chancery, as the existing thatched dwellings were in a desperate state of dilapidation. Some forty gabled cottages, mostly in groups of four, line the village street; minimally Gothic, of rubble with red brick dressings.”

The church building

7. The parish church of All Saints, Mixbury, was first listed as a Grade II* building on 7 December 1966. The listing description reads as follows:

Church. C12 chancel and nave. C13 north aisle and west tower, 1840s rebuilding of rest of church, including chancel arch, by George Wyatt of Oxford. Coursed limestone rubble and squared, coursed limestone. Steeply pitched lead roofs with stone coped gables. Nave, chancel, north aisle, vestry, south porch, west tower. 5-window range. Chancel has a 3-light geometrical east window: a pointed arched priest's doorway on south flanked by 2-light Decorated windows and similar windows on north. C19 Decorated style north

aisle windows. Nave north has three 2-light Perpendicular clerestory windows. Nave has three restored 2-light Decorated windows and three 2-light Perpendicular clerestory windows. Gabled stone south porch. C12 south doorway has 2 orders of zig-zag on scalloped capitals. West tower of 3 stages. Perpendicular with diagonal buttresses and crenellated parapet. 2-light Perpendicular windows, lowred to bell-stage. C19 chancel has stained glass by O'Connor c.1850-60. Decorated 3 bay north arcade. C19 roofs, pews and font. Alabaster pulpit. Brass eagle lectern.

There is no reference to the railings.

The Statement of Significance

8. According to the parish's Statement of Significance, the railings are made of wrought iron. The precise date when they were installed is not known but it is likely to have been after the renovations to the church in the 1840s. The first record of them is in 1881. The purpose of the railings is not known either. Victorian decoration is a strong possibility, but the parish also know that coke for the church heating systems was stored behind them at one stage, so they may have had a practical use too. The railings were taken down in 2020 to enable the ground around the church to be lowered to help to resolve damp problems inside the church. The ground around the church where the railings had stood was subsequently turfed as the parish has had four Covid-delayed weddings in 2021. There has been a very positive response from the majority of parishioners as to how much 'softer' and 'more welcoming' the church looks without the railings.

The Statement of Needs

9. The parish's Statement of Needs notes that in order for the church to remain viable, it needs to be maintained as easily, as cost effectively, and as safely as possible. When they were in place, the railings had a negative impact on all three of these factors; and that is why the parish are proposing that they should not be re-instated around the church.

10. Every year the parish need to clean out the gutters; but they also often need to repair parts of the guttering system, attend to masonry, fix tiles on the porch roof, repair the outside lights, and clear up debris from the pigeons in the tower. Although some of these tasks can be completed with long poles, many require contractors to work above where the railings used to be. When the railings were there, many contractors would not take on the work for health and safety reasons, whilst others demanded that the railings should be temporarily removed, or covered with wooden boxing, both of which were expensive and not very practical. Cherry pickers were an option but they are expensive too. The area where the railings once stood has now been turfed and this is very easily maintained by the village volunteer mowing team.

The views of the parish

11. In support of their petition, the petitioners have uploaded five anonymised, and supportive, comments from parishioners in response to the PCC advising the village of their inclination not to reinstate the railings. These include observations that "*The church now springs from the earth in the traditional way of old English churches*"; and the railings "*... were ugly and inappropriate. With them in place the church looked a bit forbidding - without them it looks more welcoming, more sympathetic.*"

12. The proposals have the full support of the PCC.

The Diocesan Advisory Committee

13. The Diocesan Advisory Committee have recommended the proposals for approval by the court, despite advising that they are likely to affect the character of the church as a building of special architectural or historic interest, and also the archaeological importance of the church. As a result, as well as displaying the usual public notices, notice of the proposals has been published on the diocesan or another publicly accessible website. These notices all expired on 3 November 2022, and no objections have been received in response to either form of notice. In their Notification of Advice, dated 20 June 2022, the DAC have stipulated that the railings are to be retained and reused within the churchyard, as agreed by a DAC subcommittee in due course (for which a separate faculty permission is to be sought, and for which planning permission may also be required).

The legal framework

14. Since the church of All Saints, Mixbury is Grade II* listed church, I have, of course, had regard to what have become known as the *Duffield* guidelines (named after the decision of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158), as explained and expanded in later cases. It is sufficient for me to refer to (and paraphrase) the following summary of the relevant principles (as they apply to a Grade II* listed church) taken from my recent decision in this Diocese in the case of *Re St Laurence, Combe* [2022] ECC Oxf 5 (at paragraph 19):

“... for the purposes of the present case, which concerns a Grade [II] listed church building, I must consider:*

(1) The degree of harm that these proposals, if implemented, would cause to the significance of the church as a Grade [II] listed building of special architectural or historic interest; and*

(2) Whether the petitioners have demonstrated a clear and convincing justification for their proposals, in terms of any resulting public benefits which would outweigh that harm.

In doing so, I have to bear in mind:

(a) That the burden rests on the petitioners to demonstrate a sufficiently good reason for making any changes to this listed church building;

(b) That the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted;

(c) Since this building is listed Grade [II], only exceptionally should serious harm be allowed; and*

(d) Whether the same, or substantially the same, benefits could be obtained by other works which would cause less harm to the character and special significance of this church building.

Analysis and decision

15. Since this is an unopposed faculty petition, I am satisfied that it is expedient in the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules, for me to determine this petition without a hearing, and on the basis of the written and illustrative material that has been uploaded to the online faculty system and is before the court. I note that no-one has objected to this petition for the permanent removal of the railings.

16. Having viewed the supporting documents and the images uploaded to the online faculty system, including images (reproduced below) of a drawing from 1825 before the railings were installed, and of the church with the railings in place, the court is satisfied that the permanent removal of the railings from around the church building will cause only the most minor (if any) harm to the setting, the appearance, or the character of the church as a building of special architectural and historic interest, or to the archaeological importance of the church. Indeed, from the anecdotal evidence of the views of parishioners, and in the subjective, but informed, opinion of the church buildings officer, the removal of the railings has enhanced the setting, the appearance, and the “aesthetics” of the church building. The court is also satisfied: (1) that the petitioners have demonstrated a clear and convincing justification for the permanent removal of the railings, in terms of the benefits that will result from easier, and less costly, maintenance of the church building and its immediately surrounding grounds, and the safety of those carrying out such works; and (2) that such resulting benefits far outweigh any minor harm that might result from the permanent removal of the railings from around the church. From the very nature of the proposal, and the reasons underlying it, it is inconceivable that the same, or substantially the same, benefits could be obtained by any alternative proposals. The court will therefore grant the faculty as asked.

17. However, the court agrees with DAC officers that it would be regrettable if this church were permanently to lose a fine heritage asset, and the railings should therefore be adapted (as necessary) and reinstated elsewhere in the churchyard, where they can serve some useful function. The court therefore proposes to impose the following as a condition of the grant of the faculty:

The railings are to be retained and reused within the churchyard as agreed by a subcommittee of the DAC in due course. For this purpose, further proposals are to be formulated, and a separate application for faculty permission (for which planning permission may also be required) is to be made, within 18 months of the grant of the faculty (or such further period as the court may allow on application by letter to the Registry). Because of his prior involvement in, and understanding of this case, and in furtherance of the overriding objective of the FJR, such application is to be reserved to the Chancellor (rather than his Deputy) if the Chancellor is available.

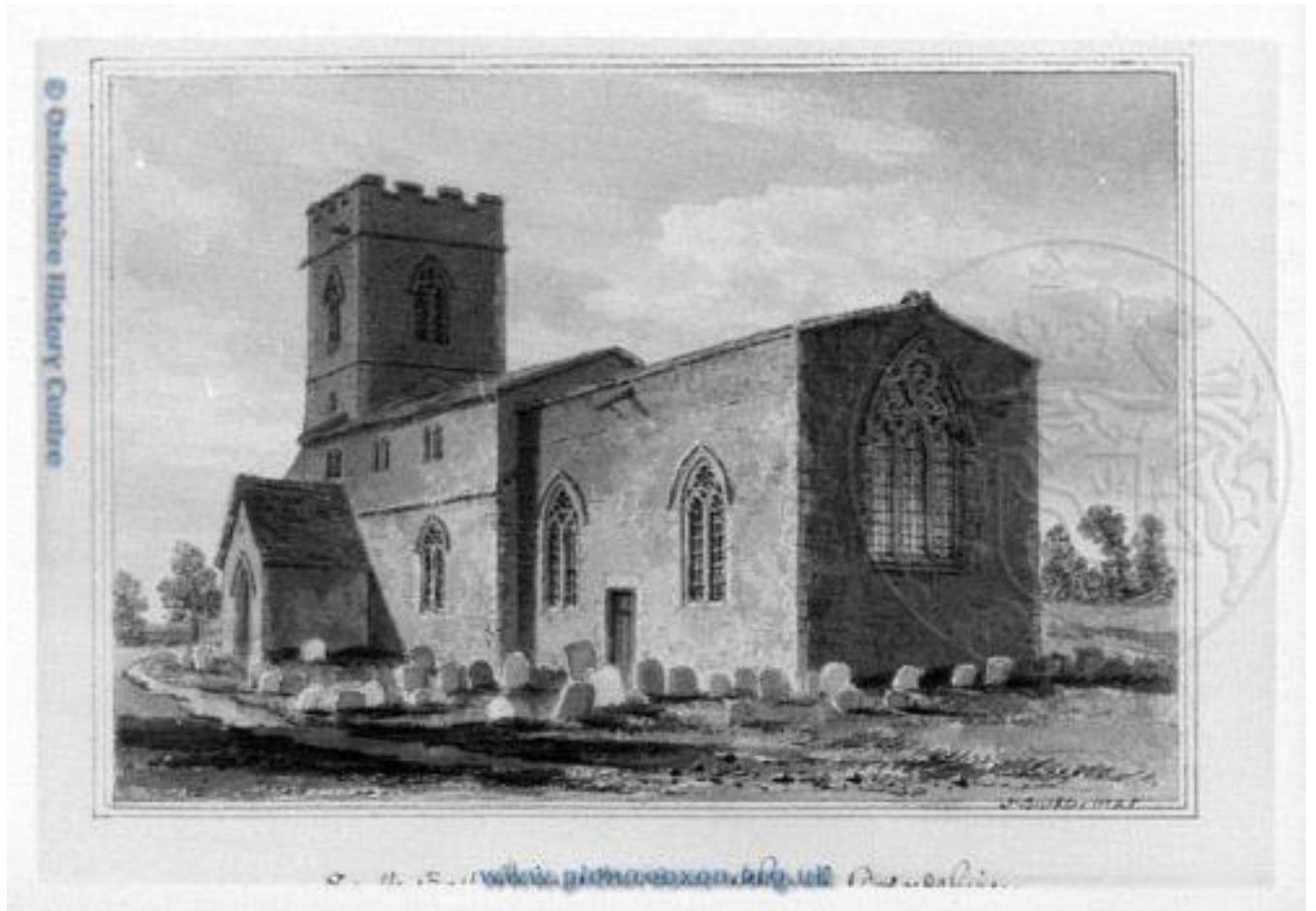
18. In the usual way I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

15 November 2022

1825 Drawing of the church



The railings in place on the south side of the church looking west



The railings in place on the south side of the church looking east



The church tower with the railings in place

