

**IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE**

**IN THE MATTER OF ST. JAMES CHURCH, ULDALE**

Deputy Chancellor Richard Lander

Determined on the papers and without a hearing

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**JUDGMENT**  
**Delivered on 8 December 2022**

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**Introduction and background**

1. A petition was presented to the Court on 17 December 2020 by Rev'd Stephen Banks, Mr Andrew S. Coxon and Mrs Hilary Craddock, the Incumbent and churchwardens, of St James Church, Uldale ("the Church"). The petitioners seek a faculty for internal works at the Church.
2. Uldale is one of the parishes within the Binsey Mission Group, a collection of churches covering a large area of rural Cumbria. The Church is not within the village of Uldale itself; it is situated just under a mile away, about half way between the villages of Uldale and Ireby. I have not visited the Church but have been assisted by photographs of the exterior and interior in the documents provided to me, notably the exterior photographs in the Heritage Impact Statement prepared by the architect, Alastair McGregor, and the interior photographs in the Statement of Impact. I have also taken the liberty of familiarising myself with the location and outward appearance of the church by the use of Google Maps and Google Streetview.
3. The Church dates from the 12<sup>th</sup> century, albeit that significant work was carried out to it in the 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> centuries. It is grade II listed.
4. In appearance, the Church is a low whitewashed stone building, with a slate roof. Its principal features include a large stained glass east window and a bellcote at the western end. The other windows to the north and south elevations are Georgian arched windows. To the north of the nave is a small vestry area, which is understood to have been a Victorian extension. The entrances to the church are through double doors at the western end and through a small door to the vestry, also within the western elevation of the building.

5. In recent years, two phases of work have been carried out to the main fabric of the Church building. The Diocesan Advisory Council Report (“DAC Report”), which is undated but was uploaded on 22 March 2022, records that the main fabric of the building is now in a good stable condition. However, the Church has remained unoccupied since these works were carried out.
6. The work proposed by the current petition is the third phase of work, namely the restoration and improvement of the interior. The aim of the work is to bring the Church back into use, and to create a flexible and comfortable space for both church and community use.
7. St James is a small church with a small congregation. It is therefore particularly encouraging to see the amount of effort and work that has been put into this project by the PCC and the DAC, with a view to restoring and improving the ministry of the Church.

#### The proposed work

8. The petition seeks a faculty for the following works:
  - (1) Installation of an accessible toilet;
  - (2) Installation of kitchen facilities;
  - (3) Electrical work;
  - (4) Removal of existing pews, and their replacement with freestanding chairs;
  - (5) Levelling and replacement of the nave floor;
  - (6) Changing the location of the font.

#### The reasons for the proposed work

9. The DAC Report identifies the key issues with the current configuration of the Church. In summary:
  - (1) There is no water closet toilet, with the only available toilet being a chemical toilet in a shed at the far end of the churchyard;
  - (2) There are no kitchen facilities for the preparation of hot drinks or light refreshments;
  - (3) The electrical installations are antiquated, and of insufficient capacity to allow for heating, lighting, organ and kettle to be used at the same time;
  - (4) The existing fixed pews limit flexibility. Moreover, they cause access difficulties for those with pushchairs, wheelchairs, walking frames or similar, coupled with the fact that the presence of the pews in most of the nave leaves little room elsewhere for the storage of these items. Currently the pews are fixed onto raised platforms, which are a tripping hazard.

10. The Church Building Council (“CBC”), Historic England (“HE”), the Victorian Society (“VS”), the Georgian Group (“GG”) and the Society for the Protection of Ancient Buildings (“SPAB”) were first consulted on the proposals in May 2021. The responses drew attention to what were perceived to be deficiencies in the Statement of Needs and the Statement of Impact. These documents were revised in the light of this, and a further round of consultation took place.
11. The Revised Statement of Needs identifies two main targets for the proposed work.
12. The first is the return of the Church as an active place for regular worship, fellowship and mission activities. These include the following:
  - (1) Regular services with refreshments afterwards, sometimes a meal;
  - (2) Special services with activities for adults and/or children;
  - (3) Other forms of innovative worship;
  - (4) Meetings and courses;
  - (5) Prayer days.
13. The second involves the use of the Church by the wider community as a meeting place, so as to permit use for activities such as the following:
  - (1) Meetings of small groups, such as sewing groups, knitting groups and mother/toddler groups;
  - (2) Coffee mornings for the community;
  - (3) Meetings of walking groups;
  - (4) Musical activities
  - (5) Work days for maintenance of the Church and the churchyard.
14. At present there is no active church in Uldale and many of those who formerly attended St James prior to its closure have not been able to attend church elsewhere.
15. There is no community hall or church hall in Uldale. Historically, some community activities took place at the village Church of England school, but this closed some years ago. After the closure the school building remained available for use for a time, but it was then sold off. This led to a degree of ill feeling in the village, because “the church” was perceived to be to blame, even though the congregation of St James’ Church was as dismayed as the rest of the villagers at the loss of this facility.

### Consultation

16. Following the revision of the Statement of Needs and Statement of Impact, CBC, HE, VS and GG updated their responses to the consultation. SPAG were unable to respond to the revised documents because of the unavailability of the case officer.
17. There is broad support from these bodies for the modernisation of the facilities within the Church, that is, the toilet facilities, the kitchen facilities and the updating of the heating and electrical systems. The proposed removal of the pews and their

replacement with individual chairs has received less support, and concerns have been expressed as to the proposed flooring materials. I shall deal with the issues raised when looking at the various categories of work later in this judgment.

18. There has been limited response to public consultation, with one letter in support of the proposals and no opposition. Within the PCC, a questionnaire was circulated, leading to a number of (mainly anonymous) responses. One of those responding was not in favour of the installation of the toilet, and others questioned the wholesale removal of the pews. Otherwise there was broad support for the proposals.
19. Nobody has served formal particulars of objection or sought to become a party opponent.

#### The legal framework

20. The starting point is that it is for the Petitioners to prove both the need for the proposed work and the appropriateness of that work: see, for example, *Re All Saints, Melbourn* [1990] 1 WLR 833 (Court of Arches).
21. Moreover, in the case of a listed building, the burden of proof is a relatively heavy one. The leading authority is *Re St. Alkmund, Duffield* [2013] Fam. 158 (Court of Arches). At paragraph 87 of his judgment, Charles George QC, Dean of the Arches, posed a series of questions, which have become known as the Duffield Framework. These questions were intended to be of assistance to chancellors determining petitions of this type, and have been applied regularly in such cases since then.
22. The questions posed in *Duffield* were the following:
  - “(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
  - (2) If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals: see *Peek v Trower* (1881) 7 PD 21 , 26–28, and the review of the case law by Bursell QC, Ch in *In re St Mary's Churchyard, White Waltham* (No 2) [2010] Fam 146 , para 11. Questions 3, 4 and 5 do not arise.
  - (3) If the answer to question (1) is “yes”, how serious would the harm be?
  - (4) How clear and convincing is the justification for carrying out the proposals?
  - (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1 , 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are

consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed.”

23. I shall turn to consider these questions in turn.

Question 1 - Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

24. The conclusion of the DAC, in its Notification of Advice, is that the historical architecture and character of the church would not be detrimentally affected by the proposed work. However, on a careful reading of that document, it is not entirely clear to me whether the DAC was actually saying that any detrimental effect to the historical architecture and character of the church would be outweighed by the benefits to the church and the wider community. At this stage, the question which I am considering is whether the proposed works would result in harm to the significance of the church as a building of special architectural or historic interest; the benefits fall to be considered later.

25. The various bodies which were consulted took a different view from the DAC, and it is necessary for me to consider the objections raised.

26. The principal concerns raised relate to the removal of the pews, their replacement with individual chairs and the proposed flooring materials.

27. HE indicated, in its updated consultation response, that the pews contribute positively to the overall character of the Church as a key feature of the interior, and that their removal would have a significant impact on the church. This is in line with what other consultees have said.

28. Moreover, HE’s response reflects the Heritage Impact Statement prepared in support of the petition. I agree with the conclusion reached in the Heritage Impact Statement that the removal of the pews would have a significant impact on the character of the interior of the nave. The evidence is that the pews date from 1901, and are of no particular historical or aesthetic interest. Both the design and the craftsmanship has been described as poor. Nevertheless, the pews are a key feature of the interior and I agree with the Petitioners’ suggestion in the Statement of Impact that they contribute to a well-ordered appearance for the interior of the Church.

29. The design of the proposed new chairs has also been the subject of robust criticism and objection from the bodies consulted.

30. The DAC Report suggests (at para 5.2.4) that the removal of the pews would have a low to medium impact on the character of the interior of the church. Having

considered the responses by the various bodies, my conclusion on the first question is that the loss of the pews, and their replacement with individual modern chairs, would have a negative impact causing some harm, in terms of historic interest. The internal appearance of the Church as traditional old church would, at least in part, be lost.

31. Some concerns were also raised by the various bodies about the proposed use of engineered flooring to replace the floor in the areas where the pew platforms are to be removed. The proposed specification was then amended to involve the use of solid timber flooring, which addressed the issue of the hard floors.
32. The other flooring issue which has led to comment concerns the carpet in the chancel, with VS in particular suggesting that the present carpet (which has been in place for 60 years or more) detracts hugely from the chancel and demonstrates why carpet is to be avoided in church interiors. My conclusion is that the recarpeting of the chancel (as opposed to exposing the solid floor beneath) would also have a negative impact causing some harm, albeit much less harm than the removal of the pews.
33. I do not consider that the other proposed works would, in isolation, result in harm to the significance of the church as a building of special architectural or historic interest.

Question 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.

34. In the light of my conclusion on the first question, this issue does not arise at this stage. As I have already indicated, some aspects of the proposals will not cause harm, but it is convenient to deal with all the proposals together, later in this judgment.

Question 3 - If the answer to question (1) is “yes”, how serious would the harm be?

35. Having considered the DAC Report and the responses to consultation I take the view that the harm would be moderately serious. If one were to divide the level of harm into three categories of low, medium and high then I would have considered that this case just crept up into the medium category.

Question 4 - How clear and convincing is the justification for carrying out the proposals?

36. In answering this question, I shall focus on the more controversial aspects of the proposals.

*Removal of the pews and replacement with chairs*

37. I consider that there is a very clear and convincing justification for the removal of the pews, as explained with clarity in the DAC Report.

38. The pews are not particularly comfortable for use in the formal services for which they were designed. Furthermore, they do not allow for use by those with pushchairs, wheelchairs or walking frames.
39. Perhaps even more significantly, the pews are only really suitable for use in formal services. They are completely inflexible, and they dominate what is a relatively small nave area of about 10.1 metres by 5.7 metres. This means, in practice, that almost all church activities other than formal services cannot be conducted in the Church. The layout is not conducive to meetings, informal services or almost any of the proposed activities listed in the Statement of Needs, to which reference has already been made. The problem is particularly acute in a Church with no church hall, in a community which has no community hall or other public meeting place.
40. In summary, it is hard to think of a situation where a Church would have a more convincing reason for wanting to remove the fixed pews. It will be necessary to return to issues about the proposed design of the chairs in due course, but at this stage I need only say that, in principle, the justification for having individual chairs for flexibility is clear and convincing.

#### *Flooring*

41. The updated proposal involves the use of solid timber flooring and the retention of existing flags. The issue concerns the use of carpeting in the chancel; it is not proposed that the nave be carpeted.
42. The chancel has been carpeted with the existing carpet since 1961. The nave has also been carpeted, presumably for a similar time. The carpet replaced a previous carpet, such that nobody can recall a time when there was no carpet.
43. It follows that what is proposed is a replacement of an existing carpet in part only of the carpeted area.
44. The replacement of an existing carpet is something that can now be undertaken without a faculty, provided that breathable materials are used: see Schedule 1 to the Faculty Jurisdiction Rules 2015, as amended in 2019.
45. That being so, I agree with the view expressed in the DAC Report that requiring the removal of an existing carpet would require a convincing reason. As it is, the reason which is put forward, namely the reduction of noise from footsteps and echo, is in my judgment a sufficiently clear justification in the circumstances for the retention and/or replacement of the carpet.

Question 5 - Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1 , 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the

harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed."

*Proposals other than those relating to seating and flooring*

46. In relation to the proposals which do not concern the seating and flooring, I am satisfied that these should be permitted. No harm of any significance to the character of the building has been suggested, and they have a clear public benefit. In those circumstances the presumption in favour of the status quo has been rebutted.
47. I fully accept the evidence as to the need to update the facilities within the Church, if it is to fulfil its role as a place of worship and also a community facility. I accept that the ability to use the Church for community events, particularly in the absence of other locally available facilities, is an important part of the wider mission of the church. This provision of Christian hospitality is an important aim in itself, but familiarity with the building and members of the congregation has the potential to encourage members of the wider community to attend the Church as a place of worship in due course.
48. It is clear that a lack of adequate toilet facilities has been, and would continue to be, a major problem for the Church. This has clearly limited the uses to which the building can be put for some time. The proposal is for an accessible toilet to be installed within the vestry, in an area partitioned off for that purpose. Unfortunately, it has not proved possible to find a way of making that toilet accessible from the chancel and nave via a ramp or sloped floor, despite proper consideration being given to that point. The proposal is therefore that alternative level access be obtained via the single door into the vestry. This is not ideal, but I accept that it is the best that can be done in the circumstances. The Church is an old building not originally designed to accommodate a toilet at all, let alone toilet facilities complying fully with modern standards.
49. The lack of catering facilities within the Church make it unsuitable, or at least less comfortable and convenient, for many of the uses to which the building could usefully be put. The same can be said about the antiquated heating, lighting and other electrical installations, all of which are required if the Church is to be a safe and comfortable environment, as a place of worship and a facility for the wider community will be required. There has been no suggestion from those consulted that any of these updates give rise to any real aesthetic issues.
50. Following some discussions about the original proposal to relocate the font to a position rather close to the pulpit, it has been proposed that the font be relocated to a position on the other side of the aisle from the pulpit. The DAC considers this new proposed location to be acceptable, and I agree. I also agree with the recommendation that the font be moved only by a suitably qualified conservator, and that this should be a condition of the faculty.

*Removal of the pews and replacement with chairs*

51. Having already indicated that I consider that there is a clear and convincing justification for the removal of the pews and their replacement with individual chairs, I take the view that there is, in principle, a clear public benefit in such a scheme, and that this outweighs any harm to the Church.
52. However, that does not necessarily mean that the scheme in its entirety should be permitted. It is necessary to consider whether there is any way of mitigating the harm to the significance of the church as a building of special architectural or historic interest, whilst still providing the public benefit of having more flexible seating.
53. In many cases where pews are removed, it is a condition of the faculty that some pews are retained for historical reference. Ideally I would have wished to make that a condition of the faculty, as suggested by most consultees. Had the interior of the Church been larger then I would have required the retention of some pews. I might also have required the retention of some pews if they had been of high quality and/or craftsmanship, or of particular historical interest. They are none of these things.
54. In the event, the DAC carefully explored the various options for pew retention, and concluded that there was simply not enough space available without having a detrimental effect on the rest of the Church. I accept the conclusion, at paragraph 6.4.2 of the DAC Report, that if any pews were retained then this would undermine the current usage and mission of the Church for the sake of retaining for historical interest examples of a poor design of Victorian pew.
55. In those circumstances I do not propose to make it a condition of the faculty that any of the existing pews be retained.
56. Turning to the chairs, this is the aspect of the proposals which has led to the greatest concern amongst consultees, and has also been the aspect of this matter that I have found to be the most difficult to decide.
57. The CBC has published a Guidance Note on suitable chairs for use in churches; it is readily available on the internet. This is not formal expert evidence, but nevertheless it is well reasoned advice by an experienced body, and it is clearly something that has to be taken seriously when making decisions about chairs. I propose to treat it in the same way as the other objections and recommendations from the CBC. The following is a quotation from the Guidance Note:

“With many years of experience and having seen a range of completed schemes, the Church Buildings Council generally advocates the use of high quality wooden chairs (i.e. unupholstered) and pews where seating is necessary. The Council’s experience is that wooden chairs have the greatest sympathy with historic church environments, present the best value for money with long life- spans, and that a well-designed, ergonomic wooden chair can provide as much comfort as an upholstered design.

Upholstered seats are not considered to be appropriate for the following reasons:

- They have a significant impact in terms of colour, texture and character which is not consonant with the quality of a highly listed church;
- Experience demonstrates that upholstered seating needs more regular refurbishment (wear and tear, staining) than seating without upholstery. This is especially true of multi-use churches where it will be normal to eat and drink regularly on the chairs;
- They are heavy and therefore more difficult to arrange and stack;
- The addition of soft furnishings can alter existing acoustics;
- Wood tones and textures fit well within church buildings and have been used for centuries in this context, whilst some colours have associations with other types of buildings such as offices.”

58. The proposed chairs are upholstered wooden chairs of a fairly simple and unobtrusive modern design. They are not what might be described as highly fashionable, in the sense that they are not likely to date quickly, nor are they likely to be the centre of attention within the building. The proposal is that the wood should be stained so as to match the other woodwork within the Church and that the upholstery should be of a colour described by the DAC as dull sandstone. I have seen a photograph of the proposed chair with this upholstery.

59. The Guidance Note sets out powerful reasons as to why upholstered chairs are generally to be avoided in the church setting. Whatever the status of the Guidance Note may be as a matter of law, there is considerable merit in keeping to the guidelines unless there is a good reason not to do so.

60. The DAC has explored the wish of the Petitioners to have upholstered chairs in commendable detail, giving specific consideration to the reasons set out in the guidelines, as I have quoted above. I shall therefore set out the conclusions set out in the DAC Report in full:

“The DAC supports and understands the reasoning expressed in the CBC Guidelines and spent considerable time debating its individual elements in relation to this particular proposal. The preferred chair is affordable in relation to the funds that the PCC has for the overall project and in relation to the importance to them of offering a comfortable and stable seating to a standard that current generations expect. The people of the local area who will be using the seats have chosen the proposed model of chair as the one they find comfortable and wish to sit upon. It appears arrogant to tell them that they are wrong in finding the chosen chair more comfortable than the alternatives for sitting on in church. The PCC has inquired and received from the suppliers documented assurances of the durability of the chair and its upholstery. The PCC and other church members have also tested in the church the stability of the chair for those sitting on them.

They have also been able to move the chair for themselves and found it not too heavy to make such chairs difficult to rearrange in the intended way.

The DAC considered that chairs of the proposed type would remain a subsidiary feature in the church not undermining the strong simple character of the interior. The proposed colour of the upholstery is a muted, earth colour that would tone with the sandstone features in the church. It would be possible to attach a condition specifying the use of this particular colour. The CBC guidelines guard against possible detrimental impacts from the choice of chairs. In this case the DAC did not consider that there were identifiable detriments that would arise. The proposed chair is undoubtedly of a modern design but it is not unreasonable to add to the works of previous ages a design of this era which does not permanently alter the fabric of the building but meets modern expectations of comfort. The PCC has had examples of six designs of chair in the church for church members to view and sit upon and then express their preferences. All have chosen the same chair with an integral upholstered seat and back as specified in the original submission. Some commented that the all-timber chair was as uncomfortable as the existing pews. They have received details from the suppliers of the rigorous testing and lifespan of the chairs and the simple cleaning methods for the upholstery and its durability. They are competitively priced and affordable. The intention is to keep the chairs out and re-arrange their layout to suit the particular service or activity. It is not intended to stack or store them between different activities. Having had the opportunity of moving the chair on the site visit the two DAC Members could not say that the chosen chair was heavy to shift. The timberwork would be stained to match that of the other internal woodwork. The chosen colour for the upholstery is that used on the central chair in the photograph below. It is a duller version of the colour of the local, sandstone corbels supporting the roof timbers and shown in the first photograph in this report. It is similar to local earth colours and both recessive in character and practical. Indeed, in such a subdued colour the chairs are likely to be less dominant than chairs with stained timber backs and seats.”

61. After some initial hesitation I am persuaded by this reasoning; I adopt it and propose to permit the use of the proposed chairs. It is clear that careful thought has been given to the issue of seating by both the PCC and the DAC.
62. I take into account that the need in this Church is not just for seating for use in formal services, but also for use on other types of occasion. Essentially the Church fulfils the functions of a church and a church hall. Wooden chairs may be perfectly satisfactory for formal church services, but I accept that chairs which are more comfortable, or at least are perceived to be more comfortable, will be particularly important in providing a welcoming environment for other occasions.

*Flooring*

63. I have already concluded that there is a clear justification for the replacement of the carpet in the chancel, and that the other proposals for the hard flooring (as revised) are entirely satisfactory.

Conclusion

64. For the reasons set out above, I grant the faculty requested by the Petitioners, subject to the conditions recommended by the DAC, namely:
- (1) There shall be an archaeological Watching Brief and that the font be only moved by a qualified conservator; and
  - (2) The chairs shall be stained to match the existing woodwork in the Church and the chair upholstery shall be the colour of dull sandstone.

RICHARD LANDER  
Deputy Chancellor  
8 December 2022