

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

**RE ST LAWRENCE APPLEBY**

**AMENDED JUDGMENT  
delivered on 8 June 2020**

Note: This judgment, as hereinafter set out in paras 1 to 64 was first delivered on 13 May 2020, but is now amended by the addition of an Addendum which adds paras 65 to 68.

*Introduction*

1. Appleby St Lawrence is a Grade 1 listed church founded in the late 12<sup>th</sup> century and situated in Appleby town centre and within the Appleby Conservation Area and the Appleby Heritage Action Zone.

2. The church was listed on 6 June 1951 and the listing states:

‘Lower stage of the tower is circa 1150, C13, South Porch, body of the church is early C14, Decorated on the inside and C15 Perpendicular on the outside, north chapel and chancel rebuilt by Lady Anne Clifford in 1655 with a general restoration: restored again 1861-2 and 1960. Coursed rubble with lead roofs. Nave with castellated clerestory, aisles, chancel, south-west porch, castellated west tower with clock of 1699. 4 bay nave arcade. Probably early C19 flat plaster ceiling with Gothic panelling. Particularly fine and important organ brought from Carlisle Cathedral in 1674 and dating probably from 1571; the case is dated 1836 when it was reconstructed, using much old material, by Thomas Modell. The windows are mostly Victorian restorations. Fine C17 memorials to the Clifford family, C15 screen. Modern font. Some good mostly C18 headstones in the churchyard.’

3. In the Standard Information filed with this Petition, the Summary Statement of Significance states that the church is:

'A wonderful town church that sits within its graveyard behind the early C18 classic cloister entrance designed by Robert Smirke. Sited at the northern end of the medieval town, counterbalancing Appleby Castle, it suffered from the ravages of border wars and, as a consequence, has been substantially repaired on several occasions. The church is predominantly C14 and C15 with the lower stage of the tower and the porch, dating from the C12/C13, being the earliest portions. The exterior conforms to Perpendicular patterns with the top part of the tower and the clerestory being particularly distinctive with gargoyles and battlements. The nave arcade comprises characteristic decorated quatrefoil pillars supporting pointed arches but with an early C19 ceiling. The chapel and chancel was built in the C17 through the patronage of Lady Anne Clifford whose mother's magnificent alabaster and black basalt effigy makes a delightful contribution to the character of the church. This piece of high art is the perfect counterpoint to the timeworn and gnarled C16 timber screens positioned behind the choir stalls. Another point of interest in the church are the boxed-in early C18 corporation pews where the town's civic leaders and officers worshipped. Probably the most significant fixture is the C16 organ, reputed to be the oldest working instrument in the country. It is a visual focal point with its renaissance decorations. The attractive Frosterley 'marble' font, the black marble monument to Lady Anne Clifford and good stained glass are of interest.'

4. The church is situated on low-lying ground beside the River Eden and I am aware that in December 2015 and January 2016 the Church suffered serious internal flooding to a considerable depth and that such prompted a large number of proposals for remedial and other works which were considered by the Diocesan Advisory Committee ['DAC'] and were the subject of a site visit in May 2016.

5. The site visit report referred to various matters for which a faculty was subsequently granted but also referred to the re-siting of the Castle and Corporation pews where the intention was to 'move all the pews one pillar westwards leaving the carvings in place'. That report advised that the DAC's view was that a very good reason would need to be advanced to move these very old pews and advised the Parochial Church Council ['the PCC'] to consult with English Heritage, as it then was, and other interested parties.

6. So it was that subsequently the DAC recommended that a faculty be granted, and one was granted, for the restoration and replacement of items damaged by the flooding, together with improved flood resilience features including a new boiler, new power supply, emergency generator and floodgates together with the installation of wc facilities in the base of the tower.

7. The last part of these post-flooding faculties related to the provision of simple kitchen facilities in a cupboard at the west end of the north aisle. However, the kitchen was not installed even though the DAC had recommended its approval, probably because of cost.

8. On 21 September 2018 there was a further visit by the DAC which considered other proposals which were intended to meet the needs of the church by facilitating a variety of worship and services, serving the community and offering a reasonable standard of comfort and hospitality. Such proposals included:

- 8.1. the removal of the remaining pews and the pew platform in the north aisle and laying flags to match the existing flags so as to increase the available social space beside the proposed kitchen servery, to provide a children's space with a new planned family service, to provide a space for displays and to provide space for a local craft fair and other events;
- 8.2. the re-siting of the Corporation and Castle pews;
- 8.3. the provision of a new glazed inner lobby to the south west door; and
- 8.4. proposals relating to the glazing of the Lady Chapel and detailed works in the St Nicholas Chapel.

9. After studying the report of that site visit report and discussing the proposals, the DAC concluded at its meeting on 29 November 2018 that there was a need for further fully detailed plans and specifications sufficient to gauge the potential impact on the special historic, architectural and aesthetic character of the church and its furnishings. These details would support and inform the consultations with Historic England and the other national specialist consultees.

10. By their Petition dated 15 September 2019 Peter John Boyle [the Associate Priest], Jean Margorie Hutchison [the Churchwarden] and John Denton Tillotson [a recently retired Churchwarden] [together described as 'the Petitioners'] seek a faculty for the following works:

- 10.1. the completion of the kitchen/servery in a cupboard at the west end of the north aisle, using the old pine wood from the pews in the north aisle, and installing the stainless-steel fittings and a small fridge;
- 10.2. the removal of pews in the north aisle to provide a multi-purpose area floored by Lazonby stone, with pews being used in the kitchen/servery; and
- 10.3. the decoration of the west end and north and south aisles with a simple wash.

11. Such petition had the unanimous support of the Parochial Church Council ['PCC'] on 2 October 2018.

12. The estimated cost of the proposed works is £15,500.

13. At its meeting on 18 July 2019 the Diocesan Advisory Committee ['DAC'] recommended such works for approval by this court subject to the following provisos:

13.1. the stone wall memorials in the kitchen/servery area are to be left in place with ventilation. The means of ventilation and protection of the stone wall memorials is to be submitted and agreed;

13.2. the materials and precise colour to be used to decorate the west end and the north and south aisles are to be agreed with the Archdeacon.

14. On such date the DAC also opined, inter alia, that the proposed works were likely to affect the character of the church as a building of special architectural or historic interest.

15. Although in 2018 an application had been submitted to the DAC in relation to:

15.1. the re-siting of the Corporation and Castle pews; and

15.2. the construction of an Inner Porch to the South West Door

any decision on such items was, and remains, deferred and they are not pursued by the Petitioners *at this time*.

16. Having read all the papers, by an email sent to the Diocesan Registrar on 19 September 2019 I directed that Special Notice of the application be given to:

16.1. Historic England ['HE'];

16.2. the Society for the Protection of Ancient Buildings ['SPAB'];

16.3. the Victorian Society ['VS'];

16.4. the Georgian Group ['GG'];

16.5. the Ancient Monuments Society; and

16.6. the Church Buildings Council ['CBC'].

17. All of the above, save for GG, had been consulted prior to the application for advice to the DAC.

18. The comments made by the Noticed Parties were largely about the proposals referred to in paras 8.2., 8.3., and 7.4. above and *not* about the limited proposals referred to in paras 10.1., 10.2., and 10.3. above. Where such Noticed Parties made observations about the matters currently before me, I will set them out below.

19. None of the Noticed Parties elected to become parties to these proceedings but asked that I should take their observations into account in deciding whether to grant a faculty. I do so and I am satisfied that it is expedient that I should determine this petition on the basis of such written representations and without any hearing.

20. The Petitioners have now responded to the observations of each of the Noticed parties. As appears below, many of such observations are made in relation to certain of the proposals relate to the matters referred to in paragraph 13 above where the DAC have, as yet, given no advice in respect of such proposals and I am *not* adjudicating on the merits of such proposals or whether I should grant a faculty in respect thereof.

21. I thus consider only those matters which are the subject of the present application, namely [1] the completion of the kitchen/servery in a cupboard at the west end of the north aisle, using the old pine wood from the pews in the north aisle, installing the stainless-steel fitments and a small fridge; [2] the removal of pews in the north aisle to provide a multi-purpose area floored by Lazonby stone (pews used in the kitchen servery cupboards); and [3] the decoration of the west end and north and south aisles with a simple wash.

22. Before considering each of those matters in turn, it is important to consider the legal principles on which I should determine this application.

*The legal principles to be applied*

23. In determining whether I should grant a faculty, the burden of proof lies on the Petitioners who propose a change to the status quo and they must satisfy me on the balance of probabilities that it is appropriate for me to grant a faculty.

24. In the case of a listed church, as this, a balancing exercise has to be carried out and an application for a faculty falls to be addressed by reference to the series of questions identified by the Court of Arches in *In Re St Alkmund, Duffield* [2012] Fam 158, at para 87, as affirmed and clarified by that Court's later decision in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at para 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193, at para 39.

25. These questions are:

- [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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?
- [3] If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

[4] How clear and convincing is the justification for carrying out the proposals?

[5] In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, 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?

26. In *Penshurst* the Court made four observations about these questions:

26.1. Question [1] cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church.

26.2. In answering Questions [1] and [3], the particular grading of the church is highly relevant, whether or not serious harm will be occasioned.

26.3. In answering Question [4], what matters are the elements which comprise the justification, including justification falling short of need or necessity: see *Duffield* paras 85-86.

26.4. Questions [1], [3] and [5] are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.

27. I agree with and adopt the recent dicta of Hodge Ch in *St Mary the Virgin, North Aston* [2020] ECC Oxf 3 in which, at para 19, he stated:

‘The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the listed church as a whole and whether this would be adversely affected overall by the proposed works. The court needs to consider whether the proposed works will adversely affect the appearance, the character, and the setting of this Grade II\* listed church, not in the abstract, but rather as a ‘building of special architectural or historic interest’. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted; and that serious harm to a church listed as Grade I or Grade II\* should only be permitted in exceptional cases. As this court recently observed in the case of *Re St Peter & St Paul, Aston Rowant* [2019] Oxf 3 (at paragraph 7), when applying the *Duffield* guidelines, the court has to consider whether the same, or substantially the same, benefit could be obtained from other works which would cause less harm to the character and special significance of the church building. If, because the intended benefit could be obtained from other, less harmful, works, the degree of harm to the special significance of the church building which would flow from the proposed works is not necessary to achieve the desired benefit, then that is highly relevant. In such circumstances, it may be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit. At all stages when applying

the *Duffield* guidelines, the court should bear in mind that the desirability of preserving the listed church building, its setting, and all the features of special architectural or historic interest which it possesses, is a consideration of considerable importance and weight. The court has directed itself by reference to these expanded guidelines, which it has borne very much in mind. Naturally, the court has also paid due regard, as it is enjoined to do by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*, to the role of the church as a local centre of worship and mission.'

28. In determining this petition I will apply the above principles.

29. On the facts here the special architectural and historic interest in the church lies principally in the historic fabric as set out above.

30. Many of the Noticed Parties commented adversely on the lack of information, justification and clarity of the documentation supplied to them. In my judgment, this is a some merit in such observation. However, I note that, for the most part, there are few comments by the Noticed Parties about the matters which I *currently* have to consider.

31. Petitions for a faculty should set out with clarity what is proposed, enclose plans if appropriate and advance full reasons from the outset as to why it is believed such works are necessary or appropriate. I am far from convinced that that was fully done in this case in that I believe that the Petitioners have sought to respond to the points raised by the Noticed Parties rather than setting out their justification for what is proposed from the outset. Although such a practice is important in *all* cases, it is particularly important in cases involving Grade I and Grade II\* listed churches where the *Duffield* principles, as explained above, are required to be applied because the petitioners have to show that the public benefit outweighs harm to the significance of the church as a building of special architectural or historic interest.

32. If the parish decides to pursue further matters, and in particular those referred to in paras 14.1. and 14.2., it will be important that all relevant information is supplied and that there is full justification of why it is sought to undertake any further works.

#### *Completion of the kitchen servery*

33. Although the wording of the Petition refers to 'completion of a kitchen/servery', it is said by the Petitioners that this nomenclature was adopted by the PCC 'at the insistence of the DAC and the Petitioners seek to emphasise that what is proposed is in reality a tea point and servery, not a kitchen and that when not used it would be concealed within a cupboard.

34. Paras 3-15 of the Schedule of Work provided by JABA sets out the details of the proposed works to the kitchen/servery. This includes the provision of floor and wall units and a fridge.

35. I have seen plans which locate the kitchen/servery at the west end of the north aisle to the right hand side of the steps leading up to the vestry and illustrate how modest the proposals are in that the kitchen/servery comprises of a single small row of floor and wall units, probably no more than 3 metres wide which would be concealed by the cupboard doors when not in use.

36. It is said that the kitchen/servery which was authorised in a previous faculty had previously been postponed on the ground of cost, that it will now be completed using the old pine wood from the pews to be removed in the north aisle.

37. The justification for this work is 'to provide facilities for providing simple refreshments in church.'

38. HE was supportive of the kitchens into church buildings as it allowed extended of churches and SPAB considered what was proposed to be a 'discrete and modest addition to the church' although it was concerned by the lack of ventilation in this area. GG had no objection to what was proposed but supported SPAB's concerns as to ventilation. CBC supported the provision of a kitchen/servery in principle.

39. However, there are two existing memorials on the interior of the north wall of the church almost adjacent to the kitchen/servery and there is a dispute as to whether they should be relocated from that location to some other part of the church or left in situ.

40. HE favoured the latter because it believed it was preferable to avoid any further impacts on the wall fabric and to retain the memorials in a well-ventilated space to the rear of the kitchen/servery. It did not believe that moving the memorials was justified given the harm that this would do to other historic fabric and that the kitchen/servery may be altered in the relatively near future. GG preferred that the memorials remained in situ but with adequate ventilation provided.

41. By contrast, SPAB believed that the wall memorials should be relocated to a different position in the church with suitable environmental conditions. CBC did not agree with the proposal to keep the two existing memorials in situ or to move them higher up the wall and would prefer them to be relocated within the church where they would not be subject to steam from hot drink and food preparation. However, both SPAB and CBC acknowledged that one memorial was in a particularly fragile state because of delamination and would require stabilisation before being relocated.



42. In response to concerns about ventilation the church architect advised the construction of a timber frame to provide ventilation to both the memorials and the kitchen cupboards. HE agree that this seemed a proportionate response and is reversible, with minimal impact on the medieval church walls.

43. Applying the *Duffield* questions, I am satisfied that:

- 43.1. the installation of a kitchen/serverly will result in harm to the significance of the building as a building of special architectural or historic interest of this Grade I listed church;
- 43.2. the degree of harm will be minimal or small because it is [per SPAB] such 'a modest and discrete addition to the church' which is only likely to be noticed at all when it is being used because it will be concealed as a cupboard at all other times;
- 43.3. the justification for the provision of very modest catering facilities in a church which seeks to promote mission and outreach is self-evident; and
- 43.4. the resulting public benefit undoubtedly outweighs such a minimal or small degree of harm.

44. As to whether the memorials should be relocated, I have concluded that since relocating them is fraught with difficulty in that they might not be capable of being moved satisfactorily and that relocating them would inevitably damage the historic fabric of this church, it is far preferable to leave them in situ and provide adequate ventilation. In so concluding I prefer the views expressed by the Petitioners, HE and GG rather than those of SPAB and CBC.

45. I note that the Petitioners have proposed ventilation to address any problem which might arise. However, given that is something which the DAC are better equipped to address I will grant this part of the faculty and impose a condition that prior to the commencement of any works the means of ventilation and protection of the two wall memorials is to be submitted to and approved by the DAC.

#### *Removal of pews in the north aisle*

46. The Petitioners state that the pews in the north aisle match others in the nave and south aisle and are believed to date from, or soon after, the 1830-31 restoration. However, there does not seem to have been any independent assessment of the significance of the pews.

47. The justification for the removal of the remaining 10 pews is said to be 'to provide a flexible space in the north aisle' and that 'storable chairs will be available to

provide a similar amount of seating'. Of course, some of the pews in the north aisle have already been removed.

48. Paras 16-19 of the Schedule of Works sets out details the dismantling of the pews with their retention for re-use and the removal of the pew platforms together with the redundant steel pipe along the aisle edge and the laying of new Lazonby flags to align with those already at the west end on the north aisle.

49. Attached to the Petition is a report of a DAC site visit to the Church on 21 September 2018. In such report it is stated that some of the pews from the north aisle have already been removed to provide some flexible social space beside the proposed kitchen/servery but that such space 'is insufficient for the needs'. 'There is a desire to set out tables for refreshments for some events and after-service coffee, to provide children's space in connection with a new family service series; to set up displays and exhibitions such as one currently being planned to celebrate Baptism and to provide space for a local craft fair and other events'. To meet these needs it is proposed to remove the remaining pews and pew platform in the north aisle and to lay flags to match the existing flags.

50. At the September 2018 meeting with DAC representatives those representing the PCC said that there was a usual Sunday attendance of about 30 people and that whilst there could be 200-300 people at major services such as Christmas and Remembrance, on those occasions extra chairs would be set out.

51. At such meeting the DAC report indicated that the removal of the pews from the north aisle would provide a suitable amount of flexible space in an appropriate area and would provide panelling for the completion of the kitchen facilities but would leave the main pew blocks of the nave and the south aisle and thus preserve the dominant character of the internal space. The extension of the current flag floor in the north aisle would provide the most appropriate hard-wearing and flood-resilient floor. The report concluded that such proposals would 'consolidate the gains from the recent, impressive works to the church'.

52. HE was sympathetic for the need for additional cleared space within the church but in the absence of details as to the provenance or potential significance of the pews, were unable to say whether their loss was acceptable or not. SPAB deferred to the VS as to the proposed removal of the pews and their significance.

53. As to the re-use of such pews in the kitchen/servery, the VS discouraged such re-use and encouraged the commissioning of bespoke joinery. GG had sympathy with SPAB's concerns about the re-use of the pews but did not wish to object on this ground.

By contrast, the Petitioners says this judgment as to re-use of the pews is entirely subjective.

54. In their response to the Noticed Parties the Petitioners say this

'The multi-purpose space created by removing the remaining pews in the north aisle is intended to be furnished with flexible arrangements of upholstered seating for after service refreshments from the servery, for small gatherings, and to provide a more flexible space for mission to young families with children who have recently begun to attend, and who are seeking a different style of worship and teaching. This space would also be used for concerts, craft fairs and to cater for those attending the annual horse fair in the town. An equivalent number of chairs will be made available for major services and funerals.'

55. In so far as the Petitioners wish to introduce additional upholstered chairs and/or wish to store them in the church, they will need a faculty to do so but I am content to deal with this by means of as condition that prior to the commencement of any works such upholstered chairs and their storage shall be agreed with the Archdeacon of Carlisle.

56. Again, applying the *Duffield* questions, I am satisfied that:

- 56.1. the removal of the pews in the north aisle will result in harm to the significance of the building as a building of special architectural or historic interest of this Grade I listed church;
- 56.2. given that some of the pews in the north aisle have already been removed, that the remaining pews match others in the nave and south aisle which constitute the dominant character of the internal space of the church and are not part of the historic fabric but are believed to date a restoration in the early 19<sup>th</sup> century, the degree of harm will be at the very most moderate; and
- 56.3. the justification for is amply demonstrated by the Petitioners in that it is important that some flexible social space is provided beside the proposed kitchen/servery so that refreshments may be served before or after services, that a multi-purpose children's space is provided and that there is space in which to set up displays and exhibitions and to provide space for a local craft fair and other events.
- 56.4. the resulting public benefit certainly outweighs any such moderate harm.

57. Notwithstanding that I note that VS discouraged such re-use of pews [and that SPAB had sympathy with such concerns] and encouraged the commissioning of bespoke joinery, for my part I can see nothing inappropriate with the re-use of pews, something which this church has done in the past. It appears that the DAC agree with

such approach in that they did not advise that I should impose a condition against re-use in any faculty I might grant.

58. I am satisfied that I should grant this part of the faculty sought without any condition against re-use of such pews.

*Decoration of the west end and the north and south aisles with a simple wash*

59. Although the Petitioners state that a specification for the decoration of the walls was included at para 34 of the Schedule of Works, namely limewash, they accept that a decision has to be made as to colour.

60. The proposed decoration seems largely uncontroversial. HE had no objection to redecoration provided that appropriate materials were appropriate for the surfaces to which they were applied and SPAB observed that it would be important to agree the specification so that the materials used were compatible with the building and allowed the historic fabric to 'breathe'.

61. Subject to proper materials being used, applying the *Duffield* questions:

61.1. I am not satisfied that what is proposed will result in any harm to the significance of the church as a building of special architectural or historic interest?

61.2. I am satisfied that the Petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted.

62. I am thus satisfied that this part of the faculty should be granted on condition that prior to the commencement of these works the materials and the precise colour to be used to decorate the west end and the north and south aisles is be agreed with the Archdeacon of Carlisle.

*Conclusions*

63. Accordingly, I grant the faculty sought on condition that:

63.1. the existing wall memorials in the kitchen/servy area are to be left in place;

63.2. prior to the commencement of any works:

63.2.1. the means of ventilation and protection of the stone wall memorials is to be submitted to and approved by the DAC;

63.2.2 such upholstered chairs and their storage shall be agreed with the Archdeacon of Carlisle; and

63.2.3. the materials and precise colour to be used to decorate the west end and the north and south aisles shall be agreed with the Archdeacon of Carlisle.

64. In accordance with the practice of the court the Petitioners must pay the costs of this application.

#### ADDENDUM

65. After the delivery of this judgment to the Petitioners and the Noticed Parties, VS observed that no details of the chairs had been supplied to it *prior* to it being consulted and, after enquiry, I was satisfied that such was the case.

66. In such circumstances I am satisfied that it would be inappropriate for me to make any decision in relation to the replacement chairs and thus I no longer adopt the approach set out in para 55 above.

67. I thus advised both the Petitioners and VS, through the Diocesan Registrar, that, if both the Petitioners and VS agreed, I would make the following order, namely that:

67.1. the faculty sought by the Petitioners should be granted in respect of all the proposed works on condition that:

67.1.1. the existing wall memorials in the kitchen/servery area are to be left in place;

67.1.2. prior to the commencement of such works the means of ventilation and protection of the stone wall memorials is to be submitted to and approved by the DAC;

67.2. there shall be a further application for a faculty in relation to the provision of replacement chairs which are to provide seating to be used when needed to replicate that originally provided by the pews removed from the north aisle and that there shall be prior consultation with each of the amenity societies referred to in para 16 of my judgment in respect of such further application. In such consultation the Petitioners will need to have regard to the fact that this is a Grade 1 listed church and should explain how often it is intended that these chairs are to be used and where they will be stored when not in use.

68. The Petitioners and VS have agreed to the above order and I thus make an order in such terms.



GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Carlisle