

**IN THE CONSISTORY COURT OF YORK**

**PARISH OF ST MARY LOWGATE, HULL**

**CHURCH OF ST MARY LOWGATE**

**IN THE MATTER OF A PETITION REQUESTING A FACULTY for reordering**

**Neutral Citation Number: [2020] ECC Yor 2**

- 1 The church of St Mary Lowgate is situated in what is often referred to as the “Old Town” of Kingston upon Hull. Lowgate runs from north to south becoming Market Place, then Queen Street, until finally it meets the Humber estuary. On the eastern side of Lowgate the church of St Mary is prominent if for no other reason than that its tower extends over the pavement with a passageway through for pedestrians.
- 2 A church on this site dates back to fourteenth century when it was a chapel of ease of All Saints North Ferriby a village eight miles to the west of Hull. The earlier church was rebuilt in the fifteenth century when various bequests were made for that purpose. The church tower collapsed in 1518 demolishing the west end of the church. The current tower was built in 1697 and encased in Roman cement in 1826.
- 3 An unusual feature of this church in the nineteenth century was that three successive vicars were succeeding generations of the Scott family, each named John Scott. The first John Scott was vicar from 1816 until his death in 1834; his son followed him as vicar between 1834 and 1865; and his son was vicar from 1865 to 1885.
- 4 The first John Scott was of an evangelical persuasion and came to Lowgate having been Lecturer at Holy Trinity (now Hull Minster) just a couple of hundred yards down the road. The second John Scott was also an evangelical and under his ministry the church thrived and the congregation numbered between five hundred and six hundred people. He had a cousin who was an architect, none other than George Gilbert Scott (GGS), who was developing a reputation for working for churches. John Scott invited him to help develop plans for the reordering of St Mary’s. The resulting work between 1861 and 1863 was extensive as it involved a significant enlargement of the church by removing the southern gallery and adding an extension to the south of the church.
- 5 Pevsner describes the work thus: “The church was encased in ashlar ... there are north and south aisles the full length of the building to which Scott added a second south aisle, south porch and vestry. He set back the west end to expose fully the base of the tower which was then pierced with a stone-vaulted walkway. The tower was also heightened.” John Betjeman in his Guide to English Parish Churches says that “the result is a forest of

pillars". The church was also filled with pews and the seventeenth century three decker pulpit, several sections of which now line the walls of the wardens' vestry, was replaced with a traceried oak pulpit. The altar was raised on two steps and an elaborate Gothic stone reredos of Caen stone was added as was a new Decorated style font.

- 6 It would seem that the reordering was designed to reflect the evangelical approach of the then vicar with the emphasis on preaching. As the Statement of Significance says: "In the early nineteenth century the pulpit provided the focus for the throngs of people fired up by the evangelical, sermon based, revival."
- 7 The third John Scott was of a different theological persuasion from his father. The Statement of Significance puts it this way: "The third John Scott further embraced the principles of the influential Oxford Movement. He introduced a surplice choir and began the tradition of ceremonial sacramental emphasis in worship. In 1877, he brought back choir stalls, desks, credences and sedilla with Gothic detail. Some excellent Clayton & Bell stained glass was added, and the east window importantly incorporated the four surviving heraldic pieces of the fifteenth century. The Oxford Movement also stressed the need for strong social action, so it was that John Scott III set up a soup kitchen, a penny bank and funded a parish nurse."
- 8 At the beginning of the twentieth century Temple Moore (TM) was invited to continue the reordering that commenced under GGS. Work began in 1908 with the creation of the present Chapel of the Nativity at the east end of the north aisle. This has a wooden floor and contains a canopied altar; it was constructed in memory of the third John Scott. The chancel was enlarged to three bays and enclosed by fretted screens in 1908-9. In 1912 the great Rood Screen was completed under the direction of TM's nephew Leslie Thomas Moore. As the Statement of Significance accurately says "it dramatically fills the eyeline on entering through the west door." It was dedicated as a memorial to Edward VII whose profile is carved in a boss under the archway.
- 9 The church is now Grade II\* listed.
- 10 That Anglo-Catholic tradition with its emphasis on sacramental worship and social action has continued to the present time. Most of the fabric work in the twentieth century related to the exterior of the building. However, the current small but dedicated group of parishioners resolved some years ago to turn their attention to the interior. That attention was badly needed. For many years the church has suffered from damp, the heating system failed some years ago and the facilities that are now regarded as essential for a public building are completely absent.
- 11 The Society for the Protection of Ancient Buildings (SPAB) commended the Statement of Need which "Comprehensively sets out the needs of the church under the following headings: Heating, Floors, WC's, Sanitary provision, Refreshments, Lighting, Space, and in respect of Liturgy, advises that things continue to work well within the Chancel, Nave and Chapel of the Nativity." The Statement describes under those various heads the problems that must be resolved. In relation to worship the church is cold causing a fall-off in attendance, particular in winter months. Their pastoral and outreach work, in

particular for the homeless – providing soup kitchens, listening and signposting – require not only a warmer space but also proper kitchen facilities. Similar provision as well as toilets including those with access for the disabled are also required for the other opportunities that they have, given their prime city centre position, for a variety of events in addition to their worship services. The Church Buildings Council (CBC) said “The Council was inspired to hear about the ministry sustained by this church despite the manifest difficulties of using the building in its present state. It was convinced that there is a pressing need to undertake the proposed works to make the building fit to sustain and develop its ministry.”

- 12 David Sherriff became the inspecting architect for the church over 10 years ago on the retirement of Ron Sims. It was in 2014 that the parish first approached the Diocesan Advisory Committee (DAC) with some outline proposals of what might be done to enable them to meet those needs. The minute of the DAC meeting (22<sup>nd</sup> July 2014) when those first proposals were discussed reads as follows:

Although this application for advice was in a very preliminary state – really an imaginative portfolio of ideas and references – members were unanimous in welcoming its brave and adventurous spirit, its deep respect for the building and its qualities, its understated creativity, and the architects’ passionate urge to make fine, beautiful spaces in a building which they clearly admire and understand. The Committee was aware that the external fabric of the church was now in good heart, but that the interior – perhaps the loveliest ancient, urban church interior in the diocese – was in very poor condition. The expansive large outer south aisle, added in the mid-19<sup>th</sup> century, now had little or no function, the building was pewed to accommodate unrealistically large numbers of people, the heating and lighting installations were in desperate need of renewal, the uneven and damaged floors were dangerous, there were no decent vestry facilities and no kitchen or WC worth the name, and the wonderful interior with fine mural monuments, glass and Sir GG Scott/Temple Moore fittings was extremely dirty and impossible to appreciate properly. Despite which the location of the church had enormous possibilities for mission, education, arts and community engagement, and tourism, and seemed now to have a PCC with the energy to manage a major revival. The architects had suggested wholesale clearance of the outer south aisle, and the introduction of a new stone floor and elegant, sophisticated new structures containing much-needed kitchens, WCs and other facilities – this in the context of wholly new services and a complete restoration of the interior, retaining and enhancing the superb furnishings and liturgical arrangements in the nave and north aisle.

- 13 Gradually those plans have been developed and refined in consultation with the DAC and efforts have been made to raise funds. The PCC have been particularly encouraged more recently by a very significant legacy and by other gifts which have given them the hope and also the faith that they will be able to complete what might have seemed at first to be an unachievable dream.
- 14 A faculty was obtained in 2017 temporarily to remove into storage pews from the inner and outer south aisles and to raise certain areas of aisle floor to the level of the pew-platforms. That was done in order to create space for a variety of activities that required open space, the parish having no other halls or rooms that it could use for such purposes. In 2019 a faculty was granted to remove and permanently dispose of the unplayable pipe organ (Brindley & Foster 1904). The organ had not been playable for over forty years and despite wide ranging enquiries they had failed to find a buyer and no regional organ builders wanted it.

- 15 By late 2019 they were in a position to put forward their final proposals for an extensive reordering to the DAC and to consult with CBC, Historic England (HE) and the relevant amenity societies, in this case the Victorian Society (VS) and SPAB.
- 16 The proposals in short form as set out in the Petition are “to make alterations to the interior (Phase 1 of 2) including:
1. removing pews from the north nave aisle, south inner and outer aisles,
  2. taking up the associated pew platforms and quarry tile aisles and replacing them with flagstones on an insulated limecrete base,
  3. renewing the heating system, incorporating underfloor heating,
  4. renewing the electrical installation,
  5. overhauling the existing vestry WC and installing new WCs including a wheelchair accessible one,
  6. providing a new clergy vestry/ counselling space,
  7. providing a space for meeting and community workshops, and
  8. providing a first stage area for making refreshments (later to become a full kitchen in Phase 2)”
- 17 A meeting was arranged when the several consultees would be able to attend and meet with the petitioners and their architect. In fact only the CBC attended on the due date. A representative of HE was not able to attend but arranged to attend a subsequent meeting shortly afterwards. Neither the VS nor SPAB were able to attend and have not in fact attended since.
- 18 All these bodies submitted their responses to the consultation. In broad terms the CBC and HE were supportive. I will set out some of the particular comments they each made later in this judgment. SPAB and the VS had a number of concerns about the proposals. Both accepted that the parish had demonstrated a real need. SPAB put it thus: “The parish and their architect have demonstrated the need for improvements in this regard and that some form of intervention to the interior could therefore be justified”. The VS said “We must congratulate the parish too on envisaging a holistic and comprehensive restoration of the building’s fabric and interior, with a view to addressing longstanding issues and ensuring the church’s long-term and meaningful future.
- 19 However, SPAB were concerned about the existing condition of the fabric and the importance of addressing the major damp issue. Their natural concern was that if the source/cause of the problem is not properly identified and remedied prior to any reordering works, it may be exacerbated even further. They therefore proposed that an independent damp specialist should be asked for advice. They also suggested that there should be an assessment of the possible heating options by a specialist with experience of heating historic church buildings.
- 20 As for the floor and furnishings, they deferred to the VS, but in doing so registered their own recognition of the contribution the Victorian reordering had made to the building’s character and special interest. In general they would encourage repair of floors rather

than replacement. Any continuation of the proposal to replace would in their submission require a robust and convincing case, addressing technical and archaeological issues, as well as those concerning special interest, significance, character and aesthetics.

- 21 As for the furnishings, they again deferred to the VS in respect of the significance of the proposed removal, but they acknowledged the wish to retain the nave pews although they drew attention to the fact that the remaining pews look somewhat lost in the considerably large and open space with a weakened connection with the pulpit. They also noted the absence of detail about additional seating whether for special services or for other activities, and how that additional furniture will be used, stored and managed. They would also like to have seen more details in the statement of need about the proposed kitchen/servery and then to have seen more details of how those specific needs would be met.
- 22 They also wanted to see details of the proposed alterations to doors and lobbies in the way that elevations would reveal.
- 23 The VS had seen the SPAB response and said that they would echo much of that. And indeed they did in relation to the damp and heating. They looked for yet more detail in the Statements of Significance and Need. They hoped for space and activity audits and a number of other details of the proposals.
- 24 Their main concerns were in relation to the replacement of the floor and the removal of some pews. They felt that the rationale for removing the northern pews from the nave north aisle which would provide only a narrow strip of cleared space was unclear. They also felt that those benches dignified the setting of the Chapel of the Nativity. They said they would be likely to oppose that element of the scheme. They would also certainly object to the treatment of the floor. They said that it was characteristic of G G Scott and clearly a major component in his restoration of the building. They said that it makes a significant contribution to the character and appearance of the interior and to an appreciation of the historic interests of the II\* listed building. They advocated for its careful restoration (or complete and meticulous relaying, if that is the best solution in addressing its condition). They felt that the proposed new stone floor paid no regard to the significance and character of the interior. They finally flagged up the need to take care of the John Scott slab at the far east end of the inner north aisle.
- 25 The architect was asked to respond to these submissions and did so. He expressed some disappointment that SPAB and the VS had not visited the church and so had not had the benefit of appreciating just the poor state of so many of the aisle quarry tiles. They also had not had the benefit of discussing with him his understanding of the cause of the damp – unmaintained drains (not all property of the church), leaking water pipes and an impervious floor finish. It would appear that the CBC were satisfied with his confidence “that the water level below the church could be managed” and his “experience in a nearby building that was made dry by good maintenance was used as evidence of likely success.” The CBC’s response went on to say “On the basis that the damp will be managed by the architect’s proposals and that there is an appropriate archaeological

strategy the Council is content for the proposed new floor, with underfloor heating in the south aisle. The heating will be supplemented with radiators elsewhere. Details of the heating proposal, including locations of radiators will be needed for the faculty application. They should be supported by the calculations to show that the heating will be effective.”

- 26 Mr Sherriff is to my knowledge a very experienced architect with conservation accreditation and over 30 years experience of working on and in churches. As he explained at the meeting with the CBC he also had specific local experience in relation to similar damp problems in a nearby building.
- 27 I am satisfied that any concerns about dealing with the damp can be dealt with by conditions attached to any faculty. The same applies in relation to the heating specification and to an archaeological strategy.
- 28 The real issues in this matter are the controversy over the proposals in relation to the floor, particularly the current tiled aisles, and a further reduction in the number of pews. On reading these responses of SPAB and the VS I was struck by the fact that the CBC and HE had visited and inspected the building and appeared to have accepted the petitioners’ case about the irremediable state of the tiles and that neither SPAB nor the VS had actually seen the building in its current state. So having regard to the architect’s observation about the desirability of inspecting the state of the tiles before forming a judgement about their future use, I asked the Secretary to the DAC to contact both the SPAB and the VS stating that I had noted that the submissions were made “without the benefit of an accompanied inspection of the church” and asked them to confirm that a representative would visit and inspect as soon as possible and if they were not able to visit would they review the submissions of HE and the CBC and also consider Mr Sherriff’s responses to their submissions as I wanted to know whether the outcome of such a site visit or review of the submissions referred to would alter the observations they had made without the benefit of such information.
- 29 In due course each responded regretting their inability to visit and stating that they considered that they did have sufficient information from the documents provided to enable them to make their assessments. SPAB said that “it would be wrong to penalise the Society for this (non-visit) by rendering our advice invalid or affording it less weight than that provided by consultees who have visited.” They drew attention to the fact that the CBC guidance in relation to Statements of Significance and Need advise those preparing them that they should consider that some people will not have the opportunity to visit the church and will need to base their opinions on the information provided in the Statements they prepare. The VS said “increasingly, when the Society’s advice is given without the benefit of a site visit, it is suggested either explicitly or implicitly that our comments are made without a sufficient understanding of the circumstances of the parish, the significance of the architecture, fixtures and fittings, or the condition of the fabric. The implied corollary is that our advice should be considered provisional, or given less weight in any judgment. We think that the increasing tendency to make such suggestions should be firmly resisted, and the corollary rebutted. The kind of issues on which we are asked to offer advice vary greatly, many of them concerning

the effects of reordering proposals on the architectural or aesthetic qualities of church buildings, both inside and out. In such cases detailed plans, assessments of significance, and adequate photographs should offer enough information for a considered judgment to be made.”

- 30 I do not disagree in principle with the points they make. I would never regard reports as provisional or of less weight on the basis that there had been no inspection. Experienced case officers and the relevant boards of trustees of the several amenity societies have great expertise arising from their specialist knowledge and their often long experience. I have always found their contributions in consultations to be both significant and valuable. I also accept that in general terms they are able to offer the benefit of that expertise even when they have not been able personally to inspect the building in question. However this is an unusual case in that everyone who has seen the building and inspected the tiles accepts that they are in such a poor condition that the proposals to replace them on the whole with a stone flagged floor makes sense and is acceptable in heritage terms. On the other hand the two bodies that had not visited and inspected were saying that the problems others must have accepted as irremediable were “not insurmountable”. It therefore seemed to me to be perfectly reasonable to ask that they either visit or at least review their conclusions in the light of what those who had visited said. It was apparent to me that I was going to have to make a decision about this and so needed to know what the considered view of those two Societies was having regard to different views that I also would have to take into account.
- 31 Each of the two Societies then went on to say that they maintained their original positions. SPAB said that their initial response should not have been taken as obstructive and maintained that the questions and points raised in their response were fair and reasonable. They said that notwithstanding Mr Sherriff’s accreditation and experience, they regularly see buildings where damp remains unresolved and applications where proposals could potentially worsen such problems. They pointed out the initial documentation did not contain an explanation of the source of the damp and/or details of remedial action proposed. They felt there was still a lack of detail in that respect.
- 32 In relation to the existing tiled floors again they expressed deference to the VS but stated that they “believe that old floors contribute enormously to the spirit and special interest of a place. The Society therefore encourages repair of such fabric instead of replacement”. They concluded by stating that they did not register a formal objection to the proposed scheme but asked that everything they had said should be taken into consideration in any deliberation of mine on the case.
- 33 The VS said that “With respect to the floor we maintain our position that the proposed stone paving will be unacceptably harmful to the character of the church, and remains largely unjustified ... George Gilbert Scott’s reordering of this church was extensive, and the essential character of the interior is, to a great extent, Victorian. The significance of the character is not simply the sum of the significance of its component parts – pews, wainscoting, floor tiles, stained-glass, etc – but derives an additional quality from the ensemble of these elements. The effect of the proposed alteration should hence be judged according to the impact they will have on the coherence of this ensemble, and

always keeping in mind the Victorian aspect of the interior's character. The existing floor makes an important contribution to this character not because of the quality or historic interest of the fabric of the individual tiles, but because of its colours, its pattern, and its texture ... The floor is clearly in a terrible state of repair and needs extensive remedial work, and we are strongly supportive of the technical aspects of the proposals – excavation, new drainage channels, new screed, etc – which are intended to alleviate existing damp problems ... We object very strongly, however, to the replacement of the current arrangement with an unarticulated expanse of stone paving. The radical change in tone and texture from the existing floor will have a very damaging effect on the existing character of the interior. The practical difficulties cited by the architect in repairing or replacing the existing tiles are noted, we must insist that they are not insurmountable ... An approach that retains the articulation of historic seating and circulation areas has proved successful in many cases, and offers a good compromise between freeing up the space and retaining built memories of the important historic arrangement ... We also maintain our position that the removal of the pews in the north aisle, and the shortening of the nave pews where they extend beyond the arcade, is unacceptably harmful and remains largely unjustified.”

34 They also asked that if I intended to move to determine the application, the position they had set out should be taken into account. As the VS had in the course of their submissions used words such as “object very strongly” I caused communication to be made with each Society to enquire whether they wished to become parties opponent by issuing directions including the following:

1. This is clearly a case to which Rule 4.5 of the Faculty Jurisdiction Rules 2015, as amended, applies – the proposed alterations would be likely to affect the character of the building as one of special architectural or historic interest. The church is Grade II\* listed and in the nineteenth century it was subject of an extensive reordering by George Gilbert Scott, a number of features of which it is now proposed to significantly alter ....
2. ....
3. SPAB have specifically stated that they do not formally object and so will not become a party to proceedings but they ask that I take into account what they have said whenever I determine the petition. I will do so. In those circumstances I assume that they are content for me not to require that a Rule 9.3 notice is served on them. Perhaps they could confirm that is in fact the case.
4. The position of the Victorian Society is a little more ambivalent ..... Unlike SPAB they do not say they are not formally objecting and they have used words of “objection” in their letters. As I understand the Rules they are entitled in those circumstances (ie not falling within subparagraph (2) of Rule 4.5) to expect to be served with a Rule 9.3 letter when they can make their position clear as to whether they wish to object and become a party or whether they maintain their position and want me to take their representations into account when reaching a decision without them formally becoming parties. I would be very grateful if they could confirm exactly what the position is and would appreciate their doing so quickly as I understand that the parish would wish for a decision, whichever way it may go, as soon as possible, as they are hoping if a faculty is granted to make an application for grant aid, the final date for submission being the 2<sup>nd</sup> November. An application apparently cannot be made without there being a faculty in place.
5. I should make it clear that although I have read the papers I have not formed a view about the case and even if dealing with the matter on the present state of the papers will not do so until I have visited and inspected the church, which I could do at very short notice.



35 Each replied immediately, SPAB saying “With regard to paragraph 3 - I can confirm that the SPAB is content for the Chancellor not to serve a Rule 9.3 notice.” And the VS saying “Whilst we request the Chancellor takes into account our representations when he determines the application, the Victorian Society does not wish to become a party, and is content not to be served with a Rule 9.3 letter. I hope that clarifies our position.”

36 I am grateful to each of them for those prompt responses. The position is therefore clear that this is an unopposed petition. I have the comments of the petitioners in relation to the objections registered by the two societies. David Sherriff was required by the DAC to respond to them and did so, uploading his comments to the online faculty system. I therefore deal with this matter as provided for by Rule 10.5 of the Faculty Jurisdiction Rules 2015 as amended and will take account of all the comments made by the two Societies in coming to my decision.

37 I was able to visit the church on Wednesday 21<sup>st</sup> October 2020. The Diocesan Church Buildings Officer accompanied me and we were let in by one of the petitioning churchwardens Hilary Newton to whom I am grateful for making the arrangements at such short notice.

38 My first concern was to examine the tiles. I took some photographs, which I reproduce below. They show on the left the typical state of many of the tiles. That photograph was taken on the aisle across the west end of the church soon after entering through the south door. The middle photograph is of south inner aisle where the pattern of the tiles is different from that in the other aisles. The right hand photograph shows the north aisle looking towards the TM Chapel of the Nativity. It shows that much of the aisle is covered in carpet because of the dangerous state of the tiles underneath.



39 Not only have there been replacement tiles inserted in places, but also there are a number of areas where the grills covering the heating pipe ducts have been replaced with metal work of a different or no pattern. Many of those ducts are now corroded as a result of the damp wicking out under the Roman cement base below the tiles.

40 The enormity of the task of repair or replacement was immediately apparent. It was quite clear that there would not be a sufficient number of tiles that could be salvaged to relay the aisles in full.

- 41 The first question for me to resolve is whether the harm of not doing so would be significant in terms of this church as a building of special architectural or historic interest. I am of course very familiar with the 5 question test, having been a member of the court in the case of *St Alkmund, Duffield* [2013] Fam 158.
- 42 I have rehearsed something of the history of the church and of how the nineteenth century reordering came to take place and what it achieved. Historically it was a time when this church, which had been on the same site for over five hundred years, was enjoying large congregations attracted by the preaching, and it was in need of extension to accommodate the numbers. Consequently the church was extended by removing the gallery and building out to the south. The extension was filled with pews so that people could attend services and listen to the evangelical preaching. There was nothing special about the pews, nor about the aisles that gave access to those pews. The tiling was plain quarry tiling, red and blue/black in colour, as can be seen in the photographs. They are laid in a variety of patterns in the different aisles. They are to be contrasted with the superior quality tiles, some of which are encaustic, that were laid in the sanctuary.
- 43 Of much greater significance than the pews is what you see standing by the west door and looking down the church. As the Statement of Significance says the Rood Screen “dramatically fills the eyeline”. As you move eastwards so the eye takes in the side screens that enclose the chancel. Passing the pulpit and entering the chancel beneath the Rood the eye is drawn to the reredos and the triptych. These, of course, will remain as will the nave pews through which one has passed on that journey. In my judgement it is that which has architectural as well as substantial historical significance and which will suffer no harm as a result of these proposals. To the north side of the chancel lies the Nativity Chapel conceived by TM. This too will be untouched and so suffer no harm.
- 44 The intention is not to remove all tiles from the building. The intention is to use some of the tiles that will be salvaged from the aisles to repair the tiling in the chancel. It is also intended to have an apron of tiles in front of the chancel, between the front pew and the rood screen. Other usable tiles will be used in the toilet area and in the circulation area around the vestries. So, tiling as laid by GGS will continue to be used in the building, it will still be very visible as one surveys the main features looking from west to east and there will be evidence of it in other places. That will leave in the church a clear demonstration of the tiles from that era, and preserve their colours, pattern and texture for people to see. It is therefore my judgement that in the context of the historic and architectural significance of this building the overall loss in relation to contribution made by the tiling will be far from total, so not even approaching substantial, I would assess it as a small loss.
- 45 I turn next to the pews. The response of HE following their visit earlier in the year is worth quoting. They say:

“... The importance of the (*Grade II\**) church to the maritime community in Hull is clear. The accolade of ‘Hull’s hidden gem’ is very fitting given the wealth of historic treasures on display in its currently underused interior.

We commend the Statement of Significance. This document provides a thorough explanation of the heritage values that people have attached to the building over time. The Statement of Need is also clear and measured. We note the importance of the social care provision and pastoral value of the church and therefore the need for the building to be made fit for purpose to continue this vital work in the community.

HE welcomes the proposal to increase the flexibility of the internal space for a range of new uses, but also to make the uses that have been introduced into the church following the temporary removal of a section of the fixed seating more comfortable and sustainable.

It was mentioned at the meeting that the first phase of the proposals involve the removal of the pews from the outer south aisle, and part of the south aisle and the north nave aisle. The removal of the central block of pews is not proposed at this time. We welcome this phased approach to the works as we consider that the nave pews make the highest contribution to the significance of the building. We discussed making the nave pews movable... we would have no objection to this approach.

We consider that the proposals have been developed in a sensitive manner that seeks to work with the form and grain of the building. The impact on the heritage significance of the Grade I (*sic*) listed building has been minimised to a level where we are comfortable that the public benefits will outweigh the harm."

- 46 My visit and inspection led me to precisely the same conclusions. I need however to address some of the matters raised particularly by the VS. They accept, in principle, the need to remove the pews in the south aisle on a permanent basis, I will come to the north aisle later. They say in relation to the proposal to replace the current pew platforms and aisles with "an unarticulated expanse of stone paving", that the "radical change in tone and texture from the existing floor will have a very damaging effect on the existing character of the interior." I accept the result will produce a different character than would be provided by a floor of whatever material through which ran the present tiled aisles. But the real difference is the difference caused by the removal of pews, it is that which changes the character of the south side of the building. The dark and heavy pews were what defined that side of the building until 2017. There will now be an open space. In my judgement there are better ways of recording and remembering what was there, than by attempting a task which seems to me to be almost impossible, namely to reconstruct aisles with some salvaged and some bought in quarry tiles.
- 47 I am also aware that 'development over time' was evident in the 50-60 years that straddled the Victorian turn of the century. GGS had filled this enlarged preaching box with pews, but he designed what was basically an open space. From the pews around the church what was visible apart from monuments on the walls was the pulpit, not as prominent as its three decker predecessor, but standing clear above the level of the pews. Also visible would be the altar set against the new reredos. These were the twin foci. But into that rather plain space in 1912 were introduced enclosing choir screens and the dominant Rood Screen. They completely changed the Victorian ambience, but they produced what we now have.
- 48 The VS said "The assertion in passing that St Mary the Virgin is 'a basically mediaeval Grade II\* building' seems to pass evidence of a simple but brave misconception. Elsewhere in the documentation the contribution of the Victorian reordering to the

significance of the church is sensitively recognised, but it bears repeating: GGS's reordering of this church was extensive, and the essential character of the interior is, to a great extent, Victorian. The significance of this character is not simply the sum of the significances of its component parts – pews, wainscoting, floor tiles, stained glass, etc – but derives an additional quality from the ensemble of these elements. The effect of the proposed alterations should hence be judged according to the impact they will have on the coherence of this ensemble, and always keeping in mind the Victorian aspects of the interior's character."

49 I accept that one must review the building as a whole and that the use of the word ensemble is not inappropriate. But we have here not an ensemble of only GGS's work, it is a mixed ensemble of Victorian and Edwardian work. The addition of TM's work significantly affected, in my judgement, what had been introduced by GGS. And it is that ensemble as a whole which gives the building its current historical and architectural significance.

50 Further change is now required a hundred years after the last significant internal change. Times have changed, the church is no longer attracting the numbers that required those many pews, but it does require open space and flexibility. It maintains its sacramental approach to worship and so the whole focus of its worship produced by the addition of the TM work to the GGS work will be preserved, refreshed and put into plain view from all sides.

51 I turn to the proposed shortening of the nave pews so that their outermost ends will be in line with the columns, and to the removal of the north aisle pews.

52 In relation to this the CBC said:

"After it is Scott restoration the building was heavily pewed. A faculty in 2017 allowed the removal to storage of the south aisle pews. This has improved considerably the usefulness of the building. It is now proposed to make this removable permanent, and also to remove the pews from the north aisle. The central block of nave pews would remain, albeit shortened. The chancel and Chapel of Nativity would remain in their present configuration. The Council was content with all these elements of the proposal, noting that they would facilitate wider ministry while leaving a setting for worship that the congregation appreciated."

53 I have already noted that HE said "the nave pews make the highest contribution to the significance of the building". The CBC said "The Council is content with the proposal to shorten the nave pews to sit within the line of the nave arcade. This will leave a coherent and usable block of seating."

54 Given what I have already described about the dominance of the Rood Screen with the chancel and altar beyond it, I must consider the contentions of the VS and SPAB. The VS say that "removal of the pews in the north aisle, the shortening of the nave pews where they extend beyond the arcade, is unacceptably harmful and remains largely unjustified... A further need for space specifically in the north aisle, however, has not been clearly articulated. Mr Sherriff has stated this area has been used for exhibitions in the past, but again no further precise indication of the need to free up this floorspace

has been offered. On the basis of the current proposals it is clear that the removal of the pews in this area especially the shortening of the nave pews, will have a harmful effect on the ensemble of furnishings in the nave, and in the absence of any further justification we must conclude that this definite harm outweighs the unclear benefits.”

- 55 In my judgement the shortening of the pews to bring them in line with the arcade makes sense. It clearly defines the area where the congregation gather for worship within that arcaded area and with a clear unobstructed view of all that lies before them including the pulpit, the choir, and the altar. To the south lies the area for social meeting, other meetings and other activities. To the north is an area that in the past has been used for exhibitions. That has been done by laying planking over the pew backs and displaying items thereon. The future anticipated requirement for this type of activity is set out in the Statement of Need. They describe this as something separate and different from the sort of things that would be taking place in the south aisle area.
- 56 The VS also spoke of the north aisle pews serving “to dignify the setting of the Chapel of the Nativity”. I am far from persuaded that that is the case. It is at least as arguable that opening up the space will draw attention to the Chapel in its own right as worthy of investigation.
- 57 SPAB did ask whether the proposed arrangement of the pews would mean that they would “look somewhat lost in what will be a considerably larger and open space, and their connection with the pulpit also somewhat weakened”. In my judgement the nave pews will form a coherent block from which as I have already said the pulpit, choir and altar, the foci in worship, will be readily in sight and well connected to the congregation.
- 58 I am satisfied that in relation to the shortening of the pews any heritage loss is minimal. So far as the north aisle pews are concerned their removal amounts to a degree of harm that falls well below what could be described as “substantial harm”.
- 59 So far in this judgment I have focused upon the controversial matters relating to the floor tiling and the reduction in the number and size of pews. There are of course a number of other aspects of the proposals which I must consider. These relate to the renewal of the lighting and heating, the introduction of toilets and a kitchen, the relocation/refurbishment of the two vestries and the provision of a small meeting space at the eastern end of the south aisle.
- 60 The petition was considered by the DAC at its May meeting this year. The very lengthy minute of that meeting covers a lot of matters. Some parts are worth repeating. They begin by recording:

“This proposal had previously come before the Committee as an advice item in 2014 and the comments made then still stood now: the interior (perhaps the loveliest ancient, urban church interior in the diocese) was in very poor state in that the heating and lighting needed renewing, there were no decent vestry, kitchen or WC facilities and there were far more pews than were needed; nevertheless, the church was trying hard to engage in mission, education, arts and community engagement and members had welcomed the architect’s vision for the future of the building and encouraged the parish to develop their ideas further. In 2017 a faculty was granted for the removal of the south aisle pews to storage and for the levelling of the floor. This had

opened up an area which had subsequently been well-used for the serving of refreshments and for various church and community activities.”

61 They then discussed the site visit and the consultation responses to which I have referred. They expressed the view, rightly or wrongly, that if SPAB and the VS had attended the meeting they would have taken a different view about the tiled floor. They reviewed the proposals in some detail and went on to conclude:

The church architect had advised the Secretary he appreciated that this application was not quite complete, but it was important to the parish that some progress be made. Did the Committee have enough before them to be able to make any recommendation? A specification and schedule of works had been received, supported by the architect’s drawings. As regards new lighting, the design intention had been outlined but more detail was still awaited from Sylvania. The existing heat output was well below the existing heat loss, a staged installation was proposed for the new heating system, but the heating engineer had been ill and so no full specification was yet available for the Heating Adviser to examine. Prof Mytum noted that an archaeological watching brief was provided for in the specification, but there was little detail beyond that basic fact and he would want to see a full brief for the archaeological aspect of this proposal (i.e. a WSI). A Boyce thought this was a great scheme but expressed concern about the proposed location of the meeting room behind a screened cupboard at the east end; K Halliday advised that the location of various elements of this scheme were dictated in part by the large number of memorials on the walls and the number of doors and entrances into and out of the interior space. The Archdeacon expressed his full support for this project, but did note that a temporary plywood floor was to be put down in the kitchen; the parish were doing well with funding for Phase 1 of the development, but what would be the outcome if Phase 2 could not go ahead, would the parish be left with a temporary floor?

62 They went on to recommend the proposals subject to a number of provisos:

1. The Inspecting Architect must respond to the Victorian Society’s concerns regarding the replacement of the tiled floor (G G Scott).
2. A Written Scheme of Investigation must be provided for the approval of the Archaeology Adviser.
3. Details of the lighting scheme must be agreed with the Lighting and Electrics Adviser.
4. Details of the heating proposals, including underfloor heating, must be agreed with the Heating Adviser.
5. Replacement furnishings (if any) must be agreed with the Church Buildings Adviser.
6. The petitioners must revert to the DAC and the Chancellor within two years of the grant of a faculty if a permanent floor covering has not replaced the temporary plywood flooring to be laid in the kitchen area in Phase 1 of this project.

63 Since that meeting a number of matters have moved on. Sylvania has now provided the lighting calculations and specification, although the DAC lighting advisor has yet to provide his assessment of those calculations. Sylvania are an established and reputable firm with considerable experience of lighting churches and I would be surprised if their calculations are not approved by Mr Haddon-Reece. Similarly the detailed heating proposals prepared by Heating Design Services have been uploaded to the online faculty system and await assessment from the heating advisor. The intention in relation to the kitchen floor is now that it will be laid with floorboards rather than with plywood, and that in due course the floorboarding will be replaced with new non slip quarry tiling. The architect did respond to the amenity societies comments on the tiled floors in the

church, and I have borne those comments in mind when making my own assessments and judgements as recorded above.

- 64 It is clear that there is really no issue about the need for renewed lighting and heating, for toilet provision and for kitchen facilities. The only outstanding issues about lighting and heating concern the technical approval of the designs now submitted. The locations of the proposed toilets and kitchen are acceptable by all as being in the best possible locations in this church. The CBC “noted that the proposed toilet was at the east end of the north aisle and not the Council’s usual preferred option of the west end. However, in this church a west end location would either obstruct one of the entrances or be obtrusive into the nave seating. On this basis the Council supports the proposed location.... It noted that the remote location could lend itself to antisocial behaviour, although it considered that local management should be sufficient to monitor this.” HE observed “the new WCs in the south-east corner and the new structure to accommodate a modest kitchen/servery appear to be proposed in the most appropriate locations.” There is no controversy about the vestry proposals. A question was raised about the meeting space at the DAC meeting which was answered by the Church Buildings Officer.
- 65 I am conscious that both SPAB and the VS would have liked to have seen more details about the future anticipated use of the new facilities. In their first response SPAB said “at present the supporting Statement of Need is not sufficiently detailed enough in this regard. It advises that more flexible space is required but it does not detail why it is required, and how and when the spaces will be used. What is it exactly (in space terms/needs) that church is struggling to accommodate and at what times? It would also be useful to know how the cleared space created in the south aisle is used (and when, frequency etc)”. The VS said “the further need for space specifically in the north aisle, however, has not been clearly articulated. Mr Sherriff has stated that this area has been used for exhibitions in the past, but again, no further precise indication of the need to free up this floorspace has been offered.” They had also said in their initial submission “We echo SPAB’s comments on the need to expand on precise requirements for the interior and how it is planned to function. Space and activities audits will likely be extremely helpful in this case, given the complications presented by the remarkably broad interior, the range of uses the interior is intended to serve, and the proposals for a servery placed much further east than is usual.”
- 66 Sometimes that sort of material is available. Sometimes when it is provided it is criticised as being unrealistic. Indeed, that was the case just down the road at Hull Minster: *Re Holy Trinity, Hull* [2017] ECC Yor 1, when I had to consider the petitioners’ detailed proposals of anticipated income from the increased number of visitors and the likely events that would be attracted to the reordered building. These were criticised “additionally many of the assumptions in the financial projections are unjustifiable. They represent what the parish hopes would happen, rather than being a prudent cold calculation of what is reasonably likely” and the specific proposals were then taken apart. In my judgment I accepted that the petitioners were honest and had done their homework and that it was likely that they would attract significant numbers of both

people and events. In the result we now know that the visitor footfall and the events that took place, prior to the onset of this year's pandemic, exceeded their expectations.

67 This of course is a different proposal from that at Hull Minster. St Mary's does not have anything like the plans and intentions that Hull Minster had. What they do have is a history of social care going back to the nineteenth century and beyond. It is a growing need and it is unlikely to be met other than by the church. St Mary's is the obvious downtown church for the focus of this downtown ministry.

68 In more general terms the Statement of Need begins by describing their location in this way:

The location of the church is a natural asset. It is sited next to the Crown Courts, opposite the Guildhall, close to retail outlets, surrounded by solicitors' offices, night clubs and public houses. It is on the main tourist trail from 'The Deep' and the Museums Quarter. Overseas visitors are also frequent as they come from the North Sea Ferry Terminal. Hull College has its main three sites in the parish. In the recent past we have had a good working relationship with the Annexe of Art and Design and another of Performing Arts. There are also halls of residence on the High Street.

It goes on to say:

In so many ways St Mary's has been a week-day church, not only in social care provision but also in respect of mid-week concerts/recitals/lectures/visitors to exhibitions. Pastoral work has the potential to expand if we have a viable meeting space within the church ... apart from the future possibilities of the building being used as a performance and exhibition space, St Mary's seeks to work in partnership with Hull Minster and to offer itself to the city as a place of spiritual practice and reflection. There is nowhere else in the city that offers a quiet space for Christian meditation such as Julian Meetings and retreats ... Over the years St Mary's has grown in reputation for hosting specific artistic events. This reputation has surpassed our limited facilities. Local art and drama groups have sought exhibition and performance space; musicians from the University of Hull, choral and recitalist, have sought to perform. The events have been of excellence, as befits the environment. The constant feedback from the audience and performers has always been one of amazement that such a gem has been so long neglected.

69 I am satisfied that the people who have put together the current proposals because they wish to see their church not only beautified but also used will be able to offer this sacred space to many different groups in the area. I do not expect them to be able to say precisely who will come and what activities will take place. There has been a decline in usage in recent years because of the state of the building. I have no doubt that a renewed and flexible building will readily attract exhibitions and events. They will be on a different scale to those at Hull Minster, but I have no doubt that they will happen.

70 So on the basis of all that has gone before I can turn now to address the *Duffield* questions. The first being whether the proposals if implemented would result in harm to the significance of the church as a building of special architectural or historic interest. There will be some loss to what is currently there and has been there since the late nineteenth century, namely a proportion of pews that were then introduced and the layout of the tiled aisles between those pews. For reasons set out earlier and in answer to the third *Duffield* question (the second question not arising) any such loss or harm will be far from being substantial. Again, for the reasons that I have already set out, I am



satisfied that there is a very clear and convincing justification for the proposals, both the non-controversial ones but also the controversial ones in relation to the reduction in the pews and the removal of the tiled aisles. It follows that given the low level of harm and the high level of need that I am satisfied that benefits that will accrue outweigh the harm that will be suffered.

- 71 In those circumstances I direct that a faculty will issue.
- 72 As noted above, the DAC added several provisos to its recommendation of the proposals. Some of them coincide with matters raised particularly by SPAB. In relation to the work to the floors there are two relevant matters. First there will be archaeological implications and before any excavation works commence there will need to be a detailed written scheme of investigation in relation to such works, and such scheme should be approved by Professor Mytum. Second although I have no reason to doubt Mr Sherriff's analysis of the cause of the damp and how it can be dealt with, it may be that once the floor is raised and more detailed examinations take place, it may become apparent that matters are not as he believed; in those circumstances it would be right for him to give careful consideration as to whether he needs to seek further advice, and if he does he would no doubt be helped by consulting SPAB and the list of specialist to which they have referred. Both the heating and lighting advisors to the DAC should give their written consent or other observations in relation to the respective proposals before any contracts are let in relation to those works. Furnishings, particularly movable furnishings, in listed buildings can be a matter of some sensitivity. Although, I have great confidence in the Diocesan Church Buildings Officer, in this particular instance I consider that the matters concerning new furnishings should be the subject of a separate petition for a faculty.
- 73 The following conditions will be attached to the faculty
- 1) Before any work commences
    - i) The lighting specification and calculations shall have been approved by the DAC lighting advisor;
    - ii) The heating specification and heat loss calculations shall have been approved by the DAC heating advisor;
    - iii) A detailed written scheme of investigation in relation to archaeological works shall have been approved by the DAC archaeological advisor;
  - 2) If, when the work has commenced, it becomes apparent that the cause of the damp is not as anticipated by the architect he shall give consideration as to whether he needs further specialist advice, and in doing so shall consider consulting SPAB;
  - 3) Proposals for future furnishings in the "social areas" shall be the subject of a further petition for faculty;

- 4) The petitioners shall ensure that a suitable display is provided that records and explains the history of the church and with particular reference to the alterations made by GGS and TM and including the pews and tiled aisles which will be removed.

HH Canon Peter Collier QC  
Chancellor

26<sup>th</sup> October 2020