

## **In the Consistory Court of the Diocese of Worcester**

### **Archdeaconry of Worcester: Great Malvern Priory: Faculty petition 02-78 relating to bells and bellframe**

## **Judgment**

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### **Introduction**

1. Malvern Priory is one of the finest churches in the Diocese. It is an important building, historically and architecturally, over 900 years old. It has significant collections of glass, tiles and misericords. It also has a substantial central tower, at the top of which is a ring of eight bells, of various dates from 1611 to 1887, plus an extra 'sharp 5<sup>th</sup> bell' dating back to around 1350 – that is, a total of nine bells. They currently hang in a bellframe first installed in 1887.
2. The PCC approved (without dissent) in January 2002 a proposal for
  - the removal of the 1887 bellframe and the re-hanging of the nine bells with all new fittings in a new all-metal frame, and
  - the addition of two new bells.

The reason for these works was that the design and layout of the existing bellframe meant that the bells were difficult to ring, and discouraged all but the most experienced ringers. The parish had been advised that repair of the frame would not be appropriate; and that the best solution would be to retune the bells, and hang them with new fittings, together with the two new bells, in a new frame.

3. The works would be carried out in accordance with the quotation of Berry & Co of Malvern, on the basis of two sets of drawings (plans and elevations), dated 17 January 2002, numbered by the Registry D114/02A and /02B, and under the supervision of Bartosch & Stokes, the architects appointed for the Priory under the Inspection of Churches Measure 1955.
4. The proposal was formally considered by the Diocesan Advisory Committee ("the DAC") in March 2002, and recommended for approval subject to relatively minor provisos.
5. Following two site inspections (in October 2000 and April 2002), English Heritage opposed the proposal, on the basis that insufficient attention had been given to the possibility of retaining and strengthening the existing bellframe, and accommodating the two new bells in a new independent pit alongside the existing one. However, it

expressed a willingness to continue discussions with the parish to see if it would be possible to achieve an outcome that would satisfy both conservation objectives and the aspirations of the ringing team.

6. Unfortunately, such an outcome was not achieved; and a petition was accordingly submitted by the Incumbent and Churchwardens at the Priory on 2 December 2002 for a faculty to authorise the replacement of the bellframe and the addition of the two new bells.
7. The proposal had been duly publicised, and had attracted no other objections, indeed no comments at all, from any other interested parties or from either the parishioners or the general public. The Victorian Society had confirmed, in a letter of July 2002, that it had no objections. The Council for the Care of Churches (the predecessor to the Church Buildings Council) subsequently took a similar view, in a letter of April 2003.
8. However, English Heritage maintained its position, and requested an opportunity to explain its position at a hearing, at which it wished to appear as a judge's witness.
9. A pre-trial review was accordingly held in March 2003, at which I directed (amongst other things):
  - that the parish provide to English Heritage the technical reports that it had procured;
  - that the parties consult in the light of that information as to whether agreement could be reached, or whether further information should be sought – whether from bell-hangers, structural engineers or others; and
  - that the parties consider whether it would be useful to instruct a joint expert.
10. Further reports were duly obtained and there followed a series of meetings between the parties. Unfortunately, however, there was no agreement as to the way forward; and both parties maintained their positions. The parish was keen to avoid the expense of an oral hearing; and English Heritage too was now willing that the petition be determined on the basis of written representations, subject to being satisfied as to the ability of the court to seek clarification on any submissions relating to technical matters. However, I considered that it was not expedient to determine the petition on that basis – not least because of the technical nature of the matters in dispute – and indicated to the parties in August 2003 that an oral hearing would be necessary. I also gave directions for the holding of that hearing.
11. There followed a further long delay, as the parties continued to obtain new information and ponder the best way forward; the petition was with the leave of the court deferred accordingly.
12. However, the PCC eventually decided that it wished to proceed with the petition, a decision notified to the court in December 2007. I remained of the view that it was not expedient for the matter to be determined solely on the basis of written representations; I accordingly held an oral hearing in the Priory on 30 September 2008. At that hearing, evidence was given:

- on behalf of the Parish by Mr Robin La Fontaine, Mr John Clements, Mr Trevor Still and Mr Christopher Povey,
- on behalf of English Heritage by Mr Alan Taylor, Mr Adrian Dempster and Mr Graham Pledger, and
- on behalf of the DAC, by David Beacham, its bells and clocks adviser.

I also inspected the bellframe in the company of representatives of each of the parties.

13. I had the benefit of various reports, memoranda, notes correspondence and other written material from all of the above and others, produced at various dates over recent years. There were no representations from the Archdeacon of Worcester – there was at the time of the hearing no Archdeacon in post, and his predecessor had not made any representations.

### The law

14. There are many faculty petitions coming before this court every year relating to alterations to churches, a few major but many more relatively inconsequential. And many of the churches in this diocese, as elsewhere, have been listed by the Secretary of State as buildings of special architectural or historic interest, under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990.<sup>1</sup> No doubt as a result of the valuable input of the Diocesan Advisory Committee, helping parishes to refine their proposals so that they are generally acceptable, only a few of them are the subject of unfavourable observations by amenity societies or by private individuals, and only a very few result in formal objections. That in itself is markworthy, since it is sometimes perceived that there is an inherent conflict between the interests of the church and those of the wider community – both the amenity societies and local people.
15. The petition relating to the bellframe at Malvern Priory thus seems to be the first one in this Diocese to have been formally opposed by English Heritage since I took office some ten years ago. It relates to a church that is, as I have mentioned, of exceptional importance, and which has not surprisingly been listed (Grade I) by the Secretary of State as a building of special architectural or historic interest. And it raises the issues of whether proposed works are appropriate in conservation terms and whether they are necessary. I consider that it may therefore be helpful to reaffirm the principles that govern the determination by this court of all petitions for the alteration of churches,<sup>2</sup> and in particular (but not exclusively) those that are listed.

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<sup>1</sup> Referred to below simply as “the Listed Buildings Act 1990”

<sup>2</sup> Here and in the remainder of this judgment, I use the term “church” to refer to the building in which a congregation meets to worship and for other purposes – see Care of Churches and Ecclesiastical Jurisdiction Measure 1991, section 1.

16. It may be noted at the outset that this Court is strictly bound only by the decisions of the Court of the Arches, the appeal court in the province of Canterbury; but it will be highly influenced by reasoned decisions issued by other consistory courts. In this judgment I focus particularly on the more recent judgments of the Court of Arches, including those in *St Luke, Maidstone*<sup>3</sup> and *St Mary the Virgin, Sherborne*.<sup>4</sup> However, in view of the passage of time since those two judgments were issued, during which a number of judgments of this and other consistory courts have appeared,<sup>5</sup> some taking apparently differing stances, and in view of the issue of new policy guidance relating to works to secular listed buildings, it is appropriate to go back to first principles.

#### *The nineteenth century cases*

17. The starting point is generally considered to be the decision of the Court of Arches in *Peek v Trower*. This was a nineteenth-century case relating to a re-ordering of a Wren church in the City of London. The Chancellor remarked that:

“The grounds of opposition fall under three heads. First, that the proposed alterations are wholly unnecessary having regard to the comfort or convenience of the parishioners; secondly, that they are not in harmony with the architectural design of the church ...; but, thirdly and principally, that the expenditure of £480 on the alterations or of any sum on any alterations of the church is a wasteful expenditure of the parochial funds, owing to the circumstance of the diminution of the population ...”<sup>6</sup>

It may be noted that although, on its facts, this was an unusual case, in that it related to a City church, the feelings expressed were those that commonly arise in disputes of this type – with alterations being criticised for being unnecessary, badly designed, or simply too expensive. It may also be noted in passing that objections purporting to be based on the grounds of excessive cost need to be treated with a degree of caution; willingness to spend money on a project is often closely related to the extent to which that project is considered to be either necessary or desirable.

18. The Consistory Court granted a faculty for the works. However, on appeal, the Court of Arches firstly noted that a consistory court has an absolute discretion to grant or refuse its permission; but that that discretion is to be exercised upon defined and reasonable principles, not capriciously or arbitrarily. It then held that:

“All presumption is to be made in favour of things as they stand. If you and others propose to alter them, the burden is cast upon you to shew that you will make things better than they are – that the church will be more convenient, more fit for the accommodation of the parishioners who worship there, more

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<sup>3</sup> [1995] Fam 1

<sup>4</sup> [1996] Fam 63.

<sup>5</sup> See for example *Holy Cross, Pershore* [2002] Fam 1 and *Re St Thomas Stourbridge*, 2001, 20 CCC No 39 from this Diocese; *St Gregory, Offchurch* [2000] 1 WLR 2471 (Coventry); *Wadsley Parish Church* (2001) 6 Ecc LJ 172 (Sheffield); *St Peter, Walworth* (2002) 7 Ecc LJ 103 (Southwark); *Dorchester Abbey* (2002) 7 Ecc LJ 105 (Oxford); *All Saints, Crondall* (2002) 6 Ecc LJ 420 (Guildford); *St Mary, Longstock* [2006] 1 WLR 259 and *St Mary, Newick* (2009) 11 Ecc LJ 127 (Chichester).

<sup>6</sup> (1881) 7 PD 21 at p 22.

suitable, more appropriate, or more adequate to its purposes than it was before.”<sup>7</sup>

It found that there was no such justification in that case, and accordingly refused to grant a faculty.

19. The simple rule to be drawn from this decision is that there is a presumption in favour of “things as they stand.” However, that is immediately qualified by the court saying that the burden lies on those promoting a proposal for the carrying out of alterations to a church to make the case in favour of it; it is not for those opposing it to make out the case against. But another way of looking at that is to say that although there is in theory a presumption against change, that presumption can be overturned provided that there is sufficient convincing justification offered in support of the benefit that will result from the proposed change. As to the nature of the benefit to be proved, this is to be that “the church will be more convenient, more fit for the accommodation of the parishioners who worship there, more suitable, more appropriate, or more adequate to its purposes than it was before.”<sup>8</sup> This is not just a test of practical utility – the addition of a beautiful monument, the replacement of serviceable but worn furnishings, or the augmentation of a ring of bells might all perfectly properly be said to provide a benefit of the kind there described.
20. The decision of the Court of Arches in *Peek v Trower* might be said to be based on the unusual facts of the case, in particular those relating to City churches. The logical basis for it is also not entirely straightforward, in that the Chancellor at first instance found that the works would be beneficial; his decision was seemingly overturned in the Court of Arches only because of his erroneous assessment of the degree of support for them.
21. However, the matter was re-considered by the Court of Arches a few years later in *Nickalls v Briscoe*, a case which concerned the insertion of a new east window in a parish church in Surrey. The Court held that the question to be asked in relation to any proposed works to a church should be:

“Is the proposed alteration an improvement? Does it render the edifice more commodious or more fit for its purposes? Or, if not this, does it add to its architectural beauty or suitable decoration? If the proposed alteration cannot be supported upon any of those grounds, those who propose it should at least be able to assert that it is supported by a very general desire on the part of the parishioners.”<sup>9</sup>
22. Again, there is little if any distinction between alterations that are necessary and those that are “merely” desirable. The test is simply, will the alteration be an improvement?” The reference to general support from the parishioners – both in this case and in *Peek v Trower* – is slightly unclear, since it is difficult to see why there should be support for a proposal that does not amount to an improvement or confer a benefit.

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<sup>7</sup> (1881) 7 PD 21 at p 27.

<sup>8</sup> P 27.

<sup>9</sup> [1892] P 269, at p 283.

23. Those nineteenth-century cases were of course decided long before the coming into existence of the present system. The chancellor of each diocese is now assisted in his or her assessment of a proposal by the opinion of the diocesan advisory committee, a body with amongst its membership much experience of practical, architectural and aesthetic considerations. There now exists a system of elected church government that enables the views of the parochial church council (PCC) on every petition to be known and taken into account. And the requirement to advertise petitions, and to notify them to appropriate specialist bodies, means that there is an opportunity for parishioners – whether members of the worshipping congregation or those living in the vicinity – and specialist groups, local or national, to express their views in support or opposition.

*The guidelines in St Luke, Maidstone*

24. In more recent times, the principles to be considered by a chancellor in determining a petition for alterations to a church have been set out by the Court of Arches in *St Luke, Maidstone*, its first judgment since it was reconstituted in its present form. That judgment was revisited by the Court in *St Mary the Virgin, Sherborne*, but it has not been overturned, and is still binding on me.
25. The *Maidstone* decision related to a scheme for the major re-ordering of a listed church. The Court first outlined the historical background, noting the decision in *Nickalls v Briscoe* (above), and summed up the position as follows:

“This appeal is concerned with two potentially conflicting and, from the viewpoint of the proponents, perfectly valid arguments.

- The first is that a church is the House of God and that any alteration which is seen by the incumbent and congregation to be desirable in order to encourage and assist true worship should be permitted without outside restraint.
- The second is that most of the churches in this land are national treasures of which the present incumbent and the present congregation are merely temporary occupiers and custodians with no right to make unnecessary or, as some would seem to argue, any alterations.

As in the realm of liturgy so also in relation to church buildings it has been the wisdom of the Church of England to keep the mean between the two extremes, of too much stiffness in refusing, and of too much easiness in admitting change.”<sup>10</sup>

26. It may be noted at this stage that this even-handed approach is already departing significantly from the earlier dictum that “All presumption is to be made in favour of things as they stand.”

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<sup>10</sup> [1995] Fam 1 at page 4E [bullet points added].

27. The Court recognised that any alteration or extension that materially affects the external appearance of a church (whether listed or unlisted) requires planning permission, to be obtained from the local authority under the Town and Country Planning Act 1990, as well as a faculty. It also noted that the state has identified those churches that are of special architectural or historic interest, in the form of the Secretary of State "listing" them under the Listed Buildings Act 1990. However, subject to those constraints, Parliament has seen fit to entrust to the consistory courts the control of the internal ordering of buildings used for worship, and the carrying out of the necessary balancing exercise between the two views outlined above. The Court also noted that the relevant Government advice then in force indicated that a similar balancing exercise had to be carried out in relation to works to secular listed buildings.<sup>11</sup>

28. After that introduction, the Court held as follows:

"As the newly constituted Arches Court we hope it may be helpful if we set out certain guidelines, emphasising that they are not rules of law but guidance designed to assist chancellors in arriving at decisions in cases where there are valid but clearly conflicting interests and arguments. We repeat by way of introduction what I said in *St Mary, Banbury*<sup>12</sup> and what we have to some extent said already in this judgment, namely that a church is a house of God and a place for worship. It does not belong to conservationists, to the state, or to the congregation, but to God.

Having reviewed the guidelines set out in *Banbury*, as modified in *All Saints, Melbourn*,<sup>13</sup> we consider that in deciding upon alterations to a church a chancellor should have in mind that:

- (i) The persons most concerned with worship in a church are those who worship there regularly, although other members of the church who are not regular worshippers may also be concerned.
- (ii) Where a church is listed, there is a strong presumption against change which would adversely affect its character as a building of special architectural or historic interest; in order to rebut that presumption, there must be evidence of sufficient weight to show necessity for such a change for some compelling reason, which could include the pastoral wellbeing of the church. ...
- (iii) Whether a church is listed or not, a chancellor should always have in mind not only the religious interests but also the aesthetic, architectural and communal interests relevant to the church in question.
- (iv) Although the present and future needs of worshippers must be given proper weight a change which is permanent and cannot be reversed is to be avoided wherever possible."<sup>14</sup>

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<sup>11</sup> Department of the Environment Circular 8/87, paragraph 4.

<sup>12</sup> [1987] Fam 136

<sup>13</sup> [1990] 1 WLR 833

29. It may be noted that these principles were said to be not rules of law but “guidance”; and that they were designed to assist in any case relating to alterations to a church – whether or not it is listed, or indeed of any architectural or historic interest at all – where there are valid but clearly conflicting interests and arguments.

#### *Works to unlisted churches*

30. Guidelines (i) and (iii) are straightforward. They do not undermine the need for petitioners to make the case in favour of proposed alterations, and to show the benefits that would arise. But they do emphasise
- the need to give preference to the views of regular worshippers (rather than, as in the earlier cases, simply “parishioners” at large); and
  - the importance of taking into account a wide range of issues – including “communal” issues, whatever they may be.
31. The fourth guideline (emphasising the desirability of ensuring, where possible, that alterations are reversible) is not stated to be applicable only in relation to listed buildings – although it may be particularly relevant in such cases. In practice, many of the most successful alterations are those made with confidence, and integrated seamlessly into the existing fabric of the building. But this guideline may occasionally be significant – where, for example, it is proposed to introduce an item (such as a new screen or floor covering) into a church.
32. The position in relation to proposed alterations to non-listed churches therefore remains that the burden is on those who promote them to show why they would be an improvement, either rendering the church more commodious or more fit for its purposes, or adding to its architectural beauty or suitable decoration – or, of course, both. The chancellor, in considering whether they should be allowed, will take into account and evaluate any representations by those in opposition (either at a hearing or, more normally, in writing). Where a proposed alteration renders a church more useful but less beautiful, or vice versa, that is a matter for careful consideration on the evidence – no doubt paying particular regard to any views expressed by the diocesan advisory committee – before a balanced view is reached.

#### *Works to listed churches*

33. The three guidelines already considered clearly apply in the case of works to a historic church just as to any other; although the emphasis in guideline (iii) on the need to consider aesthetic and architectural interests will be particularly relevant in such a case. However, the Court in *Maidstone* made it abundantly plain that, in relation to a church that has been listed by the Secretary of State, there is in addition a strong presumption against change that would adversely affect its character as a building of special architectural or historic interest – guideline (ii). But there is no presumption against change as such – “indeed”, as the Court noted earlier in the judgment, “it is the

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<sup>14</sup> [1995] Fam 1, at p 8.

joy, although sometimes the sadness, of many English churches that they have undergone substantial change in most, if not all, centuries since they were originally erected.”<sup>15</sup>

34. It should also be noted that, although there is in the guidelines quoted above a clear and strong presumption against adverse change to a listed church, there is no requirement to prove a need for *any* change. Nor should there be – there will be many proposals for alterations that are either arguably not needed at all (such as a new window<sup>16</sup>), or which are only just necessary, or only necessary when considered from a certain viewpoint, or which are arguably needed but not necessarily in the form or at the location proposed. Indeed, it might be difficult to argue that the introduction of under-floor heating into a medieval church is altogether “necessary” in some absolute sense, since the church will presumably have been used satisfactorily for many centuries without it – but it may of course be highly desirable.
35. The reference to the need for evidence as to the necessity for a proposal applies only in the context of rebutting the “strong presumption” against *adverse* change. The true test in relation to works for the alteration of a listed church is thus to consider whether they would adversely affect its character as a building of special architectural or historic interest. If they would, it is then for the petitioners to show why they are nevertheless justified for some compelling reason – which may include the pastoral well-being of the congregation. So, for example, it might on that basis be able to justify the insertion of a toilet, or the alteration of an entrance to make it more accessible for the less mobile, provided it can be demonstrated that the resulting benefit outweighs any aesthetic or architectural harm involved. The situation would thus be different depending on whether that harm is found to be severe or very slight – a greater benefit being required in the first case than the second. But there is no need to show that a particular change is in some absolute sense “necessary”.
36. Finally, under this heading, it is necessary to consider what is meant by the phrase “change which would adversely affect [the character of the church] as a building of special architectural or historic interest”. This will be a matter of fact and degree, to be determined by the chancellor on the basis of the evidence. However, I am mindful that, under the provisions of the Listed Buildings Act 1990, which would apply in the absence of the ecclesiastical exemption, the decision maker in considering whether to grant listed building consent for any works is to have special regard to “the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”<sup>17</sup> The same provision applies in relation to applications for planning permission for exterior works.<sup>18</sup>
37. Those statutory provisions are not directly applicable to the exercise of the faculty jurisdiction, but they suggest that it is appropriate to consider not just the effect of

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<sup>15</sup> [1995] Fam 1, at p 5B.

<sup>16</sup> As in *Nickalls v Briscoe* (to commemorate the daughter of the benefactor) and *St Gregory, Offchurch* (to celebrate the start of the new millennium).

<sup>17</sup> Listed Buildings Act 1990, s 16(2).

<sup>18</sup> Listed Buildings Act, s 66(1).

proposed works on a listed church as a whole, but also their effect on any features of special architectural or historic interest that it possesses, and on its setting.

*The Sherborne decision*

38. In its judgment in *Maidstone*, following the passage quoted above at paragraph 28, the Court of Arches continued:

“In [*Bishopsgate*], Sheila Cameron QC, Ch identified three questions to be addressed on an evaluation of the evidence:

- (1) Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral wellbeing of St Helen’s or for some other compelling reason?
- (2) Will some or all of the works adversely affect the character of the church as a building of special architectural or historic interest?
- (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court’s discretion a faculty should be granted for some or all of the works?

We accept that those questions indicate the correct approach not only in that and this case, but also *in other similar cases*. The answer to the third question will require a balance.”<sup>19</sup>

The *Bishopsgate* and *Maidstone* decisions both related to major schemes to reorder the interior of a church. Both were said to be unnecessary as well as harmful; and they were both, no doubt for that reason, controversial.

39. The *Bishopsgate* questions, as they have come to be known, were considered and applied by the Court of Arches again in *St Mary the Virgin, Sherborne*. The latter case concerned a proposal to insert a new window in place of an existing one which was said to be beyond repair – also a proposal that was said to be unnecessary as well as harmful, and thus controversial. The Court held as follows:

“Criticism may be made of the order of the questions. It might be said that logic demands that this [the effect of the proposals on the character of the church as a building of special interest] should be the first question, with the present first question only being asked if this second question is answered in the affirmative. However, we do not accept this comment, as by the questions and their order we wish to stress the fact that with listed buildings the presumption is so strongly in favour of no alteration that the first question which must be asked is: are the alterations necessary? The present order of questions emphasises that for listed buildings the presumption is heavily against change. To change the order of the questions would, we believe, cause confusion and might seem to

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<sup>19</sup> [1995] Fam 1, at pp 8H – 9B [emphasis added].

some to some to indicate a relaxation of the requirements before the change will be authorised. No such relaxation is intended or desired by this court.”<sup>20</sup>

40. As to the order in which the *Bishopsgate* questions should be asked, this seems on reflection not to be particularly significant. There is no suggestion – either in *Bishopsgate* itself or in *Maidstone* or *Sherborne* – that if the answer to the first question is “no” it is not permissible to go on to ask the second question. Thus, if a particular proposal is found to be both unnecessary and harmful to the character of a listed church, it should obviously be refused. If it is both necessary and desirable (or at any rate not harmful), it should clearly be allowed. If it is unnecessary, but desirable or not harmful, it should probably be allowed – there is certainly nothing in the *Bishopsgate* questions that prevents that. The balancing exercise referred to is thus only necessary where a proposal is harmful but arguably necessary; that is the third of three *Bishopsgate* questions. But it is also of course in essence the second of the guidelines offered by the Court of Arches in *Maidstone*.
41. Thus, according to the Court in *Maidstone*, the *Bishopsgate* questions only apply to indicate the correct approach in other cases that are similar to those two. In *Sherborne*, it clearly considered that they applied also in that case. The common feature of the three cases would seem to be that each related to a major, controversial proposal for works to a listed church that were said by some to be unnecessary or harmful or both. The questions, and the order in which they are asked (insofar as that is significant) thus strictly apply only in relation to such cases.
42. However, even if they are taken to apply more widely – for example, to all works affecting (for better or worse) the character of a listed church – the *Bishopsgate* questions add nothing to the key principle, as set out in the second of the guidelines in *Maidstone* itself, namely that there is a strong presumption against adverse change. I am also mindful of the wise observation of McClean Ch in *Re Wadsley Parish Church* that “I do not think that it would be helpful to develop a *Bishopsgate* catechism and so impose an unduly prescriptive framework on the balancing process chancellors must perform.”<sup>21</sup>
43. What is perhaps unfortunate, therefore, is that the Court of Arches in *Sherborne* stated that “for listed buildings, the presumption is heavily against change”. However, the following sentence seems to make it clear that the Court was not intending to alter the law in any way; the word “change” in that extract should thus be read as “adverse change” – assuming that the two terms are synonymous is a common mistake, but an unfortunate one; not all change is decay. Only on that basis are the two judgments of the Court, in *Maidstone* and *Sherborne*, reconcilable. It would after all be remarkable if the Court were to be suggesting that it is not permissible to make changes to a listed church that are universally agreed to be highly desirable.

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<sup>20</sup> [1996] Fam 63, at p 77H.

<sup>21</sup> (2001) 6 Ecc LJ 172 (Sheffield Consistory Court) at para 24.

*The approach in Offchurch*

44. The second of the *Maidstone* guidelines was then cited in *St Gregory, Offchurch*, which related to the installation of a new window. Gage Ch observed that the guidance which had included that passage had been offered in the context of cases involving radical changes in the church, such as alterations by way of extension or reordering; but that the case with which he was concerned was not such a case. He considered that it would therefore be sensible to give general guidance for the way in which he proposed to approach petitions for millennium windows.
45. He accordingly held as follows:
- “First, as the church is a listed building, the strong presumption against change which would adversely affect its character as a building of special architectural or historic interest will be adhered to, whether or not this is a petition for a millennium window or some more radical alteration to the church.
- Secondly, in cases involving a petition for a millennium window the first question that the court will ask itself is whether the new window adversely affects the character of the building as a building of special architectural or historic interest.
- Thirdly, if the answer to the second question is no, then the court will still need to give effect to the presumption against change to a listed building, but that presumption may be more readily rebutted.
- Fourthly, if the answer is yes to the second question, the petitioners will need to show a necessity for change.
- Fifthly, when the court is considering whether a necessity for change has been proved, different considerations will apply where a window is involved than in cases where involving reordering or more radical alterations. It is impossible to set out the circumstances in which the court will find a necessity proved. Each case will vary. Each should be dealt with on its own individual facts.”<sup>22</sup>
46. The same approach, if correct, would logically apply to petitions for other alterations that did not involve radical changes, since it would be strange if millennium windows were to be treated on a different basis from all other alterations.<sup>23</sup>
47. However, the approach in *Offchurch* is questionable. It is noticeable that the judgment makes no reference to the *Bishopsgate* questions, which is right, since they do not apply to a proposal not involving a radical change. And the first and second of the guidelines in *Offchurch* are correct. But it seems to me that the third is not, since it refers to “the presumption against change to a listed building.” As I have sought to demonstrate, the Court of Arches in *Maidstone* lays down no such presumption, merely a presumption against change which would *adversely* affect the character of a listed church; and there is therefore no need for the third guideline in *Offchurch*. And as for the fourth, it is difficult to see how a millennium window that had been found to

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<sup>22</sup> [2000] 4 All ER 378 (Coventry Consistory Court), at p 382 f-j.

<sup>23</sup> The same approach was adopted in *Dorchester Abbey* (removal of Victorian draught lobby) and *All Saints Crondall* (new window).

have an adverse effect on the character of a listed church could be found to be sufficiently necessary so as to be allowed.

48. The decision in *Offchurch* was cited in *St Peter and St Paul, Cranfield* – a case concerning a proposal to notch a historic bellframe and to remove the beams beneath it.<sup>24</sup> Bursell Ch adopted the guidelines quoted above, but reading, as appropriate, the words “the removal of the floor beams” or “notching” for the words “millennium window”. He found that one of the options before him would adversely affect the character of the church as a building of special architectural or historic interest; and that there was accordingly a burden upon the PCC of proving that there was a necessity for the change. “For example”, he continued, “if the PCC were to champion a scheme embracing change over against a perfectly adequate one which did not, they would clearly have failed in the evidential burden placed upon them”. Here too, given the finding that the scheme had an adverse effect on the character of the church, it would seem that the word “change” in the quoted passage should be taken to mean “adverse change”. Subject to that gloss, the conclusion in *Cranfield* is entirely consonant with the approach outlined in *Maidstone*, and does not need to be justified on the basis of *Offchurch*.
49. It follows that I respectfully decline to follow the approach outlined in *Offchurch* insofar as it diverges from *Maidstone*.

#### *Policy relating to alterations to secular buildings*

50. The approach indicated by the *Maidstone* guidelines, as interpreted above, also accords with policy relating to secular listed buildings. The Secretary of State’s current policy is still in Planning Policy Guidance note PPG15, produced in 1994 (just after the judgment in *Maidstone*), which states that:

“Applicants for listed building consent must be able to justify their proposals. They will need to show why works which would affect character of a listed building are desirable or necessary.”<sup>25</sup>

It is thus sufficient to show that works to secular listed buildings are desirable; but if they are not, it may be possible to justify them if they can be shown to be “necessary” – again, not in an absolute sense, but simply to a degree sufficient to outweigh their undesirability.

51. More recently, English Heritage published in April 2008 a document entitled *Conservation Principles, Policies and Guidance*, setting out “a logical approach to making decisions and offering guidance about all aspects of England’s historic environment”, and commended for adoption and application by all those involved with the historic environment and in making decisions about its future.<sup>26</sup> It sets out sensible guidance in relation to various categories of works, as follows:

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<sup>24</sup> 4 February 2001, unreported (St Albans Consistory Court), cited in *St Thomas, Stourbridge*.

<sup>25</sup> Paragraph 3.4. PPG 15 is the successor to DoE Circular 8/87, noted above.

<sup>26</sup> Paragraphs 1 and 164.

- (1) routine management and maintenance
- (2) periodic renewal
- (3) repair
- (4) intervention to increase knowledge of the past
- (5) restoration
- (6) new work and alteration
- (7) integrating conservation with other public interests
- (8) enabling development.

This guidance, albeit expressed in somewhat abstract terms, may well prove to be of assistance to all those with responsibility for historic churches. It is clearly not formally binding on consistory courts, but deserves to be considered carefully.

52. In relation to categories (6) and (7), the guidance states that:

“138. New work or alteration to a significant place<sup>27</sup> should normally be acceptable if:

- (a) there is sufficient information comprehensively to understand the impacts of the proposal on the significance of the place;
- (b) the proposal would not materially harm the values of the place, which, where appropriate, would be reinforced or further revealed;
- (c) the proposals aspire to a quality of design and execution which may be valued now and in the future;
- (d) the long-term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future.

...

149. Changes which would harm the heritage values of a significant place should be unacceptable unless:

- (a) the changes are demonstrably necessary either to make the place sustainable, or to meet an overriding public policy objective or need;
- (b) there is no reasonably practicable alternative means of doing so without harm;
- (c) that harm has been reduced to the minimum consistent with achieving the objective;
- (d) it has been demonstrated that the predicted public benefit decisively outweighs the harm to the values of the place, considering
  - its comparative significance,

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<sup>27</sup> “Place” is defined as “any part of the historic environment, of any scale, that has a distinctive identity perceived by people”; and “significant place” as “a place which has heritage value”

- the impact on that significance, and
- the benefits to the place itself and/or the wider community or society as a whole.”

53. That is, in short, alterations to listed buildings will normally be acceptable if they are not harmful and of sufficient quality; but if they are not, they may still be acceptable if they can be shown to be necessary. That of course precisely accords with the second of the guidelines laid down by the Court of Arches in *Maidstone*.
54. More detailed guidance has been given by English Heritage in its 2003 publication *New Work in Historic Places of Worship*.

### *Conclusion*

55. As I noted at the outset, this Court is of course bound by decisions of the Court of Arches; those of other consistory courts can only at best be persuasive. This judgment does not seek in any way to undermine the rulings of that Court, but rather to clarify their meaning in practice.
56. First, there remains a duty on anyone promoting an alteration to any church, whether listed or not, to show the benefits, practical or aesthetic or both, that would result. Where there is a disagreement, the views of the regular worshippers are to be given particular weight. And alterations that are irreversible should be avoided where possible.
57. Secondly, there is a strong presumption against alterations which *adversely* affect the character of a listed church as a building of special architectural or historic interest. But there is no presumption against works to a listed church which – for example, because of their scale or their location – have no effect at all upon its character. Still less can there be a presumption against works which affect the special character of such a church beneficially – either by the removal of an existing feature which detracts from that character or by introducing a new one that enhances it. Further, in determining the effect of works, it will be appropriate to have regard to their effect not just on the building as a whole, but also on any features of special architectural or historic interest that it possesses, and on its setting.
58. Thirdly, where proposed works to a listed church are found to have an adverse effect on its character as a building of special architectural or historic interest, it will be necessary for petitioners to produce evidence of sufficient weight to show “necessity” for the change. That does not mean that it is necessary to show in some abstract sense that the works are necessary, but simply that the benefit resulting from them outweighs any architectural or aesthetic harm. However, where the effect of the works is either neutral or beneficial, there is no particular need to consider the necessity for them, since there is no adverse effect to be mitigated and thus no balancing exercise to be carried out. The only reason to do so is, as in the case of any faculty petition for proposed works, in order to save a parish from unwise expenditure or other impropriety.

59. Finally, it is sometimes argued that a proposal should not be allowed because there is a better way of achieving the same or similar result. However, a faculty is merely a permission; it does not require the works permitted to be carried out. The test is thus whether the works that are now proposed meet the tests outlined above (and any others that are applicable). It is therefore generally not relevant that there might be some other proposal that also meets those tests – either to achieve the same purpose or indeed to achieve some other purpose, said to be more important. It is always open to anyone to submit a subsequent faculty petition for a different proposal; and it would be perfectly possible for two alternative schemes, each beneficial in its own way, both to be authorised. However, it might be relevant to consider alternative proposals where it is being argued that a proposal that is harmful is nevertheless necessary – for example, it would be difficult to argue successfully that a proposal is necessary if objectors to it were able to point to an alternative means of achieving the same result that was less harmful (albeit possibly more expensive).

### **The case for each of the parties**

60. Against that background, I now turn to consider the case for each of the principal parties. However, before doing so, I note that there are a number of matters that appear to be not in dispute.

#### *Agreed factual background*

61. I have already mentioned briefly the history of the bells themselves. Their dates and origin are not in dispute. Nor is the fact that they are of considerable historical interest; indeed the sharp 5<sup>th</sup> bell is one of the oldest ringable bells in the country. They are also relatively heavy. They are all apparently in a sound condition.
62. There are substantial timbers on the east and west walls of the ringing chambers, surviving from an earlier bellframe.
63. The present frame and fittings were installed in 1887 by John Taylor & Co Bellfounders. The frame is of composite construction, having A-shaped cast iron sides fixed between timber sills and head beams. The frame rests on a timber grillage of four east-west beams over three north-south beams. The east-west beams are not anchored into the masonry walls of the tower, but the north-south beams beneath them are. The frame has been strengthened with diagonal bracing, some probably original, some added later to arrest horizontal movement. It is in a good physical condition.
64. The high-sided frame is of a style that was made by the bellfounders in the period from 1882 to 1890, when they changed to the low-sided frame still used today. There were around 75 examples of this type made by Taylor's.
65. The fittings – including the headstocks, clappers, sliders and wheels – are of a style that was typical of the era, and are in reasonable condition, with regard to their age.

However, if they are to be retained, they would require some attention. In practice, all of the proposals canvassed involved the incorporation of new fittings.

66. The last major works in the tower were undertaken in 1968, when the medieval sharp 5<sup>th</sup> bell was hung for full-circle ringing, as part of the main ringing circle. Some fittings were renewed at this time, and some further attempt was made to strengthen the frame.
67. Overall, the condition of the installation is fair, especially considering that most of it is well over 100 years old.
68. The Priory is fortunate to have an active band of ringers, who ring regularly for Sunday services and at other significant occasions. However, full-circle ringing is becoming increasingly difficult, due to the weight and difficult "go" of the bells. It is as a result becoming difficult to retain existing ringers, many of whom are over 60, and to train new recruits.
69. The cause of the problem is the excessive movement, mostly in the east-west direction, caused by the lack of anchorage into the east and west walls of the tower, the poor layout of the bells (with the two heaviest bells ringing mouth-to-mouth), and the high-sided frame which has an inherent tendency to rock slightly.
70. There are (and have been since at least 1988) fine cracks visible in the south wall of the ringing chamber, but there appears to be nothing to suggest that the tower is of insufficient strength to carry the dynamic loads produced by the bells, in their existing configuration, when rung full-circle. Nor is there any sign of structural distress that might be attributed to the ringing of bells.
71. Quite apart from the inherent problems of the existing frame, it would be desirable to introduce two new bells, to create a ring of ten, from which a lighter ring of six could be used for teaching purposes. Both proposals – either the repair of the existing bellframe or the installation of a new frame – allow for that.

#### *The case for the petitioners*

72. The parish wishes to continue the tradition of bell ringing at the Priory. It accordingly seeks a solution to the problems arising from the bellframe that is reliable, a good use of money, long-lasting, and supported within church – both by the bell ringers and by the congregation. It has accordingly sought advice from various quarters over the last twenty years as to the possible options. The petition as first presented in 2002 was thus supported by detailed reports submitted by all those who had given such advice.
73. The Whitechapel Bell Foundry had visited the Priory in 1988, to consider the augmentation of the ring to ten bells. They considered that it would be possible to modify the existing structure to incorporate two more bells. However, they did not recommend that, and said that the only satisfactory solution would be to re-tune the existing bells, and hang them in a new framework of cast-iron and steel, designed to house eleven bells (ten bells plus the semi-tone bell), carried on a concrete ring beam.

In the meanwhile, they saw nothing dangerous, and considered that the bells could continue to be rung.

74. More recently, the parish sought the advice of Mr Adrian Dempster of Ward Cole (consulting engineers), who visited the Priory in May 2001. He reported on the two options of remedial works to the existing bellframe and installing a new frame, and provided budget prices for each – the former being slightly more costly, as a result of the applicability of VAT. He later confirmed that the arrangement proposed by the parish (the replacement frame) would be very much better, structurally, than the existing; and that the tower walls were of adequate strength to take it.
75. There then followed three visits by bell experts in September 2001. I use that imprecise term deliberately, since they all describe themselves differently. Nicholson Engineering Ltd are “church bellhangers and ironsmiths of distinction”; Hayward Mills Associates are “bell consultants and contractors”; John Taylor Ltd are “bellfounders”. I am not clear as to the precise distinction between these various terms, but nothing seems to turn on it.
76. Nicholsons inspected in September 2001, in response to an invitation to provide an estimate for the re-hanging of the bells in a new bellframe, and to augment the ring to eleven. They described the problems with the bellframe, which they attributed to its poor design, and noted that numerous attempts had been made over the years to try to stiffen the frame both horizontally and vertically. They considered that “it might in theory be possible to undertake yet more strengthening and bracing of the bellframe”, but did not recommend that, as it would merely perpetuate a poor design and layout.
77. They accordingly supported the proposal that had been made by the parish to remove the existing frame and to replace it with a new one, within which the eight existing bells (re-tuned and with new fittings) could be hung along with two new ones. The frame, which would be supported by a substantial foundation of joists spanning the tower in both directions and each securely built into the tower walls at both ends, could be either of entirely of fabricated steel construction, or of cast-iron sides bolted to steel sills and foundation joists.
78. Taylor’s noted the problems that had arisen since they installed the existing frame, and proposed that it be replaced by a new frame, of cast-iron sides mounted on a grillage of heavy steel beams, spanning in both directions. They subsequently looked at the option of re-using the existing frame, but considered that it was of no historic merit, and that it would not be possible to add two further bells without significant re-arrangement that would be both impracticable and costly.
79. Hayward Mills also noted that the strengthening works carried out to the existing frame in the past had not been as successful as one would have wished, and that “although it might be feasible to undertake a further strengthening scheme, we think that the cost of this work would be prohibitive”; they therefore considered that the most cost-effective scheme would be to hang the bells in a new frame. They therefore recommended a new fabricated steel bellframe, with the bells retuned and with new fittings.

80. They also subsequently provided a quotation for the reuse of the existing bellframe, as recommended by English Heritage; but emphasised that they did not consider that this would be advisable from the bellringers' point of view; and that if a strengthening scheme were to be undertaken, a further restoration would be needed fairly soon.
81. Berry & Co only provided (in 2002) a quotation to re-hang the bells in a new frame, but subsequently commented that the repair option could well be 100% more expensive. Immediately prior to the hearing, they provided (in August 2008) an updated quotation, which reflected what they described as the "spectacular" increase in the cost of all metals.
82. Against that background, the churchwardens point out in their statement that the existing bellframe has a relatively modest history – compared to the history of the Priory – and that very few people ever look at it; whereas a new bellframe will itself in the future become part of the heritage of the Priory. There has to be a solution that is seen as long term, and preserves both the structure of the tower and the practice of bell ringing. If the frame is to be repaired, the congregation must be convinced that it is the right thing to do; otherwise, the money will not be raised. Mr La Fontaine, one of the churchwardens, who gave oral evidence at the hearing, explained that very few people ask to see the bellframe; there is an open day, when people go up the tower, but people are more interested in the bells than the frame.
83. Mr Clements, the tower captain, notes that the bells in their existing configuration have become progressively more difficult to ring, so that only the most experienced can now ring the largest ones. He points to the benefits of the new solution proposed, with the eight bells augmented to ten, and the bells easier to ring, especially for the young or inexperienced. In his oral evidence, he said that all the experts had recommended a new frame; he had seen the strengthened bellframe at St Cuthbert's Church in Wells, but would not be happy with a similar arrangement at Malvern. He also suggested that the repair arrangement would not produce a good rope circle.
84. Mr Still, who is both a bell ringer at the Priory and a chartered civil engineer, outlined the troubled history of the bells, noting the various attempts that had been made – largely unsuccessfully – to repair and strengthen the bellframe since its first installation. He summarised the advice that had been given to the parish, which I have already outlined, and explained that the ringers from Malvern had visited other towers where frames had been strengthened. He considered that a further attempt to repair the existing frame would be just one more attempt to maintain a poor example of a Taylor A-frame, of which there were numerous examples elsewhere.
85. In oral evidence, Mr Still suggested that the foundation beam was flitched, and thus not as robust as would be expected; and that the frame would not be as bad in a standard size tower. It was not possible to restrain the movement of the frame. He accepted that engineering advice had improved over the years; but said that, whilst repairs would go a long way to improving the position, they would not solve the problem; it would still be patching up a flawed design. At present, numerous young people went away after trying bell ringing, as it was so difficult.

86. He said that if this were a medieval frame, as at Lichfield, there would be no argument – although he noted that the first attempt at repair there had certainly not been satisfactory. The second attempt had been an improvement, but the ringers would still prefer a new frame. He also pointed out that the new English Heritage cost figures had only been produced on the morning of the hearing.
87. Mr Povey, who gave evidence at the hearing in support of the petition, is also an engineer; and is a member of the Belfry Advisory Panel of the Worcestershire & Districts Change Ringing Association. The Association supports the Priory's attempt to install a new frame - the Convenor of the Association had written a letter of support for the proposal when it was first put forward in 2002; and the General Secretary wrote separately to support the proposal at the time of the hearing.
88. Mr Povey points out that the A-frame design was deficient when first introduced, due to the geometrical pattern of the frame that provides insufficient rigidity. This is made worse at Malvern due to the poor layout of the bells, and the failure to fasten the frame to the east and west walls of the tower. Further, the attempts to repair the bellframe in the past had compromised its historical integrity. And he noted that English Heritage had in recent years allowed two better examples of Taylor A-frames to be removed and rebuilt.
89. At the hearing, he accepted that the Dempster design would bring the movement of the frame back to acceptable limits, but you would get a better result – and less movement – with a new frame. The normal rule is that 1 mm of horizontal movement is acceptable; 2 mm is the limit; and 3 mm means that the bells are very hard to ring.
90. Mr La Fontaine summed up the case for the parish by saying that the PCC had always wanted a new frame, as had the ringers. It would be hard to convince the PCC of the need to repair the existing frame, especially with other projects competing for funds. The PCC would therefore probably not go for the repair option if a faculty were to be refused; the risk was too high. So the bells would fall silent.

#### *The case for English Heritage*

91. Before turning to the substance of the case put forward by English Heritage, I must first consider its status as a party in these proceedings.
92. I noted earlier in this judgment that it objected to the petition, in a letter of 8 January 2003, but stated that it wished to appear at any consistory court that might be held “as a judge’s witness”. This was, I assume, a reference to rule 25 of the Faculty Jurisdiction Rules 2000, which provides (under the heading “judge’s witness”) that:

“(1) The chancellor may direct the attendance of a member of the advisory committee, the Council for the Care of Churches or any other person to give evidence at the hearing of any petition for a faculty, if it appears to the chancellor that the person directed to attend may be able to give relevant evidence and is willing to give it.”

93. This seems to me to indicate the appearance of such a person at a hearing as an "amicus curiae" – that is, as a neutral third party, whose evidence may or may not further the cause of one or other party, but who is present solely to assist the chancellor, and only at his or her direction. Such a person could not be made the subject of an order to pay the costs of either of the principal parties; but equally nor could either of the parties be required to pay the costs of the judge's witness, which would thus have to be met by the court (if not borne by the witness himself or herself).
94. I do not consider that it is appropriate for a person or body that has objected to a petition, if they wish to appear at any hearing that may be held, to avoid such potential liability simply by seeking to take advantage of rule 25(1).
95. In the present case, therefore, I consider that English Heritage is not taking part at my direction, but is simply a body that has become aware of the proposal through its involvement with the DAC, and has perfectly properly registered an objection to the petition. It is therefore to be treated on the same basis as any other objector.
96. As to the substance of its case, Mr Pledger of English Heritage first visited the tower at Malvern in October 2000. He considered that the heritage merit of the existing arrangement must be in the composite construction of timber head and sill, with cast-iron side frame. He also formed the view then that it would be possible to repair the frame, and that that would be the better solution. This was reiterated in a letter of April 2002 to the parish from Mr Taylor, who stated that insufficient attention had been given to the possibility of retaining and strengthening the existing bellframe.
97. Following the pre-trial review in March 2003, English Heritage then commissioned Mr Dempster of Ward Cole, who (as noted above) had already visited the Priory and advised the parish, to investigate the technical feasibility of strengthening and augmenting the existing bellframe and strengthening the foundation beams. In its instructions to Mr Dempster, it drew attention to the investigative work that had already been carried out on behalf of the parish.
98. Mr Dempster accordingly discussed the matter with the companies that had previously reported on the bellframe, and concluded (in a report dated May 2003) that it would be possible to design a scheme that retained the existing frame, but with a properly designed lattice beam system firmly anchored into the north and south walls of the tower. This would result in the foundation for the frame being anchored to all four walls, reducing the movement to 1.5 mm, which is the accepted level at which handling problems arise when bells are rung full-circle.
99. In answer to the parish's concern as to who would guarantee the success of any such scheme, the report stated unequivocally that Ward Cole, together with the chosen bellhanging company, would be prepared to do so. He also investigated the relative costs, noting that the repair scheme would cost around £85,000 or £71,500, depending on which bellhanger was chosen, as opposed to £67,800 for the replacement scheme; as before, the difference was largely due to the VAT position. And it would be possible to augment the existing frame to include a further two bells.
100. English Heritage accordingly clarified that its formal position was one of opposition to the petition for a replacement bellframe.

101. In a subsequent letter to the parish in December 2003, the Regional Director of English Heritage drew attention to its policy statement *New Work in Historic Places of Worship*, which stated that “English Heritage wishes to encourage continuity in use of historic bells and bellframes, and thereby the tradition of change ringing. ... [it] will start from a presumption in favour of the retention of historic bells and bellframes, preferably in use.” She also drew attention to the statutory requirement (in the Listed Buildings Act 1990) to have special regard to the desirability of preserving the building or any features of special historic interest which it possesses. She stated that the frame at Malvern “is in any case of intrinsic interest as an item of 19<sup>th</sup> century technology, for its place in the evolution of metal frames and for its comparative rarity today.”
102. The costs were updated in 2005, but the relative position of the two options remained broadly as before.
103. More recently, English Heritage set out its position in a statement of September 2007. It considered that the A-frame at Malvern is not of great antiquity or rarity, although its significance is augmented by the diminishing number of comparable frames still in existence. It is however of historic interest on a national perspective, as an example of a short-lived new technology in bell-framing at the time of installation, and locally for its place in the evolution of the fittings of the medieval church building and of bell-ringing activity at the Priory.
104. The frame has been strengthened by steel cross-bracing in the past; once altered for the proposed augmentation, it can be further strengthened to meet the demands of current and future ringing. The problems arising from the design of its foundation beams have been carefully diagnosed, and measures for eliminating deflection fully detailed and guaranteed. In short, the problems of the Malvern frame are due to the instability of the foundation beams on which it stands, and not to any inherent design or mechanical defect in the A-frame type, as is evidenced by English Heritage’s study of comparable frames at Wells and Lancaster. Further, in the light of changes to the regime for VAT liability in respect of works to places of worship, the costs of the two options are now more or less identical – and indeed the repair option might even be cheaper, especially if a grant were to be available.
105. In oral evidence, Mr Dempster accepted that mouth-to-mouth ringing was not ideal, but was very common. And he noted that there was no appreciable tower sway, or very much less than elsewhere. The defects arose because the foundation for the frame was not built into the tower, and because of poor bracing. His scheme for repair would distribute the forces more evenly. He considered that with a repaired frame, there would be a tower sway of +/- 1.5 mm. A new frame would flex about the same extent as a repaired frame. From an engineering point of view, he would be happy to see either a repair of the existing frame or a new frame; neither would be “better”; each would last as long as the other; but bellringers always like a new frame. And he confirmed that he would be happy to guarantee the repair scheme, based on his professional indemnity.

106. As for Lichfield, the frame there was from the Tudor period; but the strengthening had been totally effective. The ringers there were now highly delighted with the strengthened frame, which had reduced movement from 8 mm to just under 2 mm.
107. Mr Pledger clarified the up-to-date cost position. The repair option would cost £86,055, assuming the works being done by Hayward Mills (and ignoring possible deductions of up to £6,862 for the use of local labour, and free board and transport). The new frame would cost £99,280.
108. Mr Taylor agreed that a bellframe is largely out of sight, and so out of mind. And it is true that bellringing as an activity is more interesting than the physical plant. But that is a matter of interpretation and explanation. The fact that the frame is not original is also not significant; the Priory is a product of historical evolution.
109. Finally, English Heritage did agree a common position with the parish that, in the event of a faculty being granted for the removal of the existing frame, the existing no 6 pit and sideframes should be retained in their entirety, and relocated on the north side of the new frame. The medieval sanctus bell might be hung within this re-sited pit, and activated by a mechanical chiming mechanism (that is, not by rope operation). That would require the drawings to be amended accordingly.

*Costs: summary*

110. It will be helpful at this point to summarise the various estimates that have been made of the cost of the two options (including in each case the addition of two new bells). In each case the figure includes fees and VAT as applicable, but excludes any allowance for local labour, free board or free transport; and the cost for repair option is the cheaper of the two quotations.

<i>Date</i>	<i>Source</i>	<i>Replacement</i>	<i>Repair</i>
		£	£
2001	EH (Dempster report)	53,500	61,235
2002	Berry & Co estimate	67,414	
2003	EH (letter from Taylor)		71,495
2005	EH (letter from Taylor)		76,519
2007	EH (letter from Taylor)	74,605	74,612
2008	Berry & Co estimate	101,925	
2008	EH (Taylor / Pledger)		79,193

*The position of the Diocesan Advisory Committee*

111. As noted above, the DAC recommended the proposals at its meeting in March 2002, subject to provisos:

- (1) that the details of any inscriptions on the two new bells be approved by the DAC;
- (2) that the new metal bellframe be connected to the lightning conductor system;
- (3) that the bellframe be fully recorded before removal; and
- (4) that the details of any sound-proofing found to be necessary should be approved by the DAC.

112. The DAC's bells advisor, Mr David Beacham, in a memorandum of 2006, noted that any discussion of repairing bellframes needs to be set in a historical context. Until fairly recently, analysis of problems, and the diagnosis of the appropriate treatment, was usually left to a bellhanger, who relied upon practical experience rather than scientific analysis. The results of such repairs were often not long-lasting, and it is therefore not surprising that bellringers are usually unhappy about any proposals that involve repairing an existing frame; they will always be pressing for a new one. However, it has been shown that properly engineered solutions are possible – as at Lichfield Cathedral. However, although the ringers at the Priory have visited Lichfield, they seem unwilling to be convinced.

113. Mr Beacham concluded that in principle it is possible to repair the existing frame. As to whether it is worth doing so, he noted that the original configuration would, to some extent, be lost due to the augmentation of the frame to take the two extra bells. He noted that the frame at Malvern was not particularly rare. And he noted that the cost of the two schemes, repair or replacement, were now comparable. On balance, he supported the parish's petition.

114. In a statement produced for the hearing, the DAC noted that there had been problems with the bells at the Priory almost from the outset, following the introduction of the new frame in 1887. Most if not all of the other Taylor A-frame installations were in west towers, suggesting that the problems at Malvern may be partly due to the excessive span of a central tower. It noted that none of the reports produced by the various engineers ruled out the repair option. Both Mr Pledger and Mr Dempster indicated the horizontal movement could be virtually eliminated. The bellringers at Malvern pointed to the fact that previous repairs had not been successful; but properly engineered repairs have succeeded elsewhere. On the other hand, English Heritage had apparently taken a different view in relation to some other churches.

115. The DAC statement concludes:

“The DAC agrees in principle with English Heritage that the 1887 frame can be stabilised along the lines that both engineers ... have proposed. However, they also support the parish's wish to augment the bells to a ring of ten; but given that to do so and at the same time to retain the 1887 frame would involve alterations to it which would affect its integrity, on balance they do not consider that it is sufficiently important to justify its retention. In forming this view, it also recognises that a new frame design would take account of today's better understanding of the forces generated by swinging bells and their effect on

fabric, plus the improvements for the bell ringers (better rope circle, easier access for maintenance etc) that would accompany it.”

116. At the hearing, Mr Beacham said that a new frame would enable a more condensed ringing circle, but the advantage would be fairly marginal. And the low-side frame would make the bells more accessible for maintenance. On the other hand, Mr Dempster had given his guarantee; and a repaired frame should last as long – 100 years if properly engineered – and would still provide a reasonable circle. Either scheme would provide equally good “go”.
117. He indicated that the frame at Malvern was one of 20 or so A-frames made by Taylor’s with a ring of eight bells. He subsequently provided a list of the 75 or so thought to be extant, which suggested that two have been reconstructed, three (possibly four) replaced, and one is unringable.

## **Conclusion**

### *The effect of the proposed works*

118. It follows from my earlier analysis that the first question to be answered is whether the proposed works adversely affect the character of the Priory as a building of special architectural or historic interest. Included within that is the further question of whether the works affect any features of the Priory that are of special architectural or historic interest, and whether or to what extent it is desirable to preserve them.
119. The existing bellframe is clearly part of the history of the Priory. It is not a feature that is visited or inspected often or even, it may be imagined, at all – other than, possibly, by a few enthusiasts at rare intervals. But it is clearly a functioning part of the building, without which it would not be possible to continue the tradition of change ringing, which is itself part of the history and character of the Priory.
120. The fact that there are a number of other similar bellframes is not particularly significant – there are after all many hundreds of medieval parish churches, but that does not of itself justify losing any of them. Indeed, 75 is not a particularly large number; if this one were to be removed without some good reason, others would doubtless follow. Nor is it particularly significant that it has been altered; many features of churches have been altered since they were first installed; but that is part of the ongoing story of their development to meet changing tastes and needs.
121. Equally, the fact that the bellframe now requires further alteration – if it is indeed to be retained – does not of itself mean that it has no interest. I was given at the hearing a set of sketch plans of the existing frame, as proposed to be repaired, on which the parties marked up the parts that that would be original and those that would be new work; it seemed to me that the former still comprised a substantial and significant part of the whole.
122. It is true that the bellframe is a feature of interest that is (realistically) of interest only to specialists. I have already noted that Malvern Priory has a magnificent collection of medieval wall tiles, noted in all the descriptions of the building; but they too are

probably also primarily of interest only to specialists. And I note that both the bells and the frame are mentioned on the Priory's website; it is not clear that a renovated bellframe is intrinsically of less interest than a re-tuned bell.

123. I therefore conclude that the bellframe is a feature of some, albeit limited, special historic interest; and that its removal and replacement would therefore adversely affect the character of the Priory as a building of special architectural or historic interest.

#### *The need for the works*

124. It follows from that conclusion that there is a strong presumption against the works now proposed, and that the burden is on those who propose them to show that their adverse effect on the character of the Priory is outweighed by a resulting benefit, so as to show that they are in some sense necessary.
125. It is said that by the petitioners that the replacement of the bellframe is desirable, to enable bellringing at the Priory to continue, and to enable the existing ring of eight bells to be augmented to ten. However, that does not seem to be borne out on the evidence.
126. There are clearly problems with the existing arrangement, and this restricts the ability of the Priory to retain existing ringers, and to attract, train and retain new ones. I entirely accept that that is very unfortunate. Further, there seems to be agreement between the parties that the cause of those problems is a design fault primarily arising from the lack of anchorage of the frame into the east and west walls of the tower. Past endeavours to solve this problem have not been successful; and it may indeed be getting slightly worse.
127. Those problems would undoubtedly be solved by the removal of the existing bellframe and its replacement by a suitably designed new one. That is always the case where a machine is malfunctioning – replacement will cure the problem. But that argument does not of itself justify, for example, the purchase of a new car because the starter motor in the existing one has ceased to operate. It may do; but the question is whether the fault can be satisfactorily repaired.
128. Thus it is said by English Heritage that the repair of the existing frame and its adaptation to accept two new bells would be just as effective a remedy as the proposed replacement.
129. I note that Nicholsons were invited by the parish to provide an estimate for the re-hanging of the bells in a new frame; that may have coloured their approach. And initially they considered that they considered that a solution involving the strengthening and bracing of the frame "might in theory be possible", although not recommended. But they subsequently provided a quotation for carrying out just such a scheme. Hayward Mills too initially considered that replacement of the frame would be the most cost-effective option, but subsequently provided a competitive quotation for a repair scheme. Further, although Berry & Co commented that a repair scheme

could well be 100% more expensive, they did not support that comment with any evidence.

130. Mr Dempster is satisfied that an appropriately designed repair scheme would reduce the movement to +/- 1.5 mm, which would solve the problem; and Ward Cole and the chosen bellhanger would guarantee its success. For the parish, Mr Still accepted that repairs would go a long way to improving the position, although he felt that they would not solve the problem; and Mr Povey accepted that the scheme proposed by Mr Dempster would bring the movement of the frame to within acceptable limits.
131. It is also accepted that a repair scheme could be designed so as to incorporate two new bells.
132. I consider that the bellringers at the Priory have already made up their minds that only a new frame would be an acceptable solution. No doubt this is based on their experience of past repairs, at Malvern and elsewhere, that have not been satisfactory; and that is entirely understandable. However, as Mr Still accepted, engineering advice has come a long way in recent years; and I see no reason why the solution proposed by Mr Dempster should not work perfectly adequately. And Mr Beacham, who is in effect neutral, accepts that a repaired frame should last as long as a new frame – or at least 100 years.
133. I therefore conclude that it would be possible to repair the existing frame to produce a result that is just as satisfactory as introducing a new frame.
134. Finally, it is of course necessary to consider the cost implications – if the repair option were to cost significantly more than the replacement, that would effect any overall balancing exercise. The comparison of the cost of the two options has been carried out a number of times; I have summarised the various figures at paragraph 110 above. From this it appears that the repair option would probably be less expensive, not least as a result of the position with regard to the imposition of VAT. I do not place too much weight on this, as costs may well alter before any works are actually carried out; and the position as to the availability of grants remains uncertain (although it might be hoped that, in view of the history of this matter, an application for grant aid would be received sympathetically). However, it clearly cannot be argued that there is a cost advantage to replacement.
135. Nor do I consider that it will be any more difficult to raise money to fund a repair option. The object of the giving will after all be not primarily for a bellframe – either old or new – but to ensure that the bells continue to be rung, satisfactorily; and that will be achieved just as well by the repair option as by the replacement. There are many examples of successful campaigns to raise funds to repair towers, organs and other parts of church buildings; and I have every confidence that, if tackled with imagination, a campaign to restore the bells at the Priory, as a whole, will be just as successful.
136. Since, therefore, the repair option produces the desired result as well as the replacement, and is not more expensive or more difficult to fund, there is no basis on which to override the presumption against the loss of the existing bellframe. In the

end, the only argument in favour of a new frame is that the bellringers want one. In the absence of any compelling case to justify it, that is not enough.

*Conclusion*

137. I accordingly decline to grant a faculty for the proposed works.

**Charles Mynors**

Chancellor

24 February 2009