

in so doing. However, in the present case, the domestic courts had failed comprehensively to assess the wider context of Ms Rabczewska's statements and to strike a proper balance between her right to freedom of expression and the rights of others to have their religious feelings protected. She had not launched an improper or abusive attack on an object of religious veneration that was likely to incite religious intolerance or violate the spirit of tolerance—so despite their wide margin of appreciation, the domestic authorities had failed to justify their interference with her freedom of speech. It was held by six votes to one that there had been a violation of Article 10. [Frank Cranmer]

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### Re Holy Trinity, Clapham

Southwark Consistory Court: Petchey Ch, 27 September 2022  
[2022] ECC Swk 4

*Re-ordering – Duffield questions – assessment of harm – exceptionality test – relevance of planning permission*

The petitioners sought permission for various re-ordering and extension works in this Grade II\* listed Georgian church, including the removal of pews and the expansion of areas of the church which were previously extended in the Edwardian era. The justification for the re-ordering was the church community's rapid growth, especially among young adults.

The court gave a comprehensive overview of the evolution of the *Duffield* framework, and of the inter-relationship between that framework and the secular National Planning Policy Framework, with particular reference to the concepts of 'serious harm' in the former and 'substantial harm' in the latter. Applying the fifth *Duffield* question, proposals resulting in serious harm would only exceptionally be allowed. The court considered that 'exceptional' in this context meant something more than 'a case in which an exception falls to be made'; it was an indication that serious harm would rarely be permitted. A case for change could be very strong without being exceptional; that was the case here. The only basis for finding exceptionality would be the church's designation as a resourcing church, but the court was unpersuaded; the sorts of things that the church wished to do were the sorts of things that all churches would wish to do, even though this church was better placed to do them.

The assessment of the degree of harm was, therefore, crucial to the question before the court. This was straightforwardly a matter for the court, albeit assisted by the views of experts. As far as the removal of the pews was concerned, the harm was aesthetic rather than historical, and so would in principle be

reparable. The public good to be achieved by their removal would outweigh the harm. The significance of the pews was assessed as moderate to high, and therefore not in the highest category; and the harm caused by their removal would likewise not be in the most serious category. There was, therefore, no additional exceptionality test. The same benefits could not be achieved by any proposal causing any less harm.

As far as the extensions were concerned, the local authority would have had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, when it granted planning permission. The court should, therefore, give considerable weight to that factor. The significance of the extensions was moderate to high, and the harm to the special character of the building by their construction was less than the removal of the pews; there was, therefore, no exceptionality test to be applied.

A faculty would therefore issue as prayed, subject to conditions. The court noted that it might be helpful if the Church Buildings Council's *Guidance Note* indicated to parishes and those advising them of the potential need for the assessment of harm. [Jack Stuart]

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## **Billy Graham Evangelistic Association v Scottish Event Campus Ltd**

[2022] SC GLW 33

24 October 2022

*Cancellation of letting – evangelistic meeting – religious discrimination – Equality Act 2010*

The pursuer (BGEA) is a charity registered in England and Wales and a limited company: its objects include supporting and extending the worldwide evangelistic mission of the US-based Billy Graham Evangelistic Association and now headed by Franklin Graham, Dr Graham's son. The defender (SEC Ltd) is a private limited company incorporated in Scotland: it operates the Hydro and is 90 per cent owned by Glasgow City Council. In July 2019, BGEA and SEC Ltd contracted for BGEA to hire the SSE Hydro Arena and Box Office in May 2020 for what was to be known as the 'Franklin Graham Event' – the beginning of Graham's UK tour. Although the agreement described the event as 'private', it was known to and agreed by SEC Ltd that it would be non-ticketed with free entry to the public. The event was part of an evangelistic outreach tour to profess and promote religion or philosophical belief: Christianity derived from an interpretation of the bible. The intended