



To:
The representors

*(and copied to the statutory interested parties for
information purposes only)*

Wendy Matthews
*Head of Pastoral and
Closed Churches*

Our ref: 41/125/RA

By e-mail only

2 February 2023

Dear Representors

**Mission and Pastoral Measure 2011
Church of St Jude, Southampton in the parish of Maybush
Proposed Pastoral Church Buildings Scheme**

1. On 17 November 2022 the Church Commissioners held a hearing in relation to the proposed draft Pastoral Church Buildings Scheme providing for the church of St Jude, Southampton, a chapel of ease in the parish of Maybush, to be declared closed for regular public worship and appropriated to use as *“a children’s nursery and pre-school and/or office and/or light industrial use, and for purposes ancillary thereto”*.
2. The draft Scheme was published in March 2022 and attracted 101 representations against, (including four petitions totalling some 1,667 signatures) and 20 in favour, together with four out-of-time representations against.
3. This Statement sets out the decision reached by the Church Commissioners and the reasons for the decision, and the material factors they considered in their deliberation. The minute of the hearing is attached at Annex A and the summary of the representations is attached at Annex B. The minute is a note of the main points made in the hearing, and is not a verbatim transcript of the event. Annex C sets out consideration of equalities duties, but subject to the conditions which are set out in that annex.

4. **The Commissioners have decided that the Scheme should proceed notwithstanding the representations against it, but the text will be amended to be consistent with the planning permission granted by Southampton City Council and require a nursery use only.** The following statement indicates the reasons for their decision.

Reasons for the Commissioners' decision

5. Overall, the Commissioners' findings were as follows:
- That the diocese had met the requirements of the Mission and Pastoral Measure 2011 and the scheme had been brought forward for a proper purpose.
 - That the statutory requirements of the consultation process had been met.
 - That the scheme would further the mission of the church, and it was noted that the proceeds from the sale would be used to further local mission in the Maybush area.
6. The detailed reasons for the Commissioners' decision are set out below, and in the annexes.
7. The Commissioners accepted that there was no longer a pastoral need for St Jude's church within the parochial system. They noted that attendance at St Jude's had been at a very low level since at least 2005 and had ceased altogether after 2014, and that the then St Jude's Warren Park, Southampton PCC had requested the Diocesan Mission and Pastoral Committee (DMPC) in April 2013 to discuss the possible closure and sale of St Jude's church, in the context of the union of parishes with Maybush (which took place in 2014).
8. They also noted that the current priest-in-charge (the then interim priest) had been asked to conduct a review in 2016, and that she had concluded that St Jude's was not an asset to mission in the Warren Park area, and that those residents identified more with Shirley or Lordshill than with Maybush. The Committee also took account of the Bishop's view that parish boundaries might be adjusted in future to recognise those dynamics. They noted that St Peter's Maybush was less than half a mile from St Jude's and reasonably accessible from the Warren Park area, and that there were also alternative Anglican churches in Shirley and Lordshill, the areas with which Warren Park residents were said to identify.
9. They further noted that the Maybush PCC had confirmed in 2018 that it regarded St Jude's as a burden on its finances and that its mission would benefit from the sale of St Jude's (and its church hall) and the application of the sale proceeds to mission at the other two churches in the parish, which were considered to be more viable and sustainable. The numbers on the electoral roll and regular worshippers, were better, and the buildings were also in a better state (noted in the Committee visit the day before).

10. They were satisfied that the consultation process had fully met the requirements of the 2011 Measure. They noted that there had been much informal discussion and correspondence since 2013, and that the formal consultations with the interested parties had been properly completed. They also noted that the number of representations received indicated that those concerned were fully aware of what was proposed and their rights of representation.
11. The Commissioners had regard to the advice in Paragraph 17.6 of the Code of Practice to the Mission and Pastoral Measure that worship by another Christian Group is usually the best use for a closed church. However, they noted that this had to be weighed against other factors including the financial viability and sustainability of proposed uses. They also needed to consider the wider context of the Measure's general duty to have due regard to the furtherance of the mission of the Church. Mission in this context is defined as "the whole mission of the Church of England pastoral, evangelistic, social and ecumenical".
12. They also took account of the interconnection between the sale of the church building and the sale of the surrounding church hall site, as any disposal requires a dual sale as the church is landlocked in terms of access. They noted that the PCC and the WDBF had been aware when considering the respective bids that charity law did not require them to accept the highest bid if accepting the lower bid would further the aims of the charity and on that basis would provide best value to the charity in furthering its purposes.
13. In this case, the Commissioners noted that there were countervailing considerations reflecting different strands of the Church's mission. Sale to the Romanian Orthodox Church would promote the ecumenical aspect of mission. However, the nursery use would further the social element of the mission of the Church of England, and the evidence showed that there was a need for greater nursery provision in this area of Southampton. The nursery would also be the only local provider of specialist support for neuro-divergent children, something which was not readily available elsewhere. The sale to Tiny Toes would have a direct community benefit and therefore would contribute to the social aspect of the Church's mission. The parish would benefit from the acceptance of the highest offer as the proceeds would be used directly to support local mission. In balancing these considerations, the Committee thought that it was reasonable for the PCC and WDBF to prefer the highest bid.
14. They were satisfied from the information provided about the bidding process that it had not been unfair to the ROC and that the ROC had been sufficiently aware of what was required from it in terms of demonstrating the financial viability of its bid. They noted that the Romanians did not have a definite mortgage offer and that their bid was also dependent on pledges from congregation members. This compared with a cash offer from Tiny Toes who also provided evidence of the availability of funds. Given that Tiny Toes was also the higher bidder there were cogent reasons for preferring their bid on financial ground, and on the basis that it was a bid in which objectively they could place greater confidence.

15. The Commissioners noted that the planning permission granted by Southampton City Council for change of use of St Jude's limited its use to a nursery. They saw no reason to suppose that Tiny Toes, who already operated a nursery in Lordshill, had any other intention for the property and that the Commissioners would also place their usual safeguards via covenants to ensure any other uses and/or demolition would need their prior consent, and amend the draft scheme to reflect the planning permission granted.
16. They noted the concerns of some representors that the conveyances by which the church and church hall sites had been acquired stipulated that they should only be used for ecclesiastical purposes of the parish. However, they also noted the legal advice they had received that this did not prevent a properly authorised sale of either site for other uses, but did mean that the net sale proceeds could only be applied in accordance with the legislation under which the disposals took place. In this case, the sale proceeds of the church hall (apportioned at 78%) would only be applicable for ecclesiastical purposes of the parish (of Maybush). Sale proceeds of the church (22%) would be apportioned one-third to the Commissioners and two-thirds to the Winchester Diocesan Pastoral Account.
17. They also noted the concern expressed about the future of the stained glass windows at St Jude's and noted that Tiny Toes had agreed to remove the window panels as part of their renovation work and pass them to the Parish to be dealt with in accordance with the Code of Practice to the Mission and Pastoral Measure.
18. Overall, the Commissioners were satisfied the proposals were likely to make better provision for the cure of souls and further the mission of the Church in this area of the Diocese.
19. They also welcomed the commitment given by the Diocese to working with the Romanians to find them an alternative place of worship. They noted that the ROC had made a joint bid with Tiny Toes for the church and church hall at Holy Trinity, Millbrook, which had been accepted, but also that no formal proposals for the closure or future use of Holy Trinity, Millbrook had yet been brought forward. Any proposals would also need to follow the usual Mission and Pastoral Measure processes.

Conclusion

20. In the light of these various points the Commissioners were satisfied that it would be right to allow the draft Scheme to proceed notwithstanding the representations made against it.
21. They realise that their decision will disappoint those who made representations against it, but they hope that this statement will be helpful in indicating that their decision was reached only after careful consideration of all the relevant issues.
22. The Commissioners also considered all the other points made in the representations but felt that none of them was of sufficient weight to outweigh the points listed above.

23. I enclose a notice, as required by the Measure, about the right of the representors against to apply for leave to appeal to His Majesty in Council against the Commissioners' decision that the Scheme should be made.

A handwritten signature in cursive script, appearing to read "Wendy Matthews".

Wendy Matthews
Mission, Pastoral and Church Property Committee Secretary Church
Commissioners

Annex A – Minutes of the 17 November hearing

The public hearing was held at Southampton Football Club on 17 November 2022. The meeting was chaired by Canon Peter Bruinvels.

Also in attendance were members of the Church Commissioners' Mission, Pastoral and Church Property Committee: the Rt Revd Graham Usher (Bishop of Norwich), the Ven Simon Fisher (Archdeacon of St Helens and Warrington, diocese of Liverpool), the Revd Mark Beard, Canon Amatu Christian-Iwuagwu, the Revd Christopher Smith (via Zoom), the Revd Anne Stevens, Canon Shane Waddle and Garth Watkins (via Zoom).

Also in attendance were the Committee Secretary, and the Commissioners' Deputy Official Solicitor) supported by the Committee's Chaplain and various members of the Commissioners' staff.

Approximately 50 people attended the meeting for this item. The attendees who spoke against the scheme were the Revd Ovidiu Semerean, David Fletcher and Dave Griffiths. The attendees who spoke in favour of the scheme were Neil Lewis, Sasha Lewis (Directors of Tiny Toes) and the Reverend Sheena Williams (Area Dean). The attendees from the Diocese of Winchester who spoke in favour of the scheme were the Right Reverend Debbie Sellin (Bishop of Southampton and acting Bishop of Winchester) Canon Gary Philbrick (Acting Archdeacon of Bournemouth) and the Rev Jane Bakker spoke as part of the diocesan team.

Note: This minute is a note of the main points made in the hearing, it is not a verbatim transcript.

Speakers against the scheme

1. **Mr Semerean** started by thanking the Church of England and diocese for their support for their worshipping community. The Romanian Church's link with St Jude began in 2015, when they started using the church for worship. They worshipped in other local churches after they were asked to leave five years later.
2. His Church community had become very attached to St Jude's, and they were very sad not win the bid, as, they wanted to carry on worshipping there, having built strong ties and friendships with the local residents.
3. Their offer to buy the St Jude's church, hall and site had been turned down on the basis that they would have to rely on a mortgage to cover the costs. He was not told that relying on loan finance would weaken their prospects of success, or that a cash offer would be preferable. If they had known these were the requirements, they would have considered other options. Mr Semerean would have been willing to raise some funding by re-mortgaging his own property to support the purchase.
4. However, following that decision, his Church had now successfully become the preferred bidder for Holy Trinity, Millbrook church, as part of a joint venture with Tiny Toes (who would use the Holy Trinity Hall).

5. He found his experience of the two bidding processes to be very different, and thought there had been a lack of dialogue and engagement in the process relating to St Jude's.
6. The Church had found the community at Exbury very welcoming, and the new church would enable them to become a local and sustained presence in Southampton.
7. **Mr Fletcher** had been part of the church community at St Jude's for 32 years. He summarised the history of the discussions about the closure of St Jude's stating that it was the PCC that had originally requested closure, but the diocese then put the PCC under pressure to sell the buildings. Mr Fletcher believed the PCC had agreed that the church should be sold to the Romanian church, though no minutes have been found to confirm the decision. Covid then delayed the sale and after the pandemic ended the marketing process began. There was interest from various diaspora communities including African, Indian and Asian churches, but only the Romanians submitted a formal bid. He said that the diocese did not pay sufficient attention to the needs of the local community in the decision making, and that the local preference had been for a sale to another Christian community, preferably the Romanians. The PCC had written to the Bishop of Winchester but felt that requests for meetings had been ignored. He also expressed concerns about the financial position of Tiny Toes and the motives of the parent company, which was a property development company.
8. **Mr Griffiths** was concerned about the veracity of the process, and began by saying that the neighbours of St Jude's had expressed surprise that the offer of some £140k had been found to be acceptable for the Romanians to purchase Millbrook Holy Trinity and asked why such an amount had been insufficient to purchase St Jude's. (Mr Fletcher stated in his evidence that the original asking prices for St Jude's to have been £160k).
9. He wanted to know why the diocese was prioritising a private enterprise over a church use and thought that if the Church of England no longer needed the building, then the preference should be for disposal to another worshipping community. He said that financial gain seemed to be more important than faith.

Committee questions

10. In response to the question of what the preferred outcome would be he asked that any sale of St Jude's should be to the Romanians. This view was echoed by Mr Semerean.
11. On the question of the adequacy of consultation process, he considered it to be non-existent other than a meeting with the Archdeacon.
12. On whether the Romanian Church still objected to the current proposals given that it had potentially found an alternative site, Mr Semerean responded that either church would be acceptable, but it would have preferred to own St Jude's.

Speakers in favour of the scheme

13. **Mr Lewis** explained that Tiny Toes had been sent details of the proposed disposal of St Jude's by the agents in 2016 and then again in 2020. He took exception to the personal attacks aimed at him, his family, and his business model. He and his wife had done nothing wrong, had merely bid for St Jude's, had been the highest bidders at the 'best and final bids' stage, and had their offer accepted by the Parish and Diocese subject to the implementation of any Scheme.
14. Some of the representators against had claimed that there was no need for facilities for early learning for children; but there was such a need, and that had already been identified by the Head of Southampton Council's Early Years team. Maybush had a low uptake of nursery places for two years olds; the 0 – 4 age group did not have enough places. This was backed up by data from the Southampton Local Planning Authority, which showed that many with special educational needs, like autism (which his own son had), did not have adequate young-age educational facilities. The nursery would be the first hub in the city which would specialise in neuro-divergent needs. The facilities would have community value.
15. The planning officer's view was that a successful community needs good educational and health provision, and this proposal would help provide the former. The Planning Committee had voted unanimously for the change of use sought by Tiny Toes.
16. As regards the details held at Company House on the Company's financial position, public records did not show all the financial records. He had provided proof of sufficient funds in cash for purchasing both the St Jude's and the Millbrook sites. He added that Tiny Toes Lordshill nursesey had traded successfully.
17. There was a strong need for a nursery for the many front-line health workers from the nearby hospital. He confirmed that Tiny Toes had no development plans for the St Jude's site – merely the provision of nursery and associated facilities. Contrary to what had been said in some of the representations against, Tiny Toes was the cheapest day-nursery in Southampton (their day-rate was some £5 cheaper).
18. He had followed all the rules set out in the bidding process set by the Church of England and their agents. Tiny Toes had also spent a lot of money on opportunity and planning costs. To re-open the bidding process would be unfair.
19. It was not until the public consultation process that he had even been aware of the Romanians' interest in purchasing St Jude's. He had subsequently made contact with Mr Semerean to propose the joint bid for the Millbrook site whereby the Romanians would purchase the Holy Trinity church building whilst Tiny Toes would purchase the nursery and car park. His was a family-friendly business, so he would be happy to have toilet provisions put in at the Holy Trinity Hall and also for the hall to be used as a Sunday School by the Romanians if needs be.

20. Tiny Toes had Christian values and was an ethical company.
21. **Mrs Williams** explained that she had been the Area Dean for some two years, with her term of office having just come to an end. The proposed sale of St Jude's had been discussed at parish and deanery level for a long time.
22. This was the most deprived area in the deanery, and indeed in the whole Diocese based on the deprivation indices. It had one stipendiary priest who had three church buildings in her care; keeping a church in this part of Maybush was a real struggle, and the PCC and the diocese had to make the best use of the resources available. The sale of St Jude's was required to further the mission of the parish, and some of the proceeds could be used on the other two churches of St Peter's and All Saints'.
23. The area needed affordable childcare; the proposed Scheme would promote the common good and would be a community benefit, and would therefore support the wider mission of the Church.

Committee questions

24. In response to questions, Mrs Williams thought there would be a missional benefit from meeting these needs for both children and parents and confirmed that the Maybush PCC had not been pressured by the Diocese to sell St Jude's to Tiny Toes.
25. Mr Lewis said that Tiny Toes were happy to work with the Romanians and had now placed a joint bid on the Millbrook site. The bid had been submitted by Mr Lewis after he had obtained Mr Semerean's approval, but it had been made clear that it was a joint bid.

Speakers from the diocese

28. **Bishop Debbie** explained that conversations on the future of St Jude's had been taking place for a number of years. In 2013 and again in 2018 the parish had asked for a closure of St Jude's, in the knowledge that any future use might be for a church, which was the preferred option, but fully recognising that might not be possible.
29. Maybush was a large parish, and the Diocese was keen to progress the sale of St Jude's to Tiny Toes, which would be offering a service to the community. The upkeep of the building cost approximately £6,000 per annum. She said that whilst the national Church generally did not have a good record on estates ministry, the Reverend Jane Bakker and the Rev Claire Robinson were doing a wonderful job in the parish and, with the help of volunteers, were running projects like MarketPlace.
30. The reality was that St Jude's was no longer pastorally required; its congregation had also struggled to keep it going. She fully recognised the historical goodwill of the local community towards St Jude's, but was firm in her belief that the right decision had been made and she supported the Tiny Toes proposal.

31. **Canon Philbrick** explained that the original request to seek St Jude's closure had come from the Parish; there had been no pressure from the Diocese. Although the PCC had asked for any future use to be a Christian one, it was also aware of the constraints of Charity Law and the fiduciary responsibilities of trustees. There were six buildings in the parish (three churches, and their halls), and the sale of St Jude's church and hall would produce funds to support the upkeep of other church buildings. He confirmed that the proceeds of the sale would be used for mission in Maybush.
32. There was nothing underhand in the joint bid for the Millbrook site which had surfaced just before the hearing: the bidding process had commenced some three months previously. The timing of the announcement in relation to the preferred bidders for Holy Trinity, Millbrook, was driven by a member of staff being on leave.

Committee questions

33. As to why the Romanian bid for St Jude's had not been accepted, Bishop Debbie responded that that it was because they did not have guaranteed funding in place. Canon Philbrick added that due process had been followed. Nigel Wright (Diocesan Property Advisor) at the diocesan office had advised that best value needed to be realised. There had been a three-month marketing period, so all bidders had similar opportunities.
34. Tiny Toes had been approached by the agents in 2020 to see if they were still interested because of their earlier interest in 2016. The 'best and final bids' resulted in Tiny Toes making the highest offer, with proof of funding to proceed in place.
35. Asked whether the Diocese had considered the ecumenical benefit of a sale to the Romanians, the Bishop confirmed that they had, which was partly why they were supporting the disposal at Holy Trinity Millbrook.
36. On how sale proceeds arising from St Jude's, after the various splits, would be used, Mrs Bakker said that not all the proceeds would be used on the remaining buildings in the parish; some would be used for other initiatives such as mission and support groups, and salaries for key church personnel.
37. In response to a question about further pastoral reorganisation, Bishop Debbie responded that there were no immediate plans for further pastoral reorganisation of Maybush, although the diocese would continue to keep boundaries under review, as the Shirley boundaries did not align well, and that might be something to consider in the future.

Annex B – Summary of the main points in the representations

Headline summary of the main points in the representations against the draft Scheme

1. The representors against fell into two main groups.
 - a) Members of the Romanian Orthodox Church
 - b) Local residents and Church of England members
2. The representors from the Romanian community wished St Jude's to be sold to the Romanian Orthodox Church.
3. Those in the second group had three main areas of concern:
 - (i) that St Jude's church should remain a place of Christian worship, either as an Anglican church or, if not, used by another Christian Community, ideally the Romanian Orthodox Church;
 - (ii) that there was no need for a Tiny Toes nursery on this site;
 - (iii) that Tiny Toes real intention was to develop the site for one of the other listed uses.
4. A number of these representors also raised specific points about the processes in this case (including the marketing and bidding process).
5. There was also a representation from the Trustees of the Southampton Chinese Christian Fellowship who also wished to acquire St Jude's.

Headline summary of the representations in favour of the proposal

6. The representors in favour included the Area Dean, two directors of Tiny Toes and the manager of their existing nursery at Lordshill, and fifteen local residents, most of whom had used Tiny Toes' Lordshill nursery. The Area Dean said the parish of Maybush with St Peter could not afford and did not need three places of worship. She and these local residents welcomed the prospect of additional nursery places which they said were needed in the area and that this would be a good use for an empty building. The representors from Tiny Toes emphasised that theirs was the highest bid and opposed what they saw as an attempt to reopen the bidding process after they had already incurred planning costs. They also said there was a need for more nursery places and that their rates were affordable.

Summary of the Bishop of Southampton's views

7. The Bishop of Southampton explained that the main reason for the proposed closure was the 2013 decision of the then St Jude's PCC to request consideration of closure and sale of the building (with St Peter, Maybush to become the single centre of worship for the merged parish), a decision reconfirmed in 2018 by the Maybush PCC, and the fact that no alternative to

closure had been identified since then. The reason for the sale as a nursery at the end of the consequent sale process was the fiduciary duty of the Diocese (in relation to the church hall and surrounding land) to accept the highest bid.

8. The process of how the PCC and the Diocese reached this stage was outlined.
9. On what impact her proposals would have on the local Church's relationship with the community it serves, given the level of concerns raised in the representations and the number of signatures to the petitions, the Bishop said that the current boundaries were wrong, as the residents of the former St Jude's parish did not identify as being part of 'Maybush' but instead identified with 'Shirley'. However, a boundary change could not take place until St Jude's future was settled as the Shirley parish would not wish to take on this building. It was possible, therefore, that the relationship between local churches and the community in this area would enjoy greater flourishing as ministry structures evolved. She said there was no evidence that residents of the area were attending churches either elsewhere in the parish or in the neighbouring parishes.
10. She went on to explain that the Diocese was committed to having a good ecumenical relationship with the Romanian Church, whose congregation was gathered from a very wide area of Hampshire. Much of the disappointment from members of that Church stemmed from its bid for St Jude's, which had not been the highest, not being accepted. The Diocese was having on-going discussions with them about alternative worship locations and the Romanians had expressed an interest regarding acquiring an alternative building in Southampton instead. Relationships remained cordial.
11. She gave details of the bidding process and said that a guaranteed capital receipt by the parish was of the utmost importance. St Jude's church was landlocked by parish-owned land, and its sale was therefore dependent on the sale of the whole site, which included the hall, and needed to satisfy the Charities Act provisions. It had been agreed that the apportionment of proceeds between the church site and the surrounding land and church hall would be based on a 22%/78% split.

[Note by staff: proceeds arising from the church site would need to be further split in accordance with the 2011 Measure requirements of 2/3rd to the diocese and 1/3rd to the Commissioners.]

12. The Diocese had yet to discuss with the Parish how any of the 2/3rd sale proceeds arising from any disposal of St Jude's were to be applied. The WDBF had undertaken to pay the upfront costs incurred during this process as a way of directly supporting the parish and had made a cash-flow loan provision available to the PCC to cover any additional interim costs during recent years. The Parish had agreed to reimburse the WDBF from the sale proceeds.

13. The Bishop said that whilst there were other “suitable alternative use” considerations for the church building, its location within the overall site made resolving its future inextricably linked with the parish land. In addition, it was also necessary to be assured that the church building had a viable future use.
14. She said that the proposed use of St Jude’s by Tiny Toes would benefit local residents and was also favoured by Southampton City Council, whereas the Romanian congregation was gathered from across Hampshire, and for the most part not locally resident.
15. Southampton City Council had agreed to the change of use of this building (subject to the closure going ahead) and was fully supportive of the introduction of a children’s nursery in this densely populated area. The planning permission granted for the proposed change of use meant that Tiny Toes could not use the building for other purposes, a concern raised by some opposing these proposals.
16. There would automatically be a restrictive covenant in the scheme preventing demolition of the church without the Church Commissioners’ consent, and that had been accepted by Tiny Toes. There was also a covenant requiring the Commissioners’ consent to any future architectural or structural alterations.
17. In terms of the Southampton Chinese Christian Community’s interest to acquire St Jude’s, the Bishop said that the property was actively marketed by the diocesan agent and this Church group did not enquire about the property until after best and final bids had been submitted.
18. The Bishop provided income and expenditure figures for St Jude’s in recent years which showed a continuing and increasing deficit. She said the condition of the St Jude’s building, which pre-dated the union of parishes, had been poor for many years, with even basic maintenance and repairs not having been carried out fully. She disputed any suggestion of any willful neglect; this was one of the most deprived parishes in the country with very limited resources which needed very careful prioritisation.
19. She provided parish share payment figures for St Jude’s parish (until 2014) and the Maybush parish. These showed the extent to which the diocese had subsidised the operating cost of both the old parish and the new one; the neighbouring Shirley parish in contrast readily met its parish share which was in excess of £100k per annum, whereas Maybush could not even meet a fifth of that.
20. Regarding the view that since 2010 St Jude’s had not received the pastoral care it deserved, she said that was not reflected in its electoral roll which had hovered between 13 in 2006 and 14 in 2014 (contrasting that with the figures for 1984 to 1986 respectively of 70, 70 and 81). This illustrated the need for the union of parishes, which was part of the Southampton Deanery Plan, and which had the support of the then St Jude’s PCC, which also supported the proposals to seek closure of the church; she enclosed copies of the minutes from 2013. Following the union of parishes any member of the electoral roll could stand for election to

the PCC of the new Maybush parish, so those from St Jude's did have an opportunity to be on it and to have their views heard. As far as she was aware, some of St Jude's worshippers initially moved to St Peter's in the same parish but none stood for election to the PCC.

21. The Bishop detailed the consultation process which she said showed that the requirements of the 2011 Measure had been fully met. The Diocese also had a record of the various exchanges with local residents going back to 2013 on St Jude's future.
22. The stained glass and contents referred to by Mr Rule would be dealt with as follows: the glass would be removed by Tiny Toes, who would meet the cost, and delivered to the parish as part of the proposed sale agreement; the altar cloth made by the parishioners in the 1950s and the cruets would continue to be listed on the terriers and would be transferred to St Peter's.
23. The Bishop said her proposals would aid in the Maybush PCC's aim to use its buildings for worship, for mission and for serving their community. It would also afford them an opportunity to make some urgent investments in their remaining buildings.
24. The Bishop highlighted various initiatives and projects already in place in the Maybush parish, like The Marketplace, together with others that they sought to build on. There was also a trained pioneer minister who lived in Shirley Warren who, with a minister from a local independent church, went out weekly to meet people, to build relationships and to explore pioneer possibilities. The Diocese would want to ringfence some of the proceeds of St Jude's sale to ensure that there was a missional fund available for when such projects began to take shape. In a nutshell, the parish would be able to afford to grow its ministry rather than barely maintain it.
25. She added in conclusion that this was an inner-city parish in a densely populated but deprived area of Southampton. The PCC bore the burden of maintaining three churches and three halls which had seen years of neglect, taking their toll and leading to a backlog of major repairs. A worshipping community of 52 and 19 planned givers with an average giving level of £12.54 left them facing an insurmountable burden in building works, and little chance of being able to grow mission and outreach to their community. A secure sale was vital to their future flourishing.

Supplementary views from eight representors against

26. Eight further submissions were received from those against, namely:
(i) Rev Ovidiu Semerean; (ii) Jonathan Baird; (iii) David Fletcher; (iv) Sue Fletcher; (v) David Griffiths; (vi) Helen Griffiths; (vii) Andrew Orange; and (viii) the Southampton Chinese Christian Trustees.
27. Generally, they reiterated strong opposition to any change of use, particularly for nursery purposes, and maintained that Christian worship should be the primary use were St Jude's to cease to be used for Church of England worship. They also

repeated the view that Church of England use, Romanian use, and Filipino use (of the church hall) could also all be provided for at St Jude's.

28. The Romanian Church asserted that it was not fully conversant with what was required from it to acquire the St Jude's building and that its financial position was much stronger than the perception that the parish and the Diocese seemed to have of it. In particular, the Reverend Ovidiu Semerean stated that he was unaware of any discussion of any proposal for the Romanian Church to lease St Jude's then buy it after two years.
29. The Fletchers and Griffiths echoed much of the above and continued to express concerns about how St Jude's had been selectively side-lined by the Maybush parish, other than when wanting to use its funds for repairs to the other two churches and their facilities in the parish. They felt that the PCC could have done more to improve the parish's financial position by increasing the rents paid by both the Romanians and Filipinos. Mr Fletcher also said that Companies House records indicated that the Romanians' financial position was stronger than that of Tiny Toes.
30. They also questioned why All Saints should be retained over St Jude's when its electoral roll figures were low and possibly even worse than St Jude's. It was alleged that the PCC was under pressure from the Diocese to sell this site. Were St Jude's to close, the distance to St Peter's and All Saints was not within easy walking distance as had been suggested in the Bishop's reply; there were also no direct bus services to either of these churches from the St Jude's area. Everything seemed to be focussed on Maybush with the needs of those in the Warren area ignored.
31. Some asked how the Diocese, the Parish and Tiny Toes knew where the former congregation of St Jude's now worshipped. There had been little to no discussion with the local residents in the Warren area. They expressed concern about the survey said to have been undertaken by the Reverend Jane Bakker in 2016 as local people appeared not to know about that. They also said nothing was known about the pioneer minister referred to in the Bishop's response.
32. They remained concerned about how and where the current closure proposals originated, not helped by some key minutes that could not now be located. They reminded the Diocese that the parish's earlier attempts to have a social housing development on this site also attracted strong opposition.
33. They felt that the deliberate lack of routine maintenance at St Jude's had led to unnecessary expense and deterioration of the church and hall. They also queried why the accounts showed unnecessary expenditure on St Jude's when it was closed during the pandemic; the local community had not been given the chance to be involved in its upkeep after St Jude's was shut.
34. They felt that the Bishop had not fully answered the question posed to her (number 9 of the Commissioners' staff's letter) on timelines, marketing of St Jude's, why the Romanians and Filipinos were asked to leave or their concerns about the marketing and bidding process.

35. As regards the planning permission that had been granted for nursery use (only), this appeared to contradict Tiny Toes' assertion at the drop-in session that it would make space available for other community use.
36. The Southampton Chinese Christian Trustees explained that were the St Jude's bidding process to be reopened, they would like to be directly invited to participate.

Further response from the Bishop of Southampton

37. The Bishop explained the reference to the possible leasing of St Jude's and added that when the decision to propose closure was taken leasing had not been regarded as a viable option for the Diocese or the Parish. She also stressed that the Romanian Church's occupation of St Jude's, through no fault of its own, was without a lease or faculty, and that the Diocese continued to work with it in finding it a new permanent home.
38. She recapitulated the bidding process and reiterated that Tiny Toes were the highest bidder, and with clear evidence of funding, whereas the Romanians were unable to provide evidence of funding. She said that the Companies House records might show that their financial position had subsequently improved but the WDBF decision was based on the evidence provided at the time of marketing.
39. The Bishop said that when its offer had been accepted, it was on the understanding that Tiny Toes would use its best endeavours to work with the local community in connection with the use of the hall and that it still intended to do so. However, she said that safeguarding issues would prevent any community use of the church building and that would also apply to a joint use which had been discussed with the planning officer.
40. She disputed the allegation of the lack of routine maintenance at St Jude's and said that of the PCC had struggled for many years to deal with maintaining all its buildings, particularly given the demographics of the area.
41. The Bishop gave details of the survey undertaken in 2016, which had been an observational exercise. It was led by the Church Army and included the CEMES (Church of England Ministry Experience Scheme) candidates for that year and the Reverend Jane Bakker, as Interim Minister. Although it was clear that a traditional congregation at St Jude's was not viable (as per the data provided in her previous response), there was a firm desire to ensure that other options were considered before a decision was made.
42. She also provided a more detailed timeline of consultations and marketing exercise since 2009.

Annex C - Consideration of Public Sector Equality Duty and the Human Rights Act 1998

1. This document should be read alongside the Commissioners' published Statement of Reasons in connection with the draft scheme. This document sets out the Commissioners' consideration of the potential equality and human rights issues which the draft scheme raises. The Commissioners do not consider that they are subject to the duties set out below, but without prejudice to that view, the Commissioners wished to record the details of their consideration, analysis and conclusion had they considered that a relevant duty did apply to them.
2. Although the Commissioners' consideration is recorded separately in this note, consideration of the potential impact of the public sector equality duty and human rights obligations, had they applied, was integrated into the decision-making process at the time at which the Commissioners considered whether the draft scheme should proceed.
3. The Commissioners do not consider that they are carrying out public functions in the exercise of their duties under the Mission and Pastoral Measure 2011. However, in the event that it may be determined that this is not correct, the Commissioners have considered the application of the public sector equality duty which is set out at section 149 of the Equality Act 2010.
4. The PSED requires public authorities to have "due regard" to:
 - a. The need to eliminate discrimination, harassment, victimisation, and any other conduct that is prohibited by or under the EqA 2010 (section 149(1)(a)).
 - b. The need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (section 149(1)(b)). This involves having due regard to the need to:
 - (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
 - (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it (section 149(4)); and
 - (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
 - c. The need to foster good relations between persons who share a relevant protected characteristic and those who do not share it (section 149(1)(c)). This includes having due regard to the need to tackle prejudice and to promote understanding (section 149(5), EqA 2010).

5. The Commissioners noted that the objective of the draft scheme was the closure of the church of St Jude, Southampton, and its appropriation (along with adjacent land including the site of a church hall) for use as a children's nursery and pre-school. The disposal of the church hall and adjacent land was outside the draft scheme and would be a matter for the diocese and parish (not being property subject to the Mission and Pastoral Measure 2011). Nevertheless, it is relevant to the consideration of the draft scheme given the potential benefit which may be realised by the disposal of both sites together, particularly given the land locked nature of the church building, which made individual disposal unlikely.
6. As part of their consideration of written representations and the consultation process the Commissioners identified that:
 - 6.1 Following a review of the area commissioned in the 2016 by the Reverend Jane Bakker, Mrs Bakker had concluded that the building at St Jude's would not be an asset to future Anglican mission in the area. In July 2016, Mrs Bakker advised that the Maybush PCC was "functionally bankrupt", had no reserves, was already under special consideration for Common Mission Fund/Share, and church attendance was low;
 - 6.2 The Bishop of Southampton noted that members of the Romanian Orthodox Church, who had occupied St Jude's church based on an hourly usage, had stated their intention to be able to buy the church building after two years of leasing;
 - 6.3 Members of a Filipino community had since in or about 2013 used the adjacent St Jude's church hall for worship;
 - 6.4 Neither the members of the Romanian Orthodox Church nor the Filipino community occupied any relevant premises under an approved lease authorised by faculty. In 2021, following the first Covid lockdown, the PCC offered alternative venues within the parish. The Filipino community had since used an alternative church hall at St Peter's, and following a brief period of use of St Peter's, the Romanian Orthodox community had been offered an alternative temporary worship site by the Diocese of Winchester at St Katherine's, Exbury which it is now using. The Southampton Chinese Christian Community were also not using St Jude's church or the church hall;
 - 6.5 Following Covid, the church was marketed as permitted under the provisions of the Mission and Pastoral Measure 2011. There was interest from various diaspora communities including African, Asian and Indian churches, but as set out below only the Romanian Orthodox Church Community brought forward a bid;
 - 6.6 The Diocese has had ongoing discussions with the Romanian Orthodox Church community about acquiring an alternative building, and the relationship remains cordial;

- 6.7 The Bishop of Southampton stated that the Winchester Diocesan Board of Finance (“WDBF”) took a decision at the time of marketing, and at that time Tiny Toes was the highest bidder with clear evidence of funding (a cash purchase), whereas the Romanian Orthodox Church community was not able to provide evidence of funding and on the evidence had an offer of a mortgage “in principle” which would require a condition survey, along with cash reserves and promises of donations, but that no evidence had been provided of the donation promises which formed a large part of the offer price;
- 6.8 The Reverend Ovidiu Semerean (“Father Ovidiu”) indicated that the Romanian Church’s members were not fully conversant with what was required from its members in order to acquire St Jude’s and that its financial position was much stronger than the diocese and PCC seem to have thought. He indicated that the community was concerned that the diocesan agent did not present their bid “in a fair method”. He said that the community was not aware that purchase via borrowing was a problem, and they could have made alternative arrangements to arrange funds. He stated that 90% of the promises were honoured at the time of his submission but accepted that “our financial status might probably be far behind other businesses willing to buy the church...”. He confirmed that he was unaware of any discussion of any proposal for the Romanian Orthodox Church to lease St Jude’s and then to acquire it after two years;
- 6.9 The Bishop of Southampton provided evidence of an email dated 8 March 2021 to Father Ovidiu which shows that the diocesan agent had said that it would require confirmation of funding from the Romanian Orthodox community subsequent to their offer;
- 6.10 The Bishop of Southampton noted that the proposed use by Tiny Toes would benefit local residents and was favoured by Southampton City Council, whereas the Romanian congregation at St Jude’s (of up to 400 on a Sunday) gathers from across Hampshire and for the greater part are not local residents. This was confirmed by Father Ovidiu who said only that “quite a few” live locally, and other representors who state that the range of the community extends beyond Southampton and Portsmouth to Poole, Alton, Petersfield, Fareham, and Winchester. The Bishop added that the proposals would aid Maybush PCC’s objective of serving the community, for its mission, and would include an element of social and community benefit, and would afford them the opportunity to make some urgent investment in their remaining buildings,
- 6.11 The Bishop of Southampton noted that the Southampton Chinese Christian Community had said that its members had an interest in acquiring St Jude’s, but the property was actively marketed by the diocesan agent, and the community did not enquire about the property until after the best and final bids had been submitted. Members of the community indicated that were the bidding process re-opened, they would wish to participate. Other Asian,

Indian, and African church communities which had shown an initial interest did not make a bid.

7. From representations made orally during a public hearing on 17 November 2022 the Commissioners noted that:
 - 7.1 Father Ovidiu confirmed that the Romanian Orthodox Church community has the primary objective of keeping a church as a church. He indicated that the community's offer had been turned down because their funds were donations, promises, and loans. If told, he said that the community could have "worked around" that. He noted that he had been willing to borrow £100,000 by re-mortgaging his family home in order to secure the building;
 - 7.2 Father Ovidiu confirmed that the current premises at St Katherine's are well used;
 - 7.3 Father Ovidiu confirmed that on the Monday prior to the hearing, the Romanian Orthodox Church had become the preferred bidder (jointly with Tiny Toes) for an alternative church, Holy Trinity, Millbrook, which the Romanian Orthodox Church had viewed and wished to purchase. He confirmed that he would be very pleased if the Romanian Orthodox Church ended up with Holy Trinity as a home; and
 - 7.4 The directors of Tiny Toes confirmed that there is a need for early years' childcare in the area, which is a priority for the local authority and its Head of Early Years Provision. In the Maybush parish there is a very low uptake of two year old funded places, with approximately 2,420 0 – 4 year olds in the parish. This was backed up by data from the Southampton Local Planning Authority, which showed that many children with special educational needs like autism did not have adequate young-age educational facilities. Commenting on the bidding process, the directors said that they considered that everyone had the opportunity to bid at the right time. The directors had approached Father Ovidiu to put a joint bid together for Holy Trinity. He said that the nursery was run on Christian values with strong ethical standards.
 - 7.5 The directors of Tiny Toes also confirmed that the nursery would be the first hub in the city which would include provision for neuro-divergent needs.
8. The Commissioners identified that some representors had noted that a number of bidders, particularly the Romanian Orthodox Church community, might have been under a disadvantage as part of the process of bidding for St Jude's in that the Diocese may have made a number of assumptions which did not consider the community's background or cultural practices, or alternatively that they had not understood what was required within the process, or whether the proposal had been rejected on the grounds of religion and belief. The Commissioners assessed the potential impact of the draft scheme on any persons with a relevant protected

characteristic, namely race, including nationality, and ethnic or national origin, and religion or belief.

9. As part of their consideration, the Commissioners considered that they required further information from the Bishop of Southampton and the WDBF about the bidding process. In particular, the Commissioners asked for the following information:
 - 9.1 Details about the marketing of the site and details of the bidding process including the timescales given for expressions of interest and the submission of best and final offers. The Commissioners asked for details of the financial information requested and any guidance offered in relation to funding.
 - 9.2 Details about how any queries about the process were dealt with, and by whom;
 - 9.3 Information on the process for scoring and assessing the bids;
 - 9.4 Confirmation on how the decision was reached – e.g. which committees or groups or individuals were involved and who made the final decision;
 - 9.5 Whether the decision maker was aware that Father Ovidiu was planning to mortgage his own property to raise funding, and if so, whether this was considered to be a relevant factor in the decision making;
 - 9.6 Whether Tiny Toes nursery was relying on loan finance in their bid and whether the loan was secured, and if so, whether this was considered to be a relevant factor in the decision making.
 - 9.7 Whether the WDBF and PCC preferred the Tiny Toes offer; and what weight the diocesan mission and pastoral committee gave to the guidance in Section 17.2 of the Mission and Pastoral Measure Code of Practice which states that use by another Christian body is “generally the best use”; and
 - 9.8 Whether the PCC had concluded that the decision to prefer the higher financial bid was taken with consideration of the best interests of the charity and whether the PCC took into account the social element of its mission.
10. The Commissioners were satisfied that taking into account the further information sought they had obtained sufficient information to make an assessment based on the combination of the information supplied to them from the diocese and the parish, including data gathered during the representations process.
11. The Commissioners identified two possible elements of the proposed scheme which might have an impact on people with a protected characteristic:
 - 11.1 The proposal to close Maybush St Jude; and

- 11.2 The proposal not to dispose of the church or the church hall to the Romanian Orthodox Church community but rather to propose a disposal to the highest financial bidder.
12. In response to their further queries, so far as the Commissioners consider to be material the Bishop of Southampton told the Commissioners that:
- 12.1 Three parties who had made initial offers were asked to submit 'best and final offers', with only two of them doing so, the Romanian Orthodox Church and Tiny Toes. The latter's bid was the highest, by £15,000, but the main reason for preferring it was because the Romanian Orthodox Church could not provide sufficient evidence of proof of funds to proceed with the acquisition despite being told that this would be required;
- 12.2 Tiny Toes had cash reserves to finance its bid and the bid from Tiny Toes was also made on the basis of their undertaking a full refurbishment and conversion of the church at substantial cost. The bid from the Romanian Orthodox Church was dependent on a mortgage of £245,000 and on promises of donations. The WDBF had not been aware that Father Ovidiu was planning to mortgage his own property to raise funding until the 17 November 2022 hearing. That said, it was still not clear whether the intention of this would have been to reduce the £245,000 mortgage referred to or whether it was intended to underpin the offer of donations (however, this was not considered to be a material factor in any event given the other considerations to which the Commissioners were satisfied that it was appropriate to give more weight, as set out below). The Bishop noted that this approach is in contrast to the joint bid for Holy Trinity, Millbrook where the Romanian Orthodox Church had provided proof of finance for its lesser financial commitment to that site; and
- 12.3 The Bishop said that the greater financial certainty of the Tiny Toes offer was sufficient reason to prefer it. The Maybush PCC and the Winchester Diocesan Mission and Pastoral committee independently decided to accept the higher offer from Tiny Toes, with the PCC decision ratified by the WDBF's trustees voting unanimously to accept this offer. The PCC and WDBF were aware that under charity law the PCC was not obliged to accept the highest offer, but they wished in this case to accept the higher offer to provide funds for the mission of the parish and felt that the use by Tiny Toes would also provide a significant community benefit consistent with the mission of the Church.
13. Having analysed the information which they had obtained, the Commissioners were satisfied that they had paid due regard to the matters set out in paragraph 4. In coming to that view, the Commissioners placed particular weight on the factors set out below:

a. Closure of Maybush St Jude

- 13.1 In relation to the proposal to close Maybush St Jude, on the evidence neither the Filipino community or Southampton Chinese Christian Community were in fact using the church or the church hall and alternative venues were available to them for worship. There was no evidence that the other Asian, Indian, and African church communities which had shown an initial interest were without facilities for worship and no other communities brought forward a bid;
- 13.2 So far as the Romanian Orthodox Church community was concerned (where the potential for disadvantage may have been greatest on the evidence), there was evidence of good faith assistance by the diocese, including the ability to use St Katherine's church (which was indeed being used), and no evidence that worship at St Katherine's had disadvantaged the Romanian Orthodox Church community. On the evidence there was a positive and good working relationship between that community and others without that protected characteristic in the Church of England;
- 13.3 Further, they noted that alternative venues were (or were reasonably likely to be) available for worship by the members of the Romanian Orthodox Church, with which the latter had expressed themselves to be content (through Father Ovidiu). They took into account that the purchase of Holy Trinity, Millbrook was not certain, as the necessary legal processes under the Mission and Pastoral Measure 2011 would need to be completed, but noted that Father Ovidiu had said that his church (jointly with Tiny Toes) was the preferred bidder; and
- 13.4 The church building of St Jude's itself presented problems arising from its disrepair and the condition of the building and regular Church of England worship had ceased there some time ago in 2014. The Commissioners considered that the factors set out above in paragraph 6.1 supported the diocesan conclusion in respect of the lack of viability of St Jude's for worship. On the evidence, Holy Trinity was a more viable and sustainable proposition as an open church. The Commissioners noted the diocesan view that St Peter's was a more viable proposition as an open church, and accepted the evidenced presented. The diocese had confirmed that it had an electoral roll of 43 in 2021, and that the usual Sunday attendance was between 15 – 25.

b. Proposal to dispose of the church and church hall to the highest bidder

- 13.5 From the evidence which they had seen the Romanian Orthodox Church community had not been disadvantaged in the bidding process and had understood what was required. This was shown by their participation both in the bidding process regarding St. Jude's, and in a further joint bid for Holy

Trinity, Millbrook, where they had been able to develop a joint bid with Tiny Toes;

- 13.6 The Diocese had considered the promises of donations in good faith; the diocese was primarily concerned that much of the bid was supported by a mortgage and, as a result, the Tiny Toes bid was more credible, and they could place more confidence in the bid. This was not a factor related to any protected characteristic; and
 - 13.7 From their knowledge of property acquisition, the Commissioners were satisfied that it is standard practice for a purchaser to have a mortgage agreed in principle with their bank which demonstrates that the bank is satisfied that the purchaser has the ability to repay the mortgage if one is offered after the survey. In relation to the Romanian Orthodox Church bid, no evidence was provided that any in principle mortgage had been agreed.
14. The Commissioners considered the following additional considerations. In particular:
- 14.1 The Church Commissioners' published Code of Practice sets out no hierarchy of suitable uses and use as a nursery and worship by another Christian church would be suitable in principle. The consideration of what is suitable invariably involves the weighing up of various factors depending on the circumstances of each case giving weight to their relative importance;
 - 14.2 They were satisfied that it was right to place significant weight on the conclusion which they had reached, namely that the draft scheme would further the mission of the Church of England (a statutory duty to which they were obliged to have due regard); and that in coming to that conclusion they accorded weight to the evidence that achieving the best price available would on the facts of this proposal further to the greatest extent the possibilities for mission in a relatively deprived part of the Church of England; and the importance of the social element of the Church's mission including the provision of education and support for children and the parents and carers of children (including children with special needs). Mission in this context means "the whole mission of the Church of England, pastoral, evangelical, social, and ecumenical" (Mission and Pastoral Measure 2011, section 106(1));
 - 14.3 The Tiny Toes proposal would include the provision for neuro-divergent children, and would as a result advance equality of opportunity for persons with that protected characteristic which the Commissioners were entitled to weigh in the balance;
 - 14.4 They considered that it was appropriate for the WDBF and PCC to wish to prioritise both the financial viability of the bids as well as maximum financial

value in the circumstances, since this would best guarantee sustainability of mission in the parish as a whole;

- 14.5 Other groups with protected characteristics, such as the Southampton Chinese Christian Community and other African, Indian and Asian church communities were aware of the bidding process but had not bid and there was no evidence of any impediment to their participation or that the proposal to accept the bid of Tiny Toes would damage relations with any of them.
15. For the same reasons as set out above in paragraph 1-3, although they do not consider that they are under any obligation to do so, the Commissioners considered whether the draft scheme was directly or indirectly discriminatory in its effect or impact.
16. For the reasons set out above (in particular, but without limitation, paragraph 13-14) and in light of that evidence, the Commissioners were satisfied that the draft scheme would not amount to direct discrimination of any person or group on the grounds of a protected characteristic nor indirect discrimination in relation to a protected characteristic.
17. If contrary to that conclusion, had the Commissioners considered that there would be any discrimination should the proposed scheme proceed, they would have concluded that it would be justified on the basis that it pursues legitimate aims (namely (i) the financial viability of the Maybush parish; (ii) ensuring the use of St Jude's church and hall to the benefit of the local community and (iii) furthering the mission of the Church of England), and that the means employed are proportionate to the aims pursued.