



Faculty – Grade II listed church – Retrospective faculty for retention of red-upholstered, black metal-framed chairs introduced at the time of the re-ordering in 2012 – Objections received from Society for the Protection of Ancient Buildings, Historic England and Victorian Society - Faculty granted permitting the retention of the chairs for five years*

Application Ref: 2019 - 031904

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: 12 August 2019

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

ST PETER AND ST PAUL, ASTON ROWANT

**THE PETITION OF RICHARD BOARDER AND JEREMY WILCOCK
(Churchwardens)**

Determined on paper

The following cases are referred to in the Judgment:

Re Holy Trinity, Long Itchington [2018] ECC Cov 3

Re St Alkmund, Duffield [2013] Fam 158

Re St. Chad, Longsdon [2019] ECC Lic 5

Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393

Re St Peter, Shipton Bellinger [2016] Fam 193

JUDGMENT

1. Aston Rowant is a small village in a rural part of south-east Oxfordshire which lies at the foot of the Chiltern Hills. The village church of St Peter and St Paul is Grade II* listed and is built of knapped flint with stone dressings and areas of brick and stone. The nave is Norman and a chancel, tower, aisles and clerestory were added between the 13th and 15th centuries. The architect E. G. Bruton undertook a thorough restoration in 1884. The church now comprises a nave with chapels on the north and south sides, a chancel, a south porch, and a west tower. In 2011-2012 the Parochial Church Council added a new annexe to the north side of the church containing a fully accessible modern kitchen and toilet and it also refurbished the 14th century Lady Chapel to provide a spacious and comfortable function area offering flexible space and providing a village centre for the congregation and residents alike. The re-ordering is acknowledged to have been a great success and it features at pp 26-30 of Becky Payne's 2014 informative book entitled "*Churches for Communities*" (pub. Oxfordshire Historic Churches Trust). A flexible seating layout was an essential part of the re-ordering and it is clearly necessary for services and meetings and for fund-raising and community events. However, as part of the re-ordering of the north aisle 30 red-upholstered chairs with black metal frames (at least two with arm-rests) were introduced into the church in 2012 without faculty consent.

2. The Diocesan Advisory Committee's Certificate dated 13 September 2010 had stated that that Committee (the DAC) had no objection to the re-ordering of the Lady Chapel provided that details of any new floor coverings and/or furniture were referred to the DAC in due course. On 4 May 2011 a representative of the DAC had asked the church's architect (by email) for the specification of the tables and chairs for the Lady Chapel. He responded (again by email) on 5 May 2011 confirming that "the chairs will be metal frame standing chairs with oak seats and back by Irish Contract Seating" as shown on attached photographs, which showed the seats to be of a mushroom colour. On that basis, the DAC issued a further Certificate dated 9 May 2011 certifying that it had no objection to the new chairs for the Lady Chapel. The colour and design of the red-upholstered chairs are very different from those specified by the church's architect.

3. By an online faculty application (made with the unanimous support of the PCC) the two churchwardens seek a retrospective faculty to regularise the installation of these 30 red-upholstered chairs in the church. Paragraph 25 of the online application (which was verified by one of the two churchwardens, Mr Richard Boarder) states that he had:

"... spoken with the churchwardens who introduced these chairs to the church and they have told me that they were told that a faculty was not required. They took every care in choosing the chairs visiting several churches where such chairs were in use, specifically mentioning Wendover Church. It is my understanding that this couple may well have paid for these chairs from their own pockets. I would rather this couple not be pressed on this matter as they are now elderly and frail. I would also like to point out that very similar upholstered chairs are currently in use in Chinnor Church and as thus are perfectly suitable for the job."

I take the reference to "Wendover Church" to be to St Mary's, a Grade II* listed 14th century church which (according to the listing particulars) was restored in 1839 and again in 1869. The reference to "Chinnor Church" is to St Andrew's, a Grade I listed church of the 13th/14th century which (again according to the listing particulars) was restored in 1858. I have no

evidence or information as to the colour, design, specification, location, or use made of any similar chairs in these two churches, or of the circumstances in which they may have been introduced into them. I have no reason to doubt the good faith of those who introduced the red-upholstered chairs into the re-ordered Lady Chapel; but this was done without the approval of any faculty, and in a manner inconsistent with the confirmation as to the specification of the chairs that had been provided to the DAC by the church's own architect.

4. Unfortunately, the chairs do not comply with DAC or Church Buildings Council guidance; and the unanimous view of the DAC and of the amenity societies which have been consulted in relation to the faculty application are that they are not considered to be appropriate to this Grade II* listed building in terms of their design, colour and upholstered nature. The Society for the Protection of Ancient Buildings (SPAB), Historic England and the Victorian Society have all been consulted and they are all strongly opposed to the long-term retention of the chairs. The DAC commented that:

“The chairs do not comply with DAC or CBC guidance and are not considered appropriate to the Grade II* listed building in terms of their design, colour and upholstered nature.”

The DAC did not object to the chairs being approved by the court, subject to the proviso that they might be retained in use for a period of 5 years after the date of the faculty whilst funds were raised for suitable and appropriate replacement chairs. The DAC also noted that the chairs were currently stored in various locations around the church; and it recommended that a plan should be produced for storing the chairs when they were not in use. In addition, the DAC encouraged the parish to restore the south transept chapel as a place for private devotion rather than using it for ad hoc storage.

5. The SPAB observed that:

“Unfortunately, the SPAB is unable to support the retention of these chairs. It is a great shame that the parish have already purchased them as they are not at all suited to a historically important Grade II* listed church. The DAC conditioned details of the furnishings and it is therefore extremely disappointing that these were chosen when a far more appropriate option would have been the suggested timber stacking chairs from Irish Contract Seating. We are not able to take the fact that the chairs have already been purchased into account as there is a process here that all parishes are obliged to follow.

However, we acknowledge that to replace these chairs would put an additional financial burden on the parish. We therefore suggest that the chairs are retained in the short term to enable funds to be found to replace them with something more appropriate. In the meantime, it maybe be possible for the chairs to be recovered which would help to tone their colour down, but this should not be taken as a long-term solution. ”

Historic England were of the view that:

"The clearing of the north aisle of pews has been a great success. It has enabled the church to be used as a space to serve the community as a whole as well as a space to meet for fellowship after services and has allowed a greater flexibility in worship. Chairs are clearly needed to facilitate this use but the design chosen is disappointing. The chairs here should be elegant and attractive, giving the north aisle a dignified appearance. The red upholstered chairs selected do not have these qualities. They are a standard product

suiting to a modern conference centre but out of place in a medieval building. Their presence harms the significance of the building as they look so incongruous. While the level of harm is relatively low, they are after all furniture which can be seen as transitory, it is not justified, as the harm could have been avoided by choosing a more suitable chair.

Ideally a better design of chair would be chosen and substituted. I am aware that these chairs are contributing to the life and mission of the parish and this is a small parish with limited resources, and there may not be the funds available to replace them at present. At the same time granting a retrospective faculty would set a dangerous precedent, it would be difficult to insist that other churches in a similar position selected high quality chairs in the future. To overcome this difficulty, we suggest that the chairs are allowed to remain for a limited time, which would allow them to continue in use while giving the Parish the opportunity to raise the necessary funds for more suitable chairs."

The Victorian Society commented that:

"I'm afraid the Society could not support what is proposed here. Were we to have been consulted on a proposal to introduce these chairs into the building then we could only have objected. We do not consider the fact they have already been introduced should influence the decision in this case, although we acknowledge that to resolve the situation appropriately will require additional expense on the part of the parish. This is, to some extent, a matter of principle: there is a process, and parishes should not be readily excused from following it, even if they fail to do so inadvertently. But process apart, it is clear that the chairs are also entirely aesthetically inappropriate for the II*-listed interior. The DAC specifically conditioned the details of the new seating in 2011, and specifications of a decent quality ICS oak chair were subsequently provided. These, we maintain, should be introduced now in place of the incongruous red upholstered chairs presently in situ."

A later email from the Registry (sent at my direction) queried whether the Victorian Society would be prepared to endorse the DAC's recommendation that that the chairs might be retained in use for a period of five years whilst funds were being raised for suitable replacement chairs (noting that the SPAB and Historic England had recommended their retention for a short period of time); and the email asked for the Society's agreement to this course pursuant to rule 10.6(b) of the Faculty Jurisdiction Rules 2015. In response, the Victorian Society stated that it considered:

"... that the SPAB and HE recommendations make a great deal of sense, and we would be content to see this approach adopted."

6. Since the church is a Grade II* listed building, this faculty application needs to be addressed by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by its later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39), namely:

(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

(2) If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?

(3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

7. In considering the last question, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be needed before proposals can be permitted. It also has to bear in mind that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. In applying the *Duffield* guidelines, the court has to consider whether the same or substantially the same benefit could be obtained by other works which would cause less harm to the character and special significance of the church. If the degree of harm to the special significance which would flow from proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other less harmful works, then that is highly relevant. In such circumstances, it would be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit.

8. In the present case, the court agrees with the analysis and views of the DAC and the amenity societies (as set out above). Although I have not visited the church, I have viewed a number of photographs of the chairs in use at family services and one photograph showing them positioned along the sides of the north aisle. I consider that the presence, in their setting, of these red-upholstered chairs, with their black metal frames (at least two with arm-rests), harms the appearance and the significance of this medieval Grade II* listed church as a building of special architectural; and historic interest. Since the chairs are portable and replaceable, the degree of harm is low; but the chairs are incongruous and aesthetically inappropriate in and to the setting of this medieval Grade II* listed building; and the same, or substantially the same, benefit as that provided by the red-upholstered chairs with their black metal frames (at least two with arm-rests) could have been, and would be, secured by using chairs more suited to the church's history and character. Thus, no clear and convincing justification for the retention of these chairs has been made out. Whilst each case must turn upon its own circumstances and facts, the present case bears some similarity to the case of *Re St. Chad, Longsdon* [2019] ECC Lic 5. Although he was satisfied that a case had been made out for the introduction of tables and chairs into that church, Eyre QC Ch was concerned (at paragraph 15) that the particular chairs chosen would:

"... have a real impact on the appearance and special significance of this grade II* church. They will strike a discordant note and will detract from the overall character of the interior."

The Chancellor therefore refused to grant a faculty; but he invited the petitioners to consider alternative chairs in consultation with the Diocesan Advisory Committee. In the course of his judgment, Chancellor Eyre QC reminded himself (at paragraph 13) that as Chancellor he had no particular or special expertise in matters of aesthetics and that he should exercise care in making assessments of such matters. Nonetheless, it was apparent to him that the proposed tables and chairs would be out of keeping with the existing furnishings; that the eye would be drawn to them; and that they would have a marked impact on the appearance of the church. Chancellor Eyre QC also noted (at paragraph 17) the argument that the same chairs were said to be in use in other churches, including local churches which were also listed. That argument was said at best to have

“...only very limited weight. The circumstances of each church (even of each listed church) are different. Moreover, there will be cases where the benefit to be obtained from the use of such chairs does outweigh the harm and where that benefit cannot be obtained in any other way. That might be the position if it was necessary to change all the seating in a church and where seating of other kinds was not suitable or practicable for particular reasons.”

I have borne those considerations firmly in mind in reaching my decision.

9. In the present case, the court considers that the red-upholstered chairs should remain in use at the church for a limited period of up to five years whilst the parish identifies, and raises the funds for, a suitable and appropriate replacement form of chair but then they should go, at least in their present form. I consider that the most intrusive features are the red colour of the seating, and the black metal frames (and, in at least two cases, arms), of the chairs. More neutral colours might have reduced their impact, which is particularly apparent in the image of the chairs in the north aisle. Given the use of at least some of the chairs for meetings, as well as for services, it may be that some form of cushion would be acceptable, at least for some of the chairs, particularly if it were practicable to remove the chairs from sight when not in use. The parish would be well-advised to use the five-year period of permitted continued use of the existing chairs to seek to liaise with the DAC and the amenity societies to find an alternative solution which is acceptable to all parties. In that context, the petitioners may wish to take some comfort from another decision of Chancellor Eyre QC, this time sitting in the Consistory Court of the Diocese of Coventry, *Re Holy Trinity, Long Itchington* [2018] ECC Cov 3. There the Chancellor had originally granted a faculty for re-ordering works, including the replacement of the pews in that Grade II* listed church with chairs. He had declined to approve upholstered chairs; but he had approved the introduction of un-upholstered chairs. After much research and consultation, the petitioners later sought an amendment of the earlier faculty to authorise a different type of upholstered chair, with upholstered seats and upholstered back pads within a wooden frame. The Chancellor concluded (at paragraph 18) that

"... as the chairs are to have wooden frames and those frames are to have a dark stain applied to them, the additional visual impact of upholstered back pads, though real, will be modest. That additional impact is outweighed by the benefits to be obtained and by the fact that such chairs are the clear preference of the worshipping community after what I accept has been careful consideration of the alternatives."

He therefore directed that the previous faculty should be amended accordingly. Earlier in his judgment (at paragraph 13) Chancellor Eyre QC had noted that it was

“... noteworthy that the Victorian Society acknowledge that time and energy have been committed to seeking a compromise solution and this has caused the Society to modify its previous stance”.

The petitioners may also wish to note that on the question of the colour of the upholstery, at paragraph 19 Chancellor Eyre QC had entertained no doubt that it was appropriate for the petitioners to be allowed to introduce chairs with upholstery in the shade of red with brown or ochre tones (as opposed to a more vibrant red colour) which they had proposed. The church already contained a quantity of soft furnishings in red which would remain after the re-ordering. In addition, although a brownish red was only one of the elements in the tiling, it was present and was a significant element. Chancellor Eyre QC was of the view that upholstery of the proposed (non-vibrant) red colouring would fit more readily with those elements than would upholstery in beige or oatmeal or a similar colour.

10. For these reasons, I will therefore grant a faculty in the following terms:

1. The existing chairs may be retained in use for a period of 5 years after the date of this faculty whilst funds are raised for suitable and appropriate replacement chairs.
2. Within five years after the date of this faculty, the church is to apply for a further faculty for suitable and appropriate replacement chairs which respect the interior and significance of this Grade II* listed church.
3. Within 3 months after the date of this faculty a plan is to be produced by the parish to regulate the storage of the chairs in a suitable location or locations (otherwise than in the chapel in the south transept) when they are not in use.