

**Neutral Citation Number: [2024] ECC Oxf 4**



*Faculty – Grade I listed, medieval village church (restored by J. C. Buckler in 1831-4 and by George Gilbert Scott in 1866-70) – Faculty for the installation of electric heating to include Far Infrared Halo chandeliers – Parish applying for variation to substitute Near Infrared Couronne chandeliers – Whether just and expedient to amend faculty – FJR 20.3 – Application to amend faculty refused*

**Application Ref: 2023-088301**

**IN THE CONSISTORY COURT**  
**OF THE DIOCESE OF OXFORD**

Date: Sunday, 4 August 2024

**Before:**

**THE WORSHIPFUL CHANCELLOR HODGE KC**

**In the Matter of St Mary, Adderbury**

**And in the Matter of an Application to Vary a Faculty for the Installation of Electric Heating to Substitute Near Infrared Couronne chandeliers for Far Infrared Halo Chandeliers**

This is an application determined on the papers and without a hearing

The following cases are referred to in the judgment:

*Re St Andrew, Bulmer* [2023] ECC Chd 3

*Re St Bartholomen, Orford* [2024] ECC SEI 1

*Re St John the Baptist, Cononley with Bradley* [2020] ECC Lee 1

*Re St John the Baptist, Suckley* [2017] ECC Wor 2

## JUDGMENT

### Introduction

1. This is an application, pursuant to rule 20.3 of the Faculty Jurisdiction Rules 2015, as amended (the **FJR**), by the PCC to amend a faculty, granted as recently as 5 December 2023, for the installation of electric heating so as to substitute Near Infrared ‘*Couronne*’ chandeliers for the presently permitted Far Infrared ‘*Halo*’ chandeliers. The application raises the question of how the consistory court should respond to an application to amend a faculty so as to revert to proposals that were abandoned during the course of the faculty application process because they had proved to be highly contentious.

### The faculty

2. The medieval church of St Mary Adderbury, in north Oxfordshire, is Grade I listed. That is a mark of its national significance and importance. The church was first listed as long ago as 8 December 1955. The listing details are lengthy and include several references to the nave: its restoration in c. 1866 by Sir George Gilbert Scott; its 3-light C15 clerestory windows; the octagonal columns with moulded circular capitals in the C13 four-bay nave arcades, which were possibly altered in the C14; the C15 roof of the nave with its eight king-post trusses with cusped and moulded arched braces rising from the wall posts, and with further cusped bracing extending in four directions from the kingposts, with the design repeated in the C19 aisle roofs. The entry for the church in the *Oxfordshire: North and West* volume of *Pevsner’s Buildings of England* (published in 2017 by Alan Brooks and Jennifer Sherwood) describes the church as “*one of the largest and most important churches in Oxfordshire*”, and G. G. Scott’s Victorian restoration of the nave and aisles (completed by his son, J. O. Scott, in 1885-6) as “*scholarly*”, but with the additional observation that “*not surprisingly the impressive interior now appears somewhat too restored*”. Adderbury features (at pp 532-4) in Simon Jenkins’s *England’s Thousand Best Churches* (published in 1999) with three stars (out of five), ranking in Oxfordshire below only Burford, Bloxham, and Dorchester. Jenkins describes Adderbury (and its neighbour, Bloxham) as “*the twin glories of north Oxfordshire*”. He is somewhat kinder about the “*brave attempt*” by the two Gilbert Scotts, father and son, to restore the western parts of the church, commenting that “*both strove to respect the Gothic original*”. Towards the end of this judgment, I have included an aerial image of the church which I have taken from the frontispiece of the PCC’s *petition*.

3. The faculty was granted to the vicar (the Reverend Liz Simpson), the chairman of the church’s Fabric Committee (Mr Anthony Wagg), and the churchwarden (Mr Phil Rippon). The description of the works is as follows:

*Installation of eight 7.8kW Herschel Halo chandeliers hung within the arches of the nave arcade;*

*Installation of Herschel Inspire frameless panels in the choir stalls – Six CL300 350W (900 x 300) and two CL200 250W (600 x 300) panels;*

*Installation of EHS under-pew heaters on floor brackets under the front choir stall benches - four 750W units (944mm long each) under the east benches and two 250W units (377mm long each) under the west benches;*

*Upgrading of the existing electrical installation to three phase 200A.*

There are numerous conditions, as follows:

- 1. The church architect, the M&E consultant and the manufacturer are to agree the chandelier motif and the installation design, layout and installation in consultation with the DAC subcommittee so as to mitigate the potential for harm to the historic fabric.*
- 2. The following information is to be submitted for agreement by the DAC subcommittee prior to the commencement of any work: (a) Finalized plans and sections, to scale, of the proposed installation. (b) Structural engineer's assessment showing that the arcades can support the weight of the chandeliers. (c) An independent assessment of the environmental and conservation risks, to be instructed by, and with funding from, the diocese, to help assess whether the proposed design will minimize these risks and maximize the benefit of the system to church users. (d) Details of the proposed resultant lighting levels and an assessment of whether the lights should be omitted from the chandeliers to be agreed.*
- 3. Following the installation, a further independent environmental survey with thermal imaging, to be instructed by, and with funding from, the diocese, to assess the performance of the installation in respect of the needs of the parish, the conservation needs of the historic fabric of the church, and the impact of moving from one form of heating to another.*
- 4. The existing heating installation to be retained for a period of five (5) years to allow further monitoring of the effectiveness of the proposed installation. Should it be found that it is causing harm, then use of the installation should cease until steps are taken to mitigate this harm. This could include the removal of some or all of the proposed units.*
- 5. A record of the hours of use and the costs in use is to be kept for a period of 12 months and submitted to the DAC.*
- 6. All electrical works are to be carried out in accordance with the current diocesan electrical guidelines.*
- 7. A further site visit is to be arranged with members of the DAC subcommittee and the church architect in order to agree the proposed electrical cable routes.*
- 8. The details of any excavations in connection with the installation of the new power supply are to be submitted to the DAC subcommittee to determine what if any archaeological mitigation is required.*
- 9. Before commencing any works the parish are to notify the church's insurers; and they are to comply with any recommendations or requirements they may make or impose.*
- 10. The parish are to give serious and prayerful consideration to switching to a green energy tariff if they have not already done so.*

The faculty provides for the works to be completed within six months from 5 December 2023 or such further period as the court may allow; and the certificate of practical completion is to be sent to the Registry within the period allowed. From my unannounced inspection of the church on Friday 7 June 2024, it would appear that the works had not by then even started.

4. Since the online faculty application was unopposed, I gave my reasons for granting the faculty application in summary form. In doing so, I made it clear that I had assumed that no objections had been received, either in response to the special notice on the diocesan website

under FJR 9.9, or to the usual public notices. I uploaded my reasons to the online faculty system on 3 December 2023; and the faculty was issued two days later. My reasons were as follows:

*This is an unopposed online faculty application by the vicar, the chairman of the fabric committee, and the churchwarden of this large, beautiful, and significant, medieval Grade I listed village church (restored by J. C. Buckler in 1831-4, and by George Gilbert Scott in 1866-70): (1) to install (a) eight 7.8kW Herschel Halo chandeliers to be hung within the arches of the nave arcade; (b) six CL300 350W (900 × 300) and two CL200 250W (600 × 300) Herschel Inspire frameless panels in the choir stalls; and (c) EHS under-pew heaters on floor brackets under the front choir stall benches, with four 750W units (each 944mm long) under the east benches and two 250W units (each 377mm long) under the west benches; and (2) to upgrade the existing electrical installation to three-phase 200A.*

*The documents uploaded in support of the application include a Statement of Needs and a Statement of Significance, both dated 26 July 2023, and a heating options analysis and a radiant heating specification overview prepared by an energy consultant (Peter Bemrose) in July 2023.*

*The church's current oil-fired boiler (installed in 1986) has come to the end of its working life and is likely to fail at any moment. Considerable time and energy have been spent looking at various heating options, which have been separately documented within the options appraisal document. The need to take action to fit a new heating system is both vital and immediate. The parish view the installation of a workable heating system as a major step in making their church more welcoming, as well as in sustaining their current liturgical and other activities. The parish have been considering for over four years how to heat their church; and the PCC have determined that infra-red chandeliers are the right, and the only sensible, choice. The system they have proposed is designed with two main principles which flow from the parish's mission statement, namely, to encourage greater use of the church building by the local community, and to ensure that they follow the Church of England's green agenda. The benefits the new heating system will bring are considerable, and the parish consider that they will far outweigh any harm that the Halo chandeliers may cause to the significance of the church, which they have been at pains to mitigate, as detailed in the Statement of Significance.*

*This has been a long-running case with a variety of options considered along the way. One of the DAC's Church Buildings Officers (CBO) has submitted a detailed and helpful report to the Chancellor which explains some of the background to the DAC's decision. The parish have been working on proposals for the replacement of the church's existing oil-fired heating installation for a number of years. These have been through several iterations which have been discussed by the DAC. The relevant documents from these earlier iterations have also been included in the supporting documents for the current application.*

*The Georgian Group have been consulted but they have deferred to the Victorian Society and the Society for the Protection of Ancient Buildings (SPAB), both of which have been involved in discussions about the proposed replacement heating system since 2021. Historic Buildings & Places (HBP) have also been consulted but, given the substantially technical nature of the debate on the proposed chandeliers, they are not sure that there is much in the way of informed comment they can add that has not been said by others. On the 'chandeliers' and their technical performance, HBP feel that they must defer to established expertise, particularly as embodied at the Church Buildings Council (the CBC) and SPAB. However they join in the disquiet at their*

*visual appearance and the disruptive effect of the intense red glow in the subtle and varied character of an ancient church.*

*The CBC were consulted in relation to earlier proposals, and their helpful comments have been taken into account by the DAC.*

*Historic England have been consulted, and their view is that the chandeliers will have a negative impact on the significance of the nave. They identify, as the question for the DAC, whether the case for affordability, and current and future user needs (of infrequent and short time lengths), are best met by this relatively affordable, and readily reversible, solution, and thus outweighs the resulting harm.*

*As part of the consultation on the present, revised proposals, SPAB consulted an expert in sustainable heating options, who has worked on a significant number of highly listed churches across the country. He is familiar with this case, and he has gone through it carefully, comparing the previous proposals with the revised options now being presented; and his work has informed SPAB's consultation response. After commenting on inconsistencies and deficiencies within the information submitted by the parish, SPAB come to the significant question of whether these proposals form the best heating solution for the church (both the physical building and the people using it). SPAB do not fundamentally disagree with the parish's options appraisal; and given that the pews are not fixed, and are reported to be moved when required, the under-pew heating solution appears not to be viable for them. The other options are largely unviable for comfort, performance, fabric risk, or carbon reasons. SPAB do not include cost in this as all the options are largely ruled out for other reasons, but clearly the costs of installing or running many of the other options would appear to be unsustainable too. Therefore, while this is definitely not a perfect heating solution for the church, SPAB cannot see any other option that would work. In the absence of anyone who is able to come up with a better technical alternative, they have to conclude that this may be the 'least bad' solution. The church could also improve its eco-credentials by changing to a green electricity tariff, but it is not clarified if this is also intended. However, SPAB still feel strongly that it would be more sensible to consider the proposed reordering first, and to then base the heating options/layout on this, rather than the current layout which may change.*

*After a discussion at a meeting of the PCC on 19 July 2023, a proposal to accept the heating group's proposal to opt for Herschel Halo chandeliers was carried by nine votes to one. The minutes record that, after the meeting, the single vote against the proposal to install Herschel Halo chandeliers was withdrawn. Therefore the proposal now has the full support of the PCC.*

*The DAC do not object to the proposals being approval by the court (subject to conditions numbered 1 to 8 below). They have advised that the proposals will affect the character of the church as a building of special architectural or historic interest, and therefore special notice has been given under FJR rule 9.9. No objections have been received, either in response to this special notice, or to the usual public notices (which were displayed from 11 October to 10 November 2023). In the DAC's opinion, the parish's explanation of how, in formulating these proposals, they have had due regard to net zero guidance, is adequate.*

*The CBO's report to the Chancellor explains that at their September 2023 meeting, the DAC considered the following points in their discussion of the application:*

*(1) The appropriateness of the proposed solution for meeting the needs expressed by the parish.*

- (2) *The impact of the proposed chandeliers on the significance of the nave.*
- (3) *The potential impact of this form of heating on significant fabric in the nave and the chancel.*
- (4) *The impact of the proposed chandelier lights on light levels in the nave.*
- (5) *The potential harm to the misericords from the proposed under-pew heaters.*

*Other matters considered by the DAC include the following:*

- (1) *The fact that the revised statement of significance continues to downplay the significance of the nave. For example, the elaborately carved, late C14 capitals of the central piers of the transept arcades are accorded 'possible moderate significance' while the C15 nave king post roof is accorded 'low significance'. A more appropriate response to potential harm would be to mitigate that harm, or to demonstrate that the harm is justified, and not to downplay the significance.*
- (2) *The DAC noted that the Halo chandelier has been designed to sit more comfortably in an historic environment. As such, the aesthetic harm caused by the installation will be less than that from the form of chandelier which was previously proposed. There is an option to include bespoke decorative designs in the metal corona. The parish should work with their inspecting architect, the manufacturer, and the DAC subcommittee to agree a suitable motif for the corona.*
- (3) *No data about the anticipated light levels from the chandeliers has been provided. The DAC's M&E consultant has repeatedly stressed the importance of understanding the resultant light levels, the uniformity of the light produced, and potential issues with glare or shadows, etc. This information should be provided prior to installation of the units.*
- (4) *The DAC and the Church Buildings team have requested that the quinquennial inspector, a conservation accredited architect, be involved in the design of the proposals. Confirmation of his involvement has not been included in the documents. Some of the proposed cable routes, such as the proposed trunking in the chancel, would result in harm to the significance of the interior of the Grade I listed church. These routes should be agreed with the inspecting architect and the DAC.*
- (5) *The DAC are keen that it is understood that their decision is made on the basis that this installation can be used as a means of gathering information on the impact and effectiveness of this form of heating in an historic church building which can inform their assessment of future proposals. This decision must not be considered to set a precedent for this type of heater to be 'rolled out' across the diocese.*
- (6) *On 'net zero', the DAC understand that the parish had an energy audit carried out prior to the General Synod net zero resolution. Although this early audit would not have addressed the pathway to net zero, and the parish have not used the energy footprint tool, they have appointed a heating consultant, who has assessed the various options with a view to reaching net zero. For this reason, the DAC consider that the parish have demonstrated due regard for the net zero guidance, provided that they switch to a green energy tariff if they have not already done so.*

*The CBO's report concludes: 'This is a long-running case. During this time, the parish has been asked repeatedly to improve the quality of the submission. However, the need to replace the aging*

*heating installation before it fails is clear. While the statement of significance fails to adequately acknowledge the significance of the nave, the harm to the significance which might be caused by the chandeliers would be largely reversed if they are removed in the future.'*

*I have taken all of these comments on board. I bear firmly in mind that the proposal for the chandeliers is readily reversible; and (as SPAB observe) I consider this to be the 'least bad' solution. These revised proposals are clearly necessary and desirable in terms of ensuring that the church building is properly heated and available for worship by all the members of its congregation. Regrettably, there would appear to be no viable alternative to them. The court is satisfied that the parish have paid due regard to, and have sought to follow, the applicable net zero guidance. The parish have sought, and taken into account, the advice of a qualified energy consultant; and they have undertaken a full analysis of all the available heating options. I am also satisfied both that the parish have provided a clear and convincing justification for these proposals, and that they will cause the least possible harm to the appearance, the setting and the significance of this church as a building of exceptional architectural and historic interest. In agreement with the DAC, I emphasise that the decision to grant this faculty should not be considered to set any precedent for this type of chandelier heater to be installed, still less 'rolled out', across this diocese. My decision in this case turns entirely upon its own particular facts.*

#### The amendment application

5. In late May 2024 the PCC submitted to the Registry a document dated 18 May 2024 and entitled *'Petition to the Chancellor of the Oxford Diocese ... for permission to instal 6 x 8kW and 2 x 6kW Toshiba 'Couronne' infrared chandeliers (Couronne) into St Mary's Church, Adderbury rather than 8 x 7.8kW Herschel 'Halo' infrared chandeliers (Halo)'*. This document extends to some 46 pages, and includes images of Toshiba 'Couronnes' in St James's Church, Girton, Cambridge and of Herschel 'Halos' in St Matthew's Church, Bristol (which I have reproduced at the end of this judgment). The PCC point out that in June 2022 the DAC issued its 'Not Recommend' Notification of Advice (**NoA**) to the PCC's original proposal to instal 6 x 8kW and 2 x 6kW Toshiba 'Couronne' Near Infrared chandeliers into St Mary's Church, Adderbury. The DAC gave 12 reasons why they had come to that decision. The declared aim of the PCC in their petition is to show:

- (1) that eleven of these reasons are no longer valid; and
- (2) that the remaining one is not worth £40,000.

The PCC say that they are fortunate that, following a very kind donation and money-raising events, there is sufficient money to pay for the Couronne, but not for the Halo, chandeliers.

6. The petition explains that on 2 April 2024, the PCC sent an email to the Head of Church Buildings and one of the DAC's Church Buildings Officers as follows:

*As we have been firming up on prices, we have found that the Herschel 'Halo' chandeliers will cost around £40,000 more to install than our original choice of Toshiba's 'Couronne' chandeliers.*

*The PCC therefore would please very much like you to reconsider your original refusal on the Toshiba.*

*Considering that the preference for the Herschel 'Halos' comes basically from:*

- (i) *A feeling that the red glow from the elements on the Toshiba 'Couronne' is unattractive.*

*(ii) A feeling that the 'Halo' is a more attractive chandelier.*

*We believe that these 'benefits' do not justify £40,000 more. We do not have that money and to take it from willing donors would deprive other charities of that money.*

*We do hope that you will look at this request sympathetically.*

7. This request was put to a full meeting of the DAC on 13 May. Their decision was set out in a letter from the CBO to the vicar and two members of the PCC as follows:

*The DAC discussed the parish's request for a variation at their meeting yesterday and resolved, as they did in May 2022, to not recommend this type of near infrared chandelier. As it is the Chancellor who makes the final decision in these matters, I will now forward the parish's request to him. He will consider first whether the change can be considered as a variation or if a new faculty application would be required. If he determines that it can be considered as a variation, he will consider whether he would be content to issue the variation. There is no need for any further action from the parish.*

*Please be patient as it may take the Chancellor some time to make this determination.*

8. The PCC's petition sets out the 12 reasons given by the DAC for issuing a 'Not Recommend' NoA in May 2022. The PCC believe that there are three reasons why eleven of the twelve objections against the Couronne chandeliers are no longer valid:

- (1) The DAC has misunderstood the strength of the Couronne.
- (2) The DAC's agreement to the installation of the Halo chandeliers.
- (3) The agreement to appoint Tobit Curteis to monitor the heating within the church.

The PCC proceed to address each of these considerations in turn.

*The strength of the Couronne*

9. Since the original 'Not Recommend' NoA was issued in June 2022, the DAC have given approval to the PCC (subject to certain conditions) to the installation of eight Halo chandeliers. The PCC identify three major differences between these two types of chandelier:

- (1) The temperature of the elements resulting from differing wave lengths. The Halo elements heat to c 450C and the rays are longer (Far Infrared) whereas the Couronne elements heat to c 1500C with much shorter wave lengths (Near Infrared).
- (2) The red glow of the Couronne which is a result of the shorter wave lengths.
- (3) Their appearance.

The PCC believe that since the DAC have not changed any of its negative thoughts on the Couronne, this will be due to their belief that the Couronne produces a more dangerous heat than the Halo. The PCC believe that the DAC, fairly naturally, assumes that a chandelier (like the Couronne) whose elements heat to 1500C produces a much greater heat than a chandelier (like the Halo) whose elements heat to 450C. This, however, is scientifically incorrect. The level of heat comes from the wattage and not from the temperature of the elements. The wattage per chandelier is very similar - the eight Halos produce 7.8kW each and six of the Couronnes produce 8kW and the other two produce 6kW. This means that the heat produced by the



Couronne and the Halo is effectively the same. This has been explained by Dr Tim Bestwick, the UK Atomic Energy Authority's Chief Technology Officer and Director of Strategy, Communications & Business Development, who is involved in developing nuclear fusion at Culham in Oxford (and is also one of the churchwardens). The power output of the two systems is similar - which means they produce similar amounts of heat. The temperature of the element is irrelevant in this respect, although this does determine the spectrum ('colour') of the radiation emitted and thus (for example) any visible 'glow'. The PCC contend that this misunderstanding of the science of Infrared heating makes unsafe the objections numbered 2, 6, 7, 8 and 9 in the DAC's 'Not Recommend' NoA in relation to the Couronne.

*The agreement to the installation of the Halo chandeliers*

10. Four of the objections in the DAC's 'Not Recommend' NoA in 2022 (numbered 3, 4, 5, and 11) were based on whether heating from Infrared chandeliers was the right choice for a church which was not as certain of its future plans as the DAC would have liked. The DAC argued that the PCC needed not only a clear idea of where the pews were to be sited, but also plans for the future use of the church. Now that permission has been granted to instal the Halo Infrared chandeliers, these objections have become invalid.

*The agreement to appoint Tobit Curteis to monitor the heating within the church.*

11. In March 2024 the DAC agreed that Tobit Curteis, a leading firm of consultants on church heating, should monitor the church and take measurements before, and after, the installation of the chandeliers. The PCC contend that it matters little whether Tobit Curteis are monitoring the Halo or the Couronne chandeliers, particularly as the science says that they produce roughly the same amount of heat. This puts aside objections numbered 10 and 12 set out in the 'Not Recommend' NoA.

12. The PCC therefore contend that out of the twelve objections put forward by the DAC for their 'Not Recommend' decision in 2022, only the first remains, namely:

*St Mary's Church, Adderbury is of high significance which means that it is important at national to international levels. The DAC accept the parish's need for their building to be appropriately heated. However, they did not consider that the adverse visual impact nor the potential harm to the historic fabric was justified in this instance because the committee believe that an alternative solution can be found which will cause less harm to the significance of the Grade I listed church.*

The alternative solution turns out to be Infrared chandeliers. Where factual data is deficient, the PCC believe that Tobit Curteis will provide what is required. The PCC acknowledge that the DAC (and the SPAB, the Victorian Society, Historic England and the Church Building Council) all disapprove of the glow given off by the Couronne heaters. They know also that they object to the look of the chandeliers. However, the PCC would make the following points:

(1) The wonderful architectural glories of the church are not seriously harmed by the chandeliers. The church has significant and wonderful architectural and artistic features, but these are mainly in the chancel and on the outside of the church. The chancel, whose significance the PCC judge to be high, is hidden from the body of the church to a large extent by the rood screen. Accordingly the PCC believe that the chandeliers would not cause any harm to the significance of the architectural and artistic features of the chancel. The aisle, whose significance

the PCC judges to be moderate to low (with the possible exception of two Early English columns) has little architectural or artistic note that would be disturbed by the installation of the chandeliers. The PCC claim that they are not alone in thinking this, asserting that although distinguished commentators on church architecture endorse the quality of the chancel and the exterior, John Piper and John Betjeman, together with Sir Nikolaus Pevsner, are dismissive (or worse) about the interior of the nave.

(2) The PCC have talked to many churches where the Couronne chandeliers have been installed and they have asked them for their impressions. Not one is said to find the chandeliers unpleasant, whilst a number comment favourably on the glow, saying that it adds warmth to their church. These comments, together with the others, were all included in the supporting documents which were part of the PCC's unsuccessful application for Couronne heaters. At no time did the DAC comment on these impressions from other churches who were happily using Couronne chandeliers. At no time did the DAC produce any contrary views.

(3) This would be the third time that the PCC know of when heating and lighting have been hung from the arches: paraffin lamps in 1910 and petroleum lamps in 1900. Science overtook them rapidly and they were removed. The parish suspect that science is currently moving fast in this area and they envision that within 30 years science will produce new, and cheaper and more beautiful, ways of heating their lovely church. 30 years is not long in the history of a church founded in 1230 AD.

(4) The PCC are very conscious of their responsibility for handling the money destined for the church. They do not believe that spending an additional £40,000 to have no glow and a chandelier that is possibly better looking is a responsible way of spending the money entrusted to them.

13. On 24 May 2024 I received an email from the Head of Church Buildings asserting that the PCC's lengthy '*petition*' includes extensive and alarming inaccuracies and misrepresentations regarding the process of the DAC's review of the application, the DAC's feedback, and the technicalities of the heating types in question. This email makes it clear that the Church Buildings team, and the DAC, consider that they have already spent a considerable amount of time handling this application which has been necessitated by the conduct and the approach taken by the parish. If, having reviewed the documentation the DAC has provided, I were to consider that I was presently unable to support the DAC's advice, and would find it helpful for them to respond to the '*petition*' point by point, then they would of course do so; but in the meantime the Church Buildings team think it best to spend the staff time that this would require in supporting other parishes in the diocese. On the same day, I received a letter, dated 14 May 2024, setting out the DAC response to the PCC's request for a variation of the existing faculty. The substantive letter covers five pages, and is followed by three appendices, covering a further 26 pages. These comprise the full May 2022 DAC advice; copies of the alternative quotations for chandeliers requested of, and received from the PCC; and an exchange of emails between Electric Heating Solutions (**EHS**), the supplier of the Couronne chandelier heaters, and the Church Buildings team. The appendices to the DAC letter are intended to supply some helpful background information.

14. Had I considered that the material provided by the DAC would have had any material effect upon my decision, I would, of course, have referred it to the PCC for their observations and comments. Since, however, I had already formed a clear view about the outcome of this

application to vary the existing faculty, based upon my prior knowledge of the case, and the material supplied by the PCC, before reading any of the further material supplied by and on behalf of the DAC, I did not find it necessary to call upon the PCC for any further assistance. The delay in producing this judgment – for which I apologise – has simply been due to the pressure of other work, and the need to set out my reasoning and conclusions in full, and proper, form.

15. The DAC letter begins by explaining that a faculty was granted in December 2023 for the provision of an electric heating system based upon the installation of eight Herschel Halo chandeliers in the arches of the nave arcade, with supplementary electric heaters used to provide heat in the chancel. The DAC resolved to *Not Object* rather than to *Recommend* the proposals because of:

- (1) Reliance on the chandeliers as the only source of heat in the nave. The DAC had advised the parish that the new heating installation should include supplemental units to provide heat from more than one direction, such as employing the existing heating trenches.
- (2) Insufficient assessment of the significance of the church and the impact of the proposals on that significance.
- (3) Lack of data about the anticipated light levels from the chandeliers.

The letter goes on to record that the PCC wrote to the CBO on 2 April 2024 requesting a variation to the faculty to install the EHS heating chandeliers, the subject of application reference 2021-067695, in place of the Halo chandeliers on the basis of a £40,000 difference in cost; and asserting that the DAC's preference for the Herschel Halo chandeliers comes from:

- (a) *A feeling that the red glow from the elements on the Toshiba (EHS) 'Couronnes' is unattractive.*
- (b) *A feeling that the Halo is a more attractive chandelier.*

The DAC indicate that they would be grateful for my advice on this matter.

16. By way of background, the letter states that the parish had been working on proposals to replace the existing oil-fired heating installation for a number of years. These had been through several iterations, which had been discussed by the DAC. A delegation first visited the church to discuss the heating in March 2020. In June 2021, the parish had put forward an option for an electric heating solution based on Near Infrared chandelier heaters: application ref: 2021-062859. The DAC's view was that this type of heater would not provide adequate heating for those using the church, and that the design of the heater was not appropriate in the context of this highly significant Grade I listed church. In their October 2021 letter, the DAC had encouraged the parish to undertake studies suggested by the Church Buildings Council and Historic England, such as analysing current usage, and contacting village organisations to determine whether they would move to the church if the building were to be better heated in the winter months. The parish were also advised that more detailed statements of need and significance should be prepared before deciding on a final heating solution. In March 2022, the parish had decided to proceed with an application for the installation of eight EHS Couronne chandeliers in the arches of the nave arcade, with under-pew heaters in the chancel, south, and north transepts, and the south aisle servery area: application ref: 2021-067695. At their May 2022 meeting, the DAC had resolved to *Not Recommend* these proposals. The committee's response was summarized in their

feedback to the parish, which was appended to the letter. At that time, the DAC had expressed a desire to continue to work with and support the parish as they sought an appropriate solution to their heating needs. The parish had agreed to look again at the proposals, and the 'Not Recommend' NoA was not issued.

17. In response to the request for a variation, the CBO had explained that, based upon the DAC's discussions in May 2022, as well as the responses from the statutory consultees, it was thought that the DAC would be unlikely to change their recommendation. The committee considered that the harm to the aesthetic and architectural significance of the church from the appearance of, and the red glow from, the EHS chandeliers outweighed the potential benefits from them. This was especially true as there are other options available which would cause less harm to the significance. In addition to the impact on the significance of the church, the DAC were also concerned about the potential impact of the intense heat from the Near Infrared units on the fabric. It has been observed that the higher temperatures generated by Near Infrared units result in a significant column of heat above them which might damage sensitive fabric. In contrast, the Halo chandelier, for which the faculty was granted, has been designed to sit more comfortably in an historic environment. As such, the aesthetic harm caused by the installation will be less than that from the chandelier which was proposed previously. These chandeliers are based on Far, rather than Near, Infrared units, which operate at lower temperatures, providing a less intense, more comfortable form of heat, without the red glow. The lower temperatures are also less likely to damage sensitive historic fabric.

18. The DAC requested, and received, copies of the alternative quotations (and copies are appended to the DAC letter). According to the DAC, these do not appear to have been based upon any tendered schedule of works, making them difficult to compare. Only one (Garrett Electrical Services) provides any detailed breakdown of costs, in the total sum of £101,032.10, exclusive of VAT. Of this, £84,393.47 would appear to represent the cost of materials and labour for all the heaters specified in the original faculty, plus a further £450 for a specialist to fit hooks into the fabric of the building. A quotation from EHS, to include the supply and installation of a total of eight Couronne chandeliers for the nave, is £54,610, exclusive of VAT. The DAC letter asserts that an email received from EHS by the CBO on 10 April (a copy of which is also appended to the letter) indicates that EHS is very eager to open a market for their chandeliers in the Diocese of Oxford; and speculates that, as a result, EHS has provided a very keen quotation for the installation at Adderbury. A copy of the CBO's response is also appended, in which she explains the DAC's concerns in respect of the EHS chandelier, which are based both upon the type of infrared employed and the appearance of the units. In considering this request, the DAC invite the court to note that, in addition to significant sums held by the PCC in an unrestricted bequest, the Friends of St Mary's, Adderbury have received a donation in excess of £60,000 specifically earmarked for the replacement of the heating installation. The letter points out that the original faculty was granted subject to a number of provisos, many of which would still apply, even with a change of chandelier unit. The letter lists the current progress (or lack thereof) in resolving these provisos. These emphasize the need for good design to mitigate the impact on character and appearance, the need for careful planning of the electric runs, archaeological monitoring of trench works, and structural engineering input on the hanging of the chandeliers, both from a load-bearing point of view, and also to minimise harm to fabric. The environmental survey and monitoring, which has been commissioned by the DAC, is intended to gather information on the impact and effectiveness of this form of heating, and inform their assessment of future proposals, and not as a justification for its use in this

church building. The DAC consider that it is important that the parish demonstrate their understanding of the importance of these conditions.

19. The DAC letter records that the DAC Chair and Head of Church Buildings were consulted regarding how best to approach the request for a variation. They agreed that this raises an important point of principle/precedent which, if granted, could result in other parishes obtaining approval for one type of heater only to revert, by variation, to one the committee did not consider appropriate. As such, it was decided that the proposed change should be discussed by the full committee, and that their recommendation should accompany any request for a variation. Consequently, at their meeting on 13 May 2024, the DAC resolved to *'not recommend'* a variation to the faculty to substitute the EHS chandeliers in place of the units for which consent has been granted. These units are not equivalent, as suggested by the parish, in terms of their design, nor in terms of the type of heat that they provide. The letter concludes by requesting my advice as to whether this significant change to the original proposal could be considered by way of variation, given the objection to this proposal from the DAC in May 2022, and again in May 2024, or whether a new application would be required. If I am content that this could be considered as a variation, then I am asked whether I would be content to grant the variation.

20. I should record that I have received a very short email from the Archdeacon which supports the approach taken by the Head of Church Buildings, and emphasises that the parish of Adderbury continues to absorb huge amounts of the DAC officers' time and energy (unfortunately at the expense of other church projects). The DAC have drawn my attention to a perceived lack of scientific data regarding the different types of Infrared heaters, and their impact on running costs, user comfort, and historic fabric, and the need to address these by way of further research. They have also referred me to a page that appears in the risk management and guidance section of the website of Ecclesiastical Insurance, headed *'Church Heating - the use of Infrared Heating Technology'* and dated 28 February 2024, which includes the following:

*There are two main types of Infrared heating technologies, known as Near Infrared (NIR) and Far Infrared (FIR). While both operate using the same basic principles, the use of Near Infrared (NIR) is not considered appropriate or safe to use in an environment such as a church or public building for safety reasons. Only Far Infrared (FIR) heaters should be used in these environments.*

I am informed that the Church Buildings team have inquired about the reasons for this advice. Apparently it is not based upon any claims history, but upon a perception that Near Infrared heating is too intense and invasive for the individual, whilst Far Infrared heating is more easily absorbed by the human body. Clearly, any church proposing to install any form of Infrared heating would need to consult their insurers before doing so (as required by condition 9 of the existing faculty).

21. Responding to an invitation to visit the church at the end of the substantive part of the PCC's *'petition'*, on the afternoon of Friday 7 June 2024, I made an unannounced, and unaccompanied, visit to the church. In good weather conditions, I spent an hour viewing both the exterior and the interior, and soaking up the atmosphere, of this magnificent church building. I entirely agree with the DAC's assessment that the parish have sought to downplay the significance of the nave. Whilst clearly not as significant as the chancel, I have no doubt that the nave, through which one passes to approach the chancel, contributes to the Grade I listed status of this impressive church building. I acknowledge that my judgement in matters of aesthetics is

neither a trained, nor a professional, one, unlike the Church Buildings team, and the DAC, who do have training, expertise, and experience in such matters. Based on my visit to, and observations of, the church interior, however, I agree with the views of the DAC that both the design, and the appearance, of the Couronne chandeliers are inferior to the Halo chandeliers, and that their installation in this church, and their red glow when in use, would seriously detract from the appearance and the significance of this church building. In my judgment, that is apparent from the contrasting images of the two different types of chandelier in operation in different churches which I have included at the end of this judgment. I should also indicate that during my visit I saw nothing in the literature displayed within the church about the PCC's heating and lighting proposals to indicate any change from the principle of installing Halo chandeliers.

The applicable law

(i) Variations

22. By FJR 20.3 (1) the consistory court may order that any faculty (a) be set aside (either in whole or in part) or (b) be amended, if it appears to the court “*just and expedient*” to do so. The only express ‘*steer*’ as to how this jurisdiction is to be exercised is to be found in FJR 20.3 (2). This provides as follows:

*If the court is considering exercising the power conferred by paragraph (1)(b) in a manner that would constitute a substantial change in the works or proposals already authorised by faculty the court must give such directions as to the giving of notice to the public and to such other persons and bodies as it considers just.*

This paragraph shows that the jurisdiction to amend may be exercised even though the amendment would result in “*a substantial change in the works or proposals already authorised by faculty*”.

23. In common with the exercise of any of the powers conferred by the FJR, however, the court must seek to give effect to the overriding objective when exercising the jurisdiction to amend or set aside a faculty : see FJR 1.2. The overriding objective is, of course, that of “*enabling the court to deal with cases justly*”. By FJR 1.1 (2), “*dealing with a case justly*” includes, so far as practicable -

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways that are proportionate to the importance of the case and the complexity of the issues; and
- (d) ensuring that it is dealt with expeditiously and fairly.

24. There is little guidance to be found in the authorities as to how the power to amend a faculty is to be exercised. However, I have found two cases which are of particular relevance and assistance to me. The first is the decision of Chancellor Mynors in *Re St John the Baptist, Suckley* [2017] ECC Wor 2 (in the Diocese of Worcester). In 2015, the Chancellor had granted a faculty to authorise several items as part of a remarkably ambitious programme of reordering of a Victorian church. The present petition sought approval of four remaining items which the Chancellor had not approved in 2015, namely, the installation of a new timber floor with underfloor heating; the alteration of some pews and the disposal of others; the screening-in and use of the vestry; and the introduction of a kitchenette, WC and upper room in the north

transept. The Chancellor approved the new flooring and underfloor heating. He did not authorise the new details of the proposed vestry screening, or the kitchenette, WC and upper room, as there needed to be consultation with the local planning authority, Historic England and the Victorian Society. As the proposal regarding the pews had changed, so as now to seek permission to remove two-thirds of them, the Chancellor again required the matter to be the subject of a separate petition, with further consultation.

25. Chancellor Mynors considered the issue of amendments to previously approved proposals at paragraphs 14 to 18 of his judgment. These read:

*14. It sometimes occurs that a parish wishes to amend a faculty. This may relate to something trivial, such as altering the detailed specification of some element of works that have been authorised, or extending the time within which works are to be carried out. But it may be something more major, and potentially controversial, such as removing twelve pews instead of six. A variation of this would be where a faculty authorises works, but requires the details of the works to be approved before they are implemented; the details are then submitted, but not in accordance with the original approval. The present case is an example of the latter.*

*15. The Rules provide that a chancellor may amend any faculty (Faculty Procedure Rules 2015, r 20.3). And there is nothing to stop anyone – in particular a parish – inviting the chancellor to make such an amendment. The Rules do not specify what kind of amendment may be made, nor what procedure is to be followed. However, the chancellor is only permitted to take such action if it seems ‘just and expedient’ to do so. That means that a faculty should not be amended if it would be unjust to any of those who were involved – that is, those who made representations in relation to the original petition, or who might now wish to make representations. But the very existence of the power means that it cannot be right for a chancellor to insist that any change to works that have been authorised must be the subject of a new petition; were it otherwise, there would be no need for the reference to expediency.*

*16. It seems to me that it will normally be appropriate to amend a faculty without further ado where the change is very minor, and in particular where it amounts to doing something that has been permitted, but in a different way. However, more caution should be exercised where a proposed change relates to the substance of the works. So, for example, if a parish is granted a faculty to introduced blue chairs, but now wishes to choose a slightly different shade of blue from the one approved, that can probably be authorised with no further consultation. But if it wishes to save money by using a quite different quality of chair, or to choose a bright red one, that may need to be the subject of further consultation.*

*17. And if the change is to do something significantly different, that will obviously need to be the subject of an entirely new petition. That does not mean that the new petition will necessarily be refused; but it would not be just to prevent those who might wish to make representations from doing so.*

*18. Deciding whether a particular proposed change can be authorised by amending a faculty is bound to be a matter of fact and degree. But one test is likely to be a consideration of the probability of the change raising objections distinct from those that might have arisen in relation to the original proposal. And that in turn may require consideration of whether (and why) the original proposals were controversial. So, for example, if a parish is permitted to replace a pipe organ with a digital organ, and subsequently wishes to amend the detailed specification of the stops, those who supported or objected to the petition on principle are not going to be troubled by*

*the revised specification. But if at least some of the objections were on the basis of the cost of the new organ, and the revised specification is likely to increase the cost yet further, there might be more cause for concern, perhaps leading to a request for a revised justification.*

26. In the succeeding paragraphs of his judgment, Chancellor Mynors proceeds to apply these principles to the four specific new elements of the reordering scheme. Since the screening-in and use of the vestry had not been explicitly authorised by the 2014 faculty, it would need to be the subject of a new petition. This would need to be notified to the local planning authority, Historic England and the Victorian Society, since the works in question would undoubtedly affect the character of the church as a building of special architectural or historic interest.

27. The principle of an all-timber floor, as one of two possible options, had been explicitly authorised by the 2015 faculty. The Chancellor was satisfied that the requirements as to consultation had been satisfied, and that the more detailed scheme now proposed was satisfactory. He was therefore content to approve the heating and the floor, to be carried out in accordance with the details that had been submitted.

28. The Chancellor had authorised the introduction of kitchen and WC facilities in the base of the tower. The new proposal was to introduce such facilities into the north transept, and also to insert a new mezzanine floor. The DAC were said to be of the view that this could be dealt with as an amendment to the previous faculty rather than as the subject of a new petition. However, in the light of the principles outlined earlier in his judgment, the Chancellor considered that what was now proposed was a sufficiently major departure from the previously approved works that it would need to be the subject of a new faculty petition, particularly in view of the contentious history of the matter, to be notified to the local planning authority, Historic England and the Victorian Society.

29. The 2015 faculty had authorised the carrying out of ‘*adjustments to the pews in the nave, to make them moveable, and the purchase of suitable trolleys*’. That had clearly envisaged the retention of all of them, albeit in a modified form. What was now proposed was the removal of a significant number – about 24 out of 36 – of the existing pews, and the retention of ten, adapted so as to be movable, with two fixed in place around the font. Whether or not anyone was objecting to this element of the presently proposed package, there was simply no faculty in place to authorise the removal of around two thirds of all the pews. Proposals to remove pews could be contentious; and this particular reordering has not been wholly devoid of controversy. And a previous petition (which related just to the loss of the pews) was the subject of some objection. So the Chancellor was not willing to short-cut the procedural requirements, which are designed to ensure that proposals are properly considered, and, in particular, that the recognised amenity bodies and the local planning authority are given a chance to comment fully. It followed that the proposal to remove all but twelve of the pews must be the subject of a further petition, which would have to be notified to Historic England, the Victorian Society, and the planning authority.

30. The second of the authorities is the decision of Chancellor Hill QC in *Re St John the Baptist, Cononley with Bradley* [2020] ECC Lee 1 (in the Diocese of Leeds). A faculty had been granted in 2016 to authorise extensive and ambitious reordering works in an unlisted church. The faculty had authorised (amongst other works) solid wood Rosehill chairs. The petitioners now wished, after the extended period for completion of the works had already elapsed, to introduce Alpha chairs with wooden backs and upholstered seats. The Chancellor refused to grant such a variation to the 2016 faculty, so as now to allow part-upholstered chairs; but he



indicated that he would be prepared to consider a further application for variation in respect of one of the alternative solid wood chairs suggested by the church's inspecting architect prior to the 2016 faculty.

31. Chancellor Hill QC was concerned by two aspects of the application. The first was that it was made so late. It was poor practice to implement certain works authorised by faculty and then apply to vary the faculty so as to change or exclude other elements. At paragraph 7, the Chancellor commented:

*A faculty is table d'hôte not à la carte. Permission is given for a suite of works to be implemented holistically not on a pick or mix basis.*

That said, the court had granted liberty to apply without limit of time, and in the circumstances it would be improper and ungenerous to reject the application on the ground of delay alone. More troubling however was the impecuniosity argument. “A prudent PCC should never embark upon a project when they lack the funds – either in hand or promised – to complete it.” It concerned the Chancellor that at this very late stage an application should be made to the court to vary a faculty because a parish could not afford to complete the works which had been authorised. It was unclear to him “whether there have been unexpected increases in the costs of the work or a shortfall in fundraising ... It was at best unwise, and at worst cavalier, to embark upon this re-ordering project knowing there was dubiety as to the sufficiency of the parish’s finances.”

32. Chancellor Hill QC went on to consider whether it would be appropriate to revisit the principle that the replacement chairs be wooden, rather than upholstered. The Chancellor noted that the project had been advanced on the parish’s behalf on the basis that wooden chairs would be introduced into the nave. The Victorian Society had given a very clear opinion that such chairs were required, and the correspondence suggested that the parish accepted that recommendation, thereby eliminating the Society’s opposition to the revised proposal with the wooden chairs. The project had been put to the DAC on the express basis that on the completion of the reordering, the nave would be populated by wooden chairs.

33. At paragraph 18, Chancellor Hill QC rejected the request for a variation of the faculty:

*The application comes too late. The works have largely been implemented. To allow this variation would be to break faith with the basis upon which the consultation took place, the manner in which it was put before the DAC and the way in which the petition was advanced in the Consistory Court. I am tolerably confident that had the original petition proceeded on the basis of upholstered chairs for the nave it would have failed in limine. Though unlisted, there is significant architectural merit in the building which would be compromised by the wholesale introduction of domestic-style upholstered chairs in the nave. It would be inappropriate, verging on an abuse of process, to allow such chairs now on an ex post facto basis, when the whole reordering scheme would not have been approved had upholstered chairs been proposed when the original petition was lodged. The limited availability of funds is regrettable, and the parish must do some soul searching to see how they got themselves into this position. But it seems there is adequate funding for wooden chairs in the nave, albeit the folding chairs for overflow seating in the narthex will have to wait.*

34. From the terms of FJR 20.3, and these two case law authorities, I derive the following propositions:

- (1) The consistory court may vary a faculty if it appears to the court "*just and expedient*" to do so. Expediency and justice are cumulative, and not alternative, requirements. Even if it is expedient to exercise the power to vary a faculty, it must also be just to do so.
- (2) The power to vary a faculty is to be exercised in accordance with the overriding objective of the FJR of "*enabling the court to deal with cases justly*". That involves considerations of equal treatment, expense, proportionality, expedition, and fairness. Although not expressly mentioned as a relevant consideration (and thus in contrast to rule 1.1 (2) (e) of the Civil Procedure Rules 1998, which refers to the need to allot resources to other cases), in my judgment it is also relevant to consider the effect of any application to vary an existing faculty on the resources of the Church Buildings team, and DAC members and officers; and its implications for other parishes and church projects within the diocese.
- (3) The power to vary a faculty may be exercised even though the variation would result in "*a substantial change in the works or proposals already authorised by faculty*". However, in such a case the court must consider whether to direct the giving of notice to the public, or to any other interested persons or bodies.
- (4) The court should not vary a faculty if this would be unjust to any of those who were involved in making representations in relation to the original petition, or who might now wish to do so in relation to the variation.
- (5) It may be appropriate to vary a faculty without further ado where the change is very minor, and particularly where it amounts to doing something that has been permitted, but in a different way. However, more caution should be exercised where the proposed variation relates to the substance of the works.
- (6) If the variation would involve something significantly different, that may well need to be the subject of an entirely fresh petition because it would not be just to prevent those who might wish to make representations from doing so.
- (7) Deciding whether a particular proposed change can be authorised by varying a faculty is bound to be a matter of fact and degree. But one test is likely to be a consideration of the probability of the change raising objections, distinct from those that might have arisen in relation to the original proposal. And that, in turn, may require consideration of whether (and why) the original proposals were controversial.
- (8) Particular care is needed where the proposed variation would undoubtedly affect the character of the church as a building of special architectural or historic interest.
- (9) Particular care will also be required where the variation would involve a sufficiently major departure from the previously approved works that it would need to be the subject of a new faculty petition, particularly where the original or earlier proposals have proved contentious. The court should be reluctant to short-cut the procedural requirements which are designed to ensure that proposals are properly considered, and, in particular, that the recognised amenity bodies and the local planning authority are given a chance to comment fully.
- (10) The court should be reluctant to allow a variation that would break faith with the basis upon which the original consultations have taken place, the manner in which the original proposals were put before the DAC, and the way in which the original petition was advanced in the consistory court. It would be inappropriate, verging on an abuse of process, to allow a

variation which would not have been approved had it been proposed as part of the original petition.

(11) It is poor practice to implement certain of the works authorised by a faculty and then to apply to vary the faculty so as to change or exclude other elements. In the graphic words of Chancellor Hill QC: “*A faculty is table d’hôte not à la carte. Permission is given for a suite of works to be implemented holistically not on a pick or mix basis.*”

(12) An application to vary a faculty founded upon funding difficulties or concerns requires particular scrutiny from the court. Parishes should not embark upon proposals where there are doubts about their ability to fund them; and the court will therefore wish to scrutinise whether there have been unexpected increases in the costs of the work, or any shortfall in projected fundraising, and how this has come about.

I would also add the following further proposition:

(13) Particular care is required where the Diocesan Advisory Committee do not recommend the variation for approval by the court. The DAC is a specialist advisory body on matters affecting places of worship within the diocese, charged with giving advice on matters relating to the grant of faculties. It is for the Chancellor to make the ultimate decision on any variation application. But the Chancellor will be conscious of the expertise, both individual and as a collective body, possessed by the members of the DAC. In deciding whether to vary a faculty, Chancellors should bear in mind, in particular, that their judgement in matters of aesthetics is neither a trained, nor a professional one, whereas the members of the DAC do possess training, expertise, and experience in such matters.

*(ii) Chandelier heaters*

35. The installation of chandelier heaters has been considered in two recent cases. The first, in point of time, is the case of *Re St Andrew, Bulmer* [2023] ECC Chd 3 (in the Diocese of Chelmsford). Although parts of the church might date back to the 12<sup>th</sup> century, the majority of the building was 14<sup>th</sup> and 15<sup>th</sup> century; there was also a significant 19<sup>th</sup> century restoration. Chancellor Philippa Hopkins KC had directed that a faculty should issue so as to permit the removal of the pews in the nave and the north aisle of a fine Grade I listed village church, and their replacement with Theo chairs. The church had hitherto been heated by under-pew heaters. Obviously, if the pews were to be removed, a replacement heating system needed to be found. The Chancellor addressed this aspect of the faculty petition at paragraphs 26 and following of her judgment. Chandelier heaters had been recommended by the DAC Heating Adviser as a possible solution to the church’s heating needs following a site visit. The petitioners sought the court’s approval for the installation of four 3kw chandelier heaters in the nave and two in the south aisle to replace the existing heating arrangements. They were to be in what was described as a ‘*mediaeval style*’, designed and manufactured by Electric Heating Solutions. Each chandelier was to have three 1.0kW infra-red radiant heaters and three up-lighters with LED candle type lamps. Neither English Heritage nor the Victorian Society had raised any objection to this aspect of the proposals. But the Society for the Preservation of Ancient Buildings had done so, citing “*the unsightly nature of the model selected*”. SPAB suggested the Herschel ‘Halo’ chandelier heater as one example of a “*much less visually obtrusive*” model which did not glow red when in operation. Whilst appreciating that these were more expensive than the model favoured by the parish, SPAB did not think that cost should be the only relevant consideration:

*“Those who built our churches, and have cared for them for many centuries, had a keen awareness of the fact that there is a devotional power attached to beauty ... The chandeliers are likely to be in place for many decades, and [SPAB] would very much hope that whatever is introduced could add to, rather than detract from, the worship experience”.*

36. The Chancellor summarised the points made by SPAB, and the petitioners’ response to them, at paragraphs 29-45 of her judgment. In the DAC’s view, the design of the proposed chandeliers was acceptable. The Diocesan Heating Adviser was not aware of any evidence of damage from Infrared heating to churches of masonry construction, as distinct from fabrics or other vulnerable surfaces. The Chancellor concluded that the petitioners should be permitted to instal the chandeliers for which they sought permission. Although the proposed heating would result in harm to the significance of the church as a building of special architectural or historic interest, such harm would only be limited because:

(1) In the light of the exchanges between SPAB and the petitioners, as well as the advice of the DAC’s Heating Adviser, the Chancellor was not satisfied that there was a serious risk that the proposed chandeliers would cause any **damage** to the church building. Had that been the case, her conclusion would necessarily have been different.

(2) The chandeliers would, however, necessarily have some aesthetic impact upon the church of a negative kind.

Set against that, however, was the justification for the proposed chandeliers. They would meet the parish’s need, which was for warmth. They were relatively low-cost. The DAC considered, with justification, that they were aesthetically acceptable. And they were energy efficient – so facilitating the church’s move towards net zero. That was an important consideration. The Chancellor therefore directed that a faculty should issue in relation to the proposed chandeliers.

37. The second case is the decision of Chancellor Gau in *Re St Bartholomew, Orford* [2024] ECC SEI 1 (in the Diocese of St Edmundsbury and Ipswich). The petitioners sought a confirmatory faculty to regularize the unlawful installation of six combination light and heating chandeliers to replace the previous chandeliers and oil-fired heating system. The DAC had approved the design of the chandeliers and issued a positive NoA; and Historic England had no objections to their installation. They had advised that although the proposed chandeliers would be larger and bulkier than those which then existed, there would be no harm caused to the significance of the building from their installation. The new chandeliers had been installed in this Grade I listed church after the proposals had been recommended for approval by the DAC, but before the petition had been referred to the Chancellor. There was one party opponent, a distinguished architect and expert in heritage, who was resident in the parish and a member of the congregation. The Chancellor considered that the new chandeliers were uncompromisingly modern, and were in stark contrast to the remaining original chandeliers, which had a lightness and delicacy that their modern replacements did not. However, they were efficient, flexible, and cheap to run. They were also easy to use and could be deployed in targeted areas of the church. There was clear evidence that they were helping the mission of the church, and were also helping community and other projects. The Chancellor was, however, concerned that the new wiring was “deplorable”. The replacement lights had caused some harm to the significance of the church. The original lights, although not mentioned by *Pevsner*, or forming part of the listing particulars, were attractive and sympathetic to the interior. The replacements, by contrast, were not. However, the harm caused by their removal was small. The visual and physical harm caused by the wiring of

the new lights was serious, but it was easily remediable. The Chancellor granted a faculty, subject to conditions that steps should be taken to mitigate the damage caused by the wiring; and that the original lights (currently in storage) were to be photographed, and a full description of where each was originally hung was to be made, and the photographs and descriptions were to be archived. The original chandeliers should then be sold or auctioned.

38. As I read his judgment, Chancellor Gau was not being asked to evaluate and assess the relative merits of different types of chandelier because the new chandeliers had already been selected and installed in the church building. In the earlier case, before Chancellor Hopkins KC, the parish's choice of the particular type of chandelier had been endorsed both by the DAC and their Heating Adviser.

#### *Analysis and conclusions*

39. I have formed the clear view that it would be neither just nor expedient to vary the existing faculty to substitute Couronne chandelier heaters for the Halo chandelier heaters presently authorised. Had I formed the view that it was expedient to do so, I would nevertheless have refused to vary the faculty because I would have considered it to be unjust to do so.

40. I deal first with the principal reasons advanced by the PCC for the variation. These all relate principally to the issue of expediency. The PCC claim that of the twelve reasons advanced by the DAC for not recommending the installation of the Couronne chandeliers, eleven are no longer valid; that the remaining one is not worth £40,000; and that there is sufficient money to pay for the Couronne, but not for the Halo, chandeliers. Assuming, without deciding, that the PCC are correct in their dismissal of the other eleven reasons, that nevertheless leaves a major reason remaining: the perceived damage to the significance of a Grade I listed church building, in circumstances where the parish's need for appropriate heating can be appropriately addressed by an alternative solution (Halo chandeliers) which will cause less harm to that significance. The PCC acknowledge that the DAC (and the SPAB, the Victorian Society, Historic England and the Church Building Council) all object to the look of, and disapprove of the glow given off by, the Couronne heaters. However, they take four points in response (as set out at paragraph 12 above). Dealing with each of these in turn:

(1) I disagree with the PCC's assessment of moderate to low significance ascribed to the nave and aisles. On all the evidence, I am satisfied that these are of high significance; and that such significance would be damaged by the installation of Couronne chandeliers, both because of their design, and because of the red glow that they emit when in use. Such damage would be mitigated by the installation of Halo chandeliers pursuant to, and in accordance, with the existing faculty.

(2) On a matter of aesthetics, the views of worshippers at, and visitors to, churches in which Couronne chandeliers have already been installed carry far less weight than the expert opinions of DAC members, and the amenity bodies and other statutory consultees.

(3) The principle of whether heating and lighting should be hung within the arches of the nave arcade is not in issue. The issue is what form of chandelier should be installed there.

(4) The PCC are to be applauded for their responsible stewardship of money destined for the church. However, their belief that spending an additional £40,000 to have no glow, and to have a chandelier that is possibly better looking, is not a responsible way of spending the money entrusted to them cannot make it expedient to authorise a variation to an existing faculty where

this would cause harm to the significance of a Grade I listed church building. Whilst I acknowledge that their exhortations failed to commend themselves to the Chancellor in *Re St Andrew, Bulmer*, albeit in very different circumstances (where the parish's choice of Couronne chandeliers had been endorsed both by the DAC and their Heating Adviser), I agree with the submissions of SPAB that cost should not be the only relevant consideration. Those who built our churches, and have cared for them for many centuries, had a keen awareness of the fact that there is a devotional power attached to beauty. These chandeliers are likely to be in place for many years; and whatever is introduced should add to, rather than detract from, the worship of the church, and the community and visitor experience. Further, the parish have provided no evidence to support their mere assertion that "*there is sufficient money to pay for the Couronne, but not for the Halo*", and that they do not have the extra £40,000. I note that section C of the original petition stated that the heating sub-committee of the Fabric Committee had estimated the cost of the proposed works at £120,000 of which £20,000 was then available to the PCC, with the balance of £100,000 being sought by way of grants and fund-raising. On that basis, I cannot see that there has been any material change in the financial circumstances attending the installation of the Halo chandeliers.

41. But even if it were expedient to vary the faculty, I am entirely satisfied that it would be manifestly unjust to do so. My reasons are as follows:

(1) The variation sought relates to the substance of the works already permitted by faculty, and would involve something significantly different to the Far Infrared Halo chandeliers that were the subject of the original petition. Any proposal to replace the Halo chandeliers already authorised with Near Infrared Couronne chandeliers should be the subject of an entirely new petition because it would be unjust to deny those who might wish to make representations against this course the opportunity of doing so. Merely to direct notice to be given of the variation application would run the risk of seriously downplaying the substantial nature of the significant changes involved.

(2) The proposed variation would undoubtedly affect the character of the church as a Grade I listed building of special architectural or historic interest.

(3) The proposed variation would involve such a sufficiently major departure from the previously approved works that it should properly be the subject of a new faculty petition, particularly since earlier proposals have proved contentious. The court should be reluctant to short-cut the procedural requirements which are designed to ensure that proposals are properly considered; and, in particular, that the recognised amenity bodies and other statutory consultees are given a chance to comment fully upon them.

(4) The court should be particularly reluctant to allow this variation because it would break faith with the basis upon which the original consultations proceeded, the manner in which the original proposals were considered by the DAC, and the way in which the original petition was advanced in the consistory court. It would be inappropriate, verging on an abuse of process, to allow this variation, which would have been the subject of a '*Not Recommend*' NoA had it been included within the original petition.

(5) This application to vary the faculty is largely founded upon unsubstantiated funding difficulties and concerns. The PCC should not have embarked upon the original proposals if there were any doubts about their ability to fund them. The court has not been provided with

satisfactory evidence that there have been unexpected increases in the cost of the works, or any shortfall in projected fundraising, or as to how this has come about.

(6) The DAC do not recommend this variation for approval by the court. The DAC are a specialist advisory body on matters affecting places of worship within the diocese, charged with giving advice on matters relating to the grant of faculties. Whilst it is for me to make the ultimate decision on any variation application, I recognise the expertise, both individual, and as a collective body, possessed by members of the DAC. I bear in mind, in particular, that my judgement in matters of aesthetics is neither a trained, nor a professional one, whereas the members of the DAC do possess training, expertise, and experience in such matters.

(7) Dealing with heating proposals for a church of this importance and significance inevitably places considerable demands upon the willing, but limited, specialist resources of the Church Buildings team and DAC members and officers. This clearly has implications for other parishes and church projects within the diocese. The work involved in considering, and bringing to fruition, one form of heating proposal may be wasted, or need to be repeated, if, having gone through the sometimes arduous process of obtaining a faculty, a parish then changes its mind, and seeks approval for a different form of heating. To permit this variation might encourage other parishes to apply for faculty approval for one type of heating, only to revert, by way of application for a variation, to an alternative form of heating that the DAC does not consider appropriate. That is not something which the court should sanction, or be seen to condone. It is unfair both to those directly involved in the faculty process, and to other parishes in the diocese who seek the assistance of the Church Buildings team and the DAC.

42. For these reasons, I dismiss the application to vary the existing faculty. However, I note that the time for carrying out the works authorised by the original faculty has now expired. If invited to do so, I would be prepared to extend the time for implementing that faculty by three months from the date of this judgment, to reflect the length of time that has elapsed since this matter was first referred to me on 24 May 2024.

43. In the usual way I charge no fee for this written judgment. However, I lay down a marker for the future that those who pursue unmeritorious applications for the variation of a faculty may expect to have to pay the Chancellor's statutory fees for dealing with such applications.

*David R. Hodge*

The Worshipful Chancellor Hodge KC

The Tenth Sunday after Trinity

4 August 2024

St Mary, Adderbury





Toshiba 'Couronnes' in St James's Church, Girton, Cambridge



Herschel 'Halos' in St Matthew's Church, Bristol

