

In the Consistory Court of the Diocese of Chichester  
In the matter of All Saints, Buncton

Between:

(1) JAMES VAN SOMEREN PEILL  
(2) RICHARD HARRY GORING  
(3) REVD JAMES ALEXANDER DI CASTIGLIONE

Petitioners

and

ROBIN NUGENT

Additional Party

## Judgment

1. This is a petition for a confirmatory faculty in respect of works carried out at All Saints, Buncton in March to April of 2017 for which no prior authorisation had been obtained. The petitioners are the rector and churchwardens of the parish of Wiston with Buncton. All Saints dates from the late eleventh or early twelfth century and comprises an unrestored Norman nave and chancel. It is a grade I listed building. It lies in a remote rural location, accessible by foot via a path which negotiates a wooded valley, crosses a small brook and rises again to the church which is prominently sited on the top of an escarpment.
2. In a covering letter submitted with the petition on 20 December 2017, the first petitioner stated, ‘we were advised by our church architect (Robin Nugent) that no permission was needed’. I gave directions on 8 January 2018 in which Mr Nugent was joined as a party to the proceedings. I timetabled the filing of evidence by the parties; directed that enquires be made of Mr Andrew Slater, a decorator who carried out the work; requested that advice be sought from the Diocesan Advisory Committee (DAC), and that the following bodies be consulted or specially cited: the Church Buildings Council (CBC), Historic England, and the Society for the Protection of Ancient Buildings (SPAB). I did not require public notice having regard to the nature of the proposal and its confirmatory nature.
3. The matter came on for hearing on 20 March 2018. The petitioners were represented by Mr David Willink of counsel, and Mr Nugent appeared in person. The Court heard from the three petitioners and Mr Nugent; from Mr Slater, from Dr Emma Arbuthnot, in her capacity as secretary to the DAC, and from Mrs Janet Berry, head of conservation at the CBC. Due to lateness of the hour when the evidence was concluded, and with the concurrence of the parties, I directed that closing submissions be lodged within seven days. I am grateful to Mr Willink and Mr Nugent for the focussed clarity of their representations, and to all of the witnesses for assisting the Court by giving oral evidence to supplement their written statements.

References hereafter in square brackets are to pages in the paginated hearing bundle which was prepared by the registry from documents submitted by the parties.

4. The principal issues for investigation by the Court were how it came about that the unlawful works were undertaken, as to which the petitioners' case and that of Mr Nugent were markedly different; and whether the materials used were suitable for the interior of this grade 1 listed church, known to contain medieval wall paintings. On the second matter, the Court had the benefit of expert opinion from the CBC.

### **Background**

5. A full understanding of the contested events of 2017 requires knowledge of an earlier redecoration of the church, also unauthorised, which took place in 2013. Much of the hearing was taken up with an examination of these earlier events, largely in the evidence of Mr Nugent and his cross-examination of witnesses. Whilst this provides part of the unhappy background to the current petition, it is largely uncontroversial and can be summarised relatively shortly.
6. In or about 2007 Hirst Conservation were brought in by Mr Nugent to advise on a proposal to redecorate the interior of the church, mindful of the presence of wall paintings, some of which may have been previously painted over. An application to the DAC for formal advice was made by Mr Nugent, on behalf of the parish, on 24 June 2008 [113/357].
7. There followed prolonged exchanges with the DAC during which concerns were raised by Professor David Park of the Courtauld Institute, who at the time was wall paintings adviser to the DAC, and by Mr Richard Andrews, an architect member of the DAC assigned to take the lead on this application. The DAC considered Hirst Conservation's letter [363-366] unsatisfactory, and was unimpressed by a Diagnostic Environmental Monitoring Report [337-350]. See the secretary's letter of 17 July 2008 [354-355].
8. A further request for formal advice [287-299] was submitted to the DAC under cover of a letter from Mr Nugent dated 23 June 2010 [285]. Noting that further assessment and investigation was required in relation to conserving the wall finishes, this application was limited to a proposal 'to gently re-decorate in the interim'.
9. Similar reservations were again expressed by Professor Park [280] and Mr Andrews [282], the latter regarding the proposal as premature since proper environmental monitoring had yet to take place and the effects of the damp atmosphere on the wall paintings ought to be assessed before taking the matter further. These concerns were communicated to Mr Nugent on 31 August 2010 [279].
10. A revised proposal to 'freshen the interior' was submitted by Mr Nugent to the DAC on 29 March 2011 [278]. Whilst even this revised proposal was met with caveats from Professor Park and Mr Andrews [270-277], on 20 April 2011 the DAC issued a certificate [268-269] recommending the following works: 'apply a single coat of lime wash to the interior of the church'. The certificate contained stringent provisos

including one that the whole of the work must be carried out by Hirst Conservation under the supervision of Liz Hirst. The fifth and final proviso read:

The DAC noted, in spite of past recommendations, that there was no long-term monitoring of the wall painting environment and it would be unlikely to recommend future and further decoration until such time as that monitoring had been put into effect.

11. On 6 June 2011 [392], Mr Nugent's office chased the DAC for its certificate, and there were further exchanges including a lengthy letter from Hirst Conservation to Mr Nugent (and forwarded to the DAC) dated 12 July 2011 [376-380]. On 19 August 2011 [372], the then DAC secretary wrote to the then registrar referring to the DAC's earlier certificate and indicating that information had been submitted regarding the materials which satisfied the DAC in relation to that particular proviso. The letter concluded:

I attach the additional information herewith and trust that this is sufficient for the chancellor to reach a decision. However, if you have any further queries, please do not hesitate to contact me.

A copy of this letter was emailed by the DAC secretary to Mr Nugent on the day it was written [116]. Her email included the following:

I have assumed that the public notice period has been undertaken and that the rest of the paperwork has now been lodged with the registry. However, if the application has not yet been sent, the parish should do so as soon as possible.

12. Regrettably, that is where this particular matter ends. For reasons which remain unexplained, no petition was ever submitted, this controversial matter was never put before the court for consideration, and no faculty was ever granted.
13. Notwithstanding the absence of a faculty, it would appear that the redecoration was proceeded with in the spring of 2013. It was undertaken not by Hirst Conservation under the supervision of Liz Hirst but by Mr Andrew Slater of Personality Interior and Exterior Decorations. Mr Nugent suggests [104] that this was agreeable to the DAC notwithstanding the proviso on its certificate, and refers to the proviso being met by representations made by Mrs Hirst.
14. There is no petition before the Court for a confirmatory faculty in respect of the 2013 redecoration. It was unauthorised and unlawful. However, Mr Nugent's evidence is that he honestly believed a faculty had been granted. At one stage in the proceedings he seemed to suggest that he had seen a copy of the faculty and signed a certificate of practical completion. But he can have done neither.
15. In his witness statement [100], Mr Nugent says this:

In the context of the application for Formal Advice of the DAC submitted by us on 23 June 2010 to [the DAC secretary] in pursuance of the PCC petition for a Faculty, [the secretary's letter on 19 August 2011] indicated the DAC was contented and the petition for a Faculty was under the Chancellor's consideration. The redecoration commenced 19 months later and after notification by the PCC that it had after enquiry of Church House been advised

that the work had consent to proceed, We have never had reason in 36 years' in the diocese to doubt the advice of Church House.

16. Mr Nugent did not adduce any evidence as to who it was at Church House that might have given such assurance. He ought to have been put on notice that something was amiss as the reference was to Church House, and not (as it should have been) to the diocesan registry which issues faculties at the direction of the chancellor. It also seems remarkably ill-advised for an inspecting architect to proceed without sight of the faculty. Amongst other things, he would have wanted to know whether it was time expired (many faculties require work to be completed within 12 months) and whether any conditions had been imposed. The practice in Chichester diocese, then and now, is for faculties to include a condition requiring works to be supervised by the parish's inspecting architect, thereby making such architect directly answerable to the Court for his or her actions. Paragraph 1.5 of the *Chancellor's General Directions Concerning Churches and Churchyards* (Issue 4, January 2016) repeats what was in previous iterations regarding the duties of parochial clergy and churchwardens and continues at paragraph 1.5:

Equally, it is expected of inspecting architects and others who hold themselves out to work on ecclesiastical projects that they should not participate in works to churches in the absence of a faculty.

17. Mr Nugent says he took it on trust that a faculty had been issued, and that it would have been impertinent or offensive for him to ask the churchwarden for a copy. He seemed unaware that many faculties now include on their face the following:

A copy of this faculty is to be supplied by you [the petitioners] to the architect or surveyor and contractors to be employed in respect of the authorised work before any work is commenced.

Whilst such a term did not routinely appear on faculties in 2011-2013, I still consider that a reasonable inspecting architect would have requested a copy of the faculty before commencing work and I regard it as a misjudgement on Mr Nugent's part not to ask for one. However, the Court is not required to conduct a forensic exercise in relation to these background matters. I proceed on the basis that Mr Nugent genuinely believed that a faculty had been granted in respect of the 2013 works and that such belief was also shared by the rector and churchwardens at the time of the disputed events of 2017 to which I now turn.

### **The disputed matters**

18. The evidential conflict which the Court is required to resolve falls within a narrow compass. At its core lies a difference of recollection between the petitioners on the one hand, and Mr Nugent on the other as to what was discussed and agreed at a meeting which took place in the church on the morning of 26 January 2017. It is common ground that when the church was opened up after the winter closure, it was found to be damp and the walls of the chancel were discoloured with algae. Mr Goring graphically spoke of his personal sense of embarrassment at finding the interior in such a state.

19. The meeting was attended by Mr Nugent together with Mr Peill and Mr Goring (the churchwardens) and Mr Toby Mason (the PCC treasurer). Neither Mr Nugent nor the petitioners adduced evidence from Mr Mason, but the Court heard from the other three gentlemen present. I shall briefly summarise their evidence.

*The petitioners' evidence*

20. Mr James Peill [128-131] was elected as churchwarden in April 2016. He said Mr Nugent was the church architect who dealt with faculties. In oral evidence he stated that this is what he had been told by his predecessor. Mr Peill first expressed concern to Mr Nugent about the state of the chancel walls on 2 August 2016. With the condition worsened over winter, the matter was discussed at a PCC meeting on 18 January 2017.
21. Mr Peill stated that at the January meeting Mr Nugent advised that the algae be treated and decoration work be carried out by Andrew Slater. His witness statement continued [130] that Mr Nugent 'told us that there was no need to get a Faculty as it was covered by the previous Faculty obtained for the nave'.
22. Mr Peill said that Mr Nugent emailed Andrew Slater on 1 February 2017 [137] copying himself, Mr Goring and Mr Mason, referring to the site the previous week. A meeting between Mr Nugent and Mr Slater took place at the church on 8 March 2017. On the following day, Mr Nugent emailed Mr Slater 'with instructions on what was needed to treat the walls of the chancel/sanctuary and redecorate' [142]. The email (into which those at the earlier site meeting were copied) read as follows:

Andrew –

Thank you for joining me yesterday afternoon, 8 March, at the chapel to view the visual deterioration of the interior in the chancel/sanctuary and discuss the removal of the green algae and black algae which is now appearing [on] the stone dressings of the Nave, in particular the old door opening on the South side.

This email is copied to Mr Goring and the others to facilitate transmission of your estimate to:

1. Algae: treat with an algacide.
2. Black algae of stonework: treat with an electric heat gun and not a blow torch to kill before it transmits further.
3. Walls: clean down, prepare and paint one possibly two coats of clay paint.

You understandably wish to remind all that the continuing cold environment is conducive to the promotion of the growth of the algae and as such the redecoration will not perform long term as has the redecoration of the nave walls and ceiling, until the walls are dry. We shall separately explore a solution to improve the ventilation, and the environmental conditions, when the Chapel is not used.

Thank you for confirming that the work will be completed in good time for Easter.

Regards

Robin

Robin Nugent RIBA IHBC AABC RIBASCA

23. Mr Slater then sent a quotation dated 10 March 2017 [144] under cover of an email of the same date [143], addressed to Mr Nugent and copied to Messrs Peill, Goring and Mason. On 14 March 2017, Mr Peill instructed Mr Slater to proceed on the terms agreed with Mr Nugent, 'remembering that Robin had verbally said that we

(the PCC) did not need to get a faculty as it was covered by the faculty obtained for the nave’.

24. Mr Peill (together with Mr Goring, Mr Mason, and Ms Anne Gordon-Johnson) were copied into an email of 14 March 2017 [145] from Mr Nugent to Mr Slater in the following terms, which made no reference to any need for consultation with the archdeacon:

Andrew –

I would suggest that the work proceed under the Faculty Anne obtained for the redecoration as a consequence of which we should view the trial algaecide treatment before proceeding with all. Please let me know when you want me at the Chapel.

Regards

Robin

Robin Nugent RIBA IHBC AABC RIBASCA

25. In furtherance of that agreement, Mr Slater duly emailed Mr Nugent (with Mr Peill and the others copied) on 27 March 2017 [147] stating:

I have today carried out the algaecide treatment at Buncton. I have also prepared a test panel with white clay paint so we can look at this when we meet up on Thursday 6th April prior to me getting the re-painting work done shortly thereafter.

26. Mr Nugent emailed Mr Peill and the others on 6 April 2017 [148] reporting back on the inspection that morning, including: ‘the sample redecoration had greatly improved the appearance of the Chancel’.
27. Mr Slater proceeded with the works on 8 April 2017 on which occasion, entirely by coincidence, the secretary to the DAC, Dr Emma Arbuthnot, happened to visit the church with a group from the Sussex Archaeological Society. As Dr Arbuthnot was relatively new in office, she checked what, if any, permissions had been granted in respect of the redecoration that she had observed being carried out. Her investigations complete, she emailed the rector with her concerns on 10 May 2017 [150]. Thus began a train of enquiry which led to the current petition for a confirmatory faculty.
28. At the hearing, Mr Nugent produced a letter dated 27 January 2017 which purported to attach a note [120] of the meeting the previous day. Mr Peill stated that he had not seen the letter before the hearing. He had checked through all his emails for the period in question and could find no trace of either the letter or the note having been emailed to him.
29. In cross-examination from Mr Nugent, Mr Peill accepted that everyone was proceeding on the basis that a faculty had been granted for the 2013 decoration. He did not check the faculty but took it on trust from Mr Nugent that the work to the chancel could proceed under the faculty previously granted in respect of the nave. His predecessor had informed him that Mr Nugent dealt with faculties on the parish’s behalf. Mr Peill explained that his reference to Mr Nugent giving an unsatisfactory reply to Dr Arbuthnot related to his failure to identify the particular

- paint used. He indicated that some parishioners were also carrying out spring cleaning on the day of Dr Arbuthnot's visit, but that Mr Slater was undoubtedly undertaking decoration.
30. In answer to questions from me, Mr Peill stated that had he been advised by Mr Nugent to consult the archdeacon he would immediately have done so. He had a good relationship with the Venerable Fiona Windsor, who was approachable and well-informed. He relied on Mr Nugent's professional expertise in relation to faculty matters and took what he said at face value. He said he was unaware that faculties were time-limited with a date by which authorised works were to be completed. He reiterated his apology for proceeding with works in the absence of a faculty, and for his delay in petitioning for a confirmatory faculty.
  31. Mr Harry Goring [42-43] stated that he had been churchwarden of the parish for thirty years and was alternate patron of the benefice, the other being the Bishop of Chichester. He described the 26 January 2017 meeting although not in the same level of detail as Mr Peill. He accepted that he should have checked the existence and content of earlier faculties and ought not to have proceeded on assumptions. He apologised to the Court unreservedly for his oversight and for the time taken before initiating the current proceedings to regularise the position. He said he knows the archdeacon well and had he been advised by Mr Nugent to consult her, he undoubtedly would have done. He had made a check of his files and could find no trace of Mr Nugent's letter of 27 January 2017 nor his note of the meeting on 26 January 2017.
  32. In cross-examination from Mr Nugent, Mr Goring accepted that he was under the impression that a faculty had been granted in the past for the 2013 works. He rejected entirely the suggestion that Mr Nugent's services had been dispensed with during the meeting on 26 January 2017. He said that Mr Nugent had given them a ticking off for the state of the church. His understanding was that Mr Nugent would manage the redecoration works from start to finish, bringing in Mr Slater to do the painting. Mr Nugent came over with great authority and his role was not anticipated to be limited merely to obtaining a quotation. Mr Goring did not consider that Mr Nugent was doing him, or his son, a personal favour. He expected that the church would be invoiced for Mr Nugent's work and believed that they were, although Mr Nugent put to him that no account was sent. Mr Goring's understanding was that the parish had engaged a qualified architect and they left him to get on with it.
  33. Mr Goring believed that it was the common mind of Mr Nugent and Mr Slater that clay paint should be used in preference to lime wash. It was included in the specification and Mr Goring expected that if Mr Nugent had any concerns he would have raised them but he did not.
  34. The Reverend James di Castiglione [85-89] has been rector of Ashington, Washington and Wiston-with-Buncton since September 2013. He offered an unconditional apology for his failure to check that a faculty was in place, and for not seeking a confirmatory faculty sooner. He deposed to the wonderful celebration of

Easter last year in a cleaned and redecorated church, only subsequently discovering that the requisite faculty had not been secured.

35. Mr di Castiglione was not present at the crucial meeting on 26 January 2017 and can offer no direct evidence on what was said. He reports what he was told by Mr Peill as to Mr Nugent's assurance that there was no need to get a faculty as the previous faculty obtained for the nave covered the proposed works. He did not check whether a faculty had previously been granted. He says he has learned from his mistake.
36. In cross examination from Mr Nugent, Mr di Castiglione said he relied on Mr Nugent because of his reputation and because he was on a diocesan approved list. He felt it would seem paranoid for him as rector personally to check everything he was told by a professional expert. Had he been told to check with the archdeacon, he could very easily have picked up the phone to her. It was Mr di Castiglione's understanding that Mr Nugent was instructed to carry forward the redecoration project in the chancel and to deal with Mr Slater on the parish's behalf. Mr Nugent was never sacked as inspecting architect nor was he told that his services were not required for the redecoration project. Mr Nugent's continuance as inspecting architect had been the subject of discussion at a PCC meeting on 21 June 2017 as the treasurer had raised concerns over fees [83]. But out of respect for Mr Nugent's long-standing relationship with the parish, the decision was to continue with him as inspecting architect.

*Mr Nugent's evidence*

37. The written evidence from Mr Nugent was somewhat dispersed and not in the form of a single continuous narrative witness statement. I make no criticism of him for that. Although he has represented himself without legal advice, at the hearing he was clearly in command of the bundle of documents, which he supplemented with some additional items. He conducted his case with clarity, confidence and competence, skilfully adopting such procedural guidance as I needed to give him, just as he had followed the Court's earlier directions. His written case was to be found in a letter of 17 January 2018 [99-101], a summary of matters relating to the 2013 works [102-104], and a separate summary of the 'Spring clean 2017' [105-109], all with statements of truth. His closing submissions dated 27 March 2017 and served in accordance with the Court's directions were in the form of a written summary which at times trespassed into giving fresh evidence. Again, I make no criticism of Mr Nugent in this regard, and Mr Willink has wisely taken no objection.
38. Mr Nugent has considerable experience as an ecclesiastical architect, spanning the better part of four decades, and including work in the dioceses of Chichester, Guildford, Oxford, Rochester and Winchester.
39. Notwithstanding the various iterations of his case in the documents identified above, the case he ended up advancing at the hearing was somewhat different and had not been foreshadowed either in his correspondence with Dr Arbuthnot or in his witness statements served pursuant to the Court's directions. It emerged in his opening submissions, and thereafter in his cross-examination of the petitioners, that his primary contention was either that he was sacked as inspecting architect at the



meeting on 26 January 2017, or that his services were expressly dispensed with in so far as they related to the project of redecoration in the chancel.

40. Mr Nugent repeatedly emphasised that neither an inspecting architect, nor any architect, has the status or capacity to grant consent to proceed with works: ‘that duty rests with a Local Planning Authority or Diocese’ [99]. With respect to Mr Nugent, the petitioners’ case was never put on the basis that he had personally granted the parish consent, but that he had represented to them that a faculty (or a further faculty) was not required.
41. Mr Nugent made reference to Appendix D of his Quinquennial Report of 2104 (which I take to be a standard recital) that reads:

Before any works are undertaken to the Church the PCC should consult the Archdeacon. The PCC should obtain the appropriate consent from the Diocese and the provision of a Faculty before any work is carried out, unless works are of a minor nature where the provisions of de minimis or a Dispensation from Faculty apply.

No works or historic fabric removals that vary from the consents already received must be undertaken without the *written consent* of the DAC and English Heritage. [114, emphasis in original]

42. Mr Nugent also referred to his notes of the meeting of 26 January 2017 [120] which he says were emailed to those present as indicated by the ‘distribution’ entry at the foot of the notes. At the hearing he produced a copy of a covering letter dated 27 January 2017 which he says was emailed to those present, although neither Mr Peill nor Mr Goring had any recollection of record of receiving either. The following items are particularly relevant:

- 1.2 **Proposed works:** re-treat with algacide and touch-up lime wash on S wall of the Chancel used for the 2013 redecoration. Brief to be sent to Andrew Slater requesting an estimate to be sent to PCC copies to RN. [Action by **RNA**]
- 1.4 **Consent:** PCC advised as the proposal was a repeat of the consented works no further permission may be required – told to consult the Archdeacon to check that the work could proceed under the Faculty or an extension to it to accommodate the short time to the Easter Service. [Action by **PCC**]

43. Mr Nugent said in his witness statement that the work proceeded in the belief (on his part) that, ‘the PCC had consulted the Archdeacon in accordance with our recommendation and the obligation set out in Appendix D’ [100]. He asserted that there were no wall paintings recorded in the chancel. In relation to the material used (namely clay paint), Mr Nugent’s witness statement further records [101]:

At no time did we or have we recommended the use of an alternative to lime wash. We were not consulted on the decorator’s recommendation.

We understood the instruction to proceed was given after consultation with the diocese in the same manner as all other recent and current projects across four dioceses.

44. Mr Nugent’s summary of events concerning the ‘Spring Clean 2017’ [105] states that the PCC requested assistance with the 2017 spring clean. He indicates that the brief

was received from the PCC at the meeting on 26 January 2017, that recommendations were given to the PCC with a reminder to consult the archdeacon, and that no further assistance was requested. His summary continues [105]:

The new churchwarden [presumably Mr Peill] explained that he was an archivist on the Goodwood Estate involved with its conservation and care [...] Mindful of the churchwarden's knowledge of work on heritage assets the meeting was conducted at a level of understanding not often experienced with lay members with no knowledge and experience, I recommended the PCC to use the materials used in 2013 as they were approved by the DAC and consented by the Diocese advising that further consent may not be required if they were to use the same approved materials but they must check with the Archdeacon that the work could proceed under the Faculty or any extension to it. I also recommended they invite the skilled experienced decorator, Andrew Slater, to return to undertake the cleaning and touch-up the lime wash with a further coat.

45. The summary refers to the notes of the meeting (to which I have already made reference). Mr Nugent referred to his letter of 27 January 2017 (above) addressed to Mr Peill at Goodwood which purported to attach those notes and included the following: 'No doubt you will consult the Archdeacon to check the work can proceed under the Faculty granted or extension of it'. In response to the denials of Mr Peill and Mr Goring concerning the receipt of the letter and its attachment, Mr Nugent seemed to suggest that his office had computer or IT difficulties at the time and the email(s) in question may have been sent by another (unspecified) business on his behalf. It may be of note (although Mr Nugent was not questioned about this at the hearing) that in his email of 1 February to Mr Slater [137] he apologises that it is sent belatedly 'due to the lack of normal communications'. Mr Nugent made reference to a message sent by Mr Peill on 1 February 2017 [121] summarising the meeting on 26 January 2017 and pointed out that it does not allocate any task to Mr Nugent. However his own note of the meeting [120] refers to action by 'RNA' (presumably Robin Nugent Architects).
46. Mr Nugent said that he agreed to meet Mr Slater as a favour to Mr Goring or his son, and had no part in the selection of clay paint in preference to lime wash. That, he said, was an arrangement arrived at between Mr Slater and the churchwardens. He was adamant that it was not him but the PCC who instructed Mr Slater. In his closing submissions, this was refined further with Mr Nugent now suggesting that he 'acted as a friend on behalf of Mr Slater'. This further development of Mr Nugent's case does not find support in Mr Slater's evidence, summarised below.
47. Mr Nugent's oral evidence was wide-ranging. I asked a number of questions for clarification, and Mr Willink cross-examined Mr Nugent extensively. Mr Nugent stated that a fleur de lys on the north wall of the nave was the only wall painting surviving of which he was aware, there being no evidence of wall paintings in the chancel. He pointed to an extract from a survey [368]. He accepted that he corresponded with the DAC on the parish's behalf, for example, sending an application for formal advice on 24 June 2008 [113], and spoke as acting 'as their agent'.

48. Mr Nugent's evidence was inconsistent as to the date on which he first met Mr Slater at the church, but his closing submissions indicated that he struggled without his spectacles to read the extraordinarily small print in which certain emails had been copied. As to the meeting on 6 April 2017 when Mr Nugent examined a test area prepared by Mr Slater, Mr Nugent said that he thought he was looking at a patch of lime wash. He said repeatedly that he was instructed to step back from the redecoration project and did not involve himself in it save as a personal favour to assist Mr Goring or his son, or, according to his closing submissions, on behalf of Mr Slater.

*Judge's witnesses*

49. The Court's directions [35-36] requested Mr Andrew Slater of Personality Decorations to supply certain information. He did so in a letter dated 18 January 2018 [162-163]. He has traded as a painter and decorator for twenty years but has no particular expertise in the conservation of heritage buildings. He describes meetings with Mr Nugent at the church on 8 March 2017 and 6 April 2017. Mr Slater suggested using clay paint as an alternative to lime wash, the thinking being that this might result in a better decorative finish given the poor environmental conditions. He says he did not take specific steps to ascertain that permission had been sought or obtained for the works. He stated that the acceptance by the churchwarden of the quote without alteration by email dated 14 March 2017 led him to believe that all necessary permissions were in place.
50. In answer to questions from Mr Willink, Mr Slater said that he took Mr Nugent's email of 9 March 2017 [142] as confirming the instruction to use clay paint as discussed at their meeting the previous day. He adopted that in his quotation of 10 March 2017 [144]. He painted a test area in the chancel, some 3 feet square, which he showed to Mr Nugent at a meeting on 8 April 2017.
51. In answer to questions from me, Mr Slater said that Mr Nugent asked him to come to the church and all his dealings were with Mr Nugent, not the PCC. He said that he and Mr Nugent both agreed that clay paint was to be used. Certainly Mr Nugent did not argue against it.
52. Mr Slater was extremely contrite at having carried out unauthorised works in 2013 and 2017. He informed me that as a consequence of this experience, he has ceased all work on heritage buildings. I pause to observe that Mr Slater would be well advised to delete from his *Linked In* profile the reference to his contract at All Saints Buncton, claimed to be in 2011.
53. Dr Arbuthnot is the secretary to the DAC for the Diocese of Chichester, as well as mission and pastoral secretary. At the direction of the Court she provided a witness statement [37-40] recording her visit to the church on 8 April 2017 with a group from the Sussex Archaeological Society. She discovered Mr Slater in the process of painting the chancel arch. She enquired of him what he was doing, and he explained he was using a clay paint product.

54. Dr Arbuthnot was surprised at this because she did not recall seeing either a faculty or a List B approval for such works. As she had only been in post for nine months, she wondered whether the relevant permission might have pre-dated her arrival. Finding nothing on file, she duly emailed the rector on 10 May 2017 [9]. Mr Nugent replied the same day indicating that work was being done to get the church ready for Easter ‘using the same techniques as employed in the redecoration as approved’ (presumably referring to the 2013 works). Mindful that the only thing on file was a DAC notification of advice from 2011 and not a faculty, Dr Arbuthnot sought clarification by email of 11 May 2017 [6-7]. Mr Nugent replied on 15 May 2017 [6] including the following: ‘May I reassure that the PCC was undertaking a spring clean and not conducting a redecoration’, something Dr Arbuthnot immediately disputed [5] as it was patently obvious to her that the chancel was being painted, not spring cleaned. Dr Arbuthnot continued to press for information concerning the materials that had been used, and by email of 13 June 2017 advised Mr Peill (with the rector and others copied) to petition for a confirmatory faculty ‘as soon as possible’ [3].
55. In response to questions from me, Dr Arbuthnot said that it is far from unusual for architects to act as agents for parishes in seeking formal advice and in petitioning for a faculty. The DAC is very happy to deal directly with architects in such circumstances.

*My findings*

56. There is a stark conflict between the evidence of the petitioners and that of Mr Nugent. I have sought to find some way of treating this dissonance as a genuine misunderstanding, but the difference of recollection on key matters is sharp and irreconcilable.
57. I found Mr Peill and Mr Goring to be eminently truthful witnesses, as I did Mr di Castiglione, although he was not in a position to provide direct evidence on the kernel of the dispute. They candidly owned up to multiple failings in their custodianship of the church and in their understanding of and engagement with the faculty jurisdiction. They failed to check what, if any, faculty had been issued in respect of the 2013 works. They did not seek a faculty for the work which is the subject of these proceedings. And they delayed for several months before petitioning for a confirmatory faculty.
58. Their case, however, is that they were advised by Mr Nugent that the redecoration of the chancel did not require authorisation and they relied on his advice. While, of course, they should still have checked for themselves, I can see no reason why they should conspire together to make this up, particularly when they have readily confessed to a myriad of other shortcomings.
59. I did not find Mr Nugent to be an impressive or a credible witness. I make full allowance for the fact that he acted in person and did not have legal representation. He is evidently an intelligent and self-confident individual, but his answers were long, rambling and repetitious. He consistently avoided giving a direct answer to even the most straightforward questions. His evidence was internally inconsistent and did not

sit well with the contemporaneous documentation, nor with the testimony of Mr Slater, who is wholly independent of the parties.

60. But there was a more fundamental difficulty. At its heart, Mr Nugent's evidence was inherently implausible. I reject entirely the contention that he was sacked during the course of the meeting on 26 January 2017, or (in the alternative) that he was told he was not to involve himself in the redecoration works which were to be undertaken. His own notes of the meeting [120] set out the proposed works at item 1.2 with action to be taken by RNA (Robin Nugent Architects). Mr Slater understood Mr Nugent to be acting on the PCC's behalf, and the contemporaneous correspondence, (much of it generated by Mr Nugent himself) can only be consistent with Mr Nugent managing the project and being heavily involved with it as prime mover. He sanctioned the choice of clay paint, or at least did not demur when Mr Slater suggested it, and attended on site to approve a test area which Mr Slater had painted. His assertion, on oath, that he believed he was looking at a sample of freshly applied lime wash struck me as pure fantasy. Mr Nugent's email of 9 March 2017 [142] which was to form the basis for Mr Slater's quotation expressly referred to 'one possibly two coats of clay paint'. And Mr Slater's email to Mr Nugent of 27 March 2017 is unambiguous: 'I have also prepared a test panel with white clay paint so we can look at this when we meet up' (emphasis added).
61. The totality of the evidence is not consistent, in tone or content, with Mr Nugent just doing a favour to Mr Goring or his son, or (in the alternative) with him acting on behalf of Mr Slater. What is more, if Mr Nugent genuinely believed that he was not involved in the works, it is most surprising that he did not say this in answer to Dr Arbuthnot's enquiries.
62. I therefore find that Mr Nugent agreed the use of clay paint in the manner described by Mr Slater. I unhesitatingly reject the assertion that Mr Nugent thought he was examining a test area of lime wash on 8 April 2017: he must have known it was clay paint.
63. I further find that Mr Nugent did inform Mr Peill and Mr Goring that no faculty was required. Mr Willink invited me to find that the letter dated 27 January 2017 had been generated by Mr Nugent for the purposes of this litigation. This is tantamount to an allegation of fraud and whilst the letter's provenance may be questionable and unorthodox, I cannot conclude that it was fabricated. Evidently there may have been IT difficulties at the time such that Mr Nugent did not have the benefit of 'normal communications'. I am satisfied on the balance of probabilities that the letter was not received by any of the stated recipients and it is unlikely that it was in fact sent.
64. There are two further features of this case which reinforce me in my findings. First, I am in no doubt that had Mr Peill, Mr Goring, or Mr di Castiglione been informed that they should contact the archdeacon to confirm authorisation they would have done so. They each had a good relationship with the archdeacon and the fact that none of the three of them made contact with her strongly suggests that the advice which Mr Nugent alleges he gave was not in fact given.

65. Secondly, it was readily apparent during the hearing that Mr Nugent is a powerful individual and that the rector and churchwardens deferred to him. I lost count of the number of times Mr Nugent took the opportunity of reminding the Court that he had many years' experience as an ecclesiastical architect and was on the approved list maintained by several dioceses. I find that Mr Nugent did advise Mr Peill and Mr Goring that a faculty or other authorisation was not required and that they and Mr di Castiglione accepted his advice as that of an expert and relied upon it. It was reasonable for them to do so, and Mr Nugent knew they relied on him, treating him (perhaps unwisely) as authoritative on all such matters. I reject as fanciful the suggestion that Mr Peill was himself in some way an expert by dint of his work as an archivist at Goodwood House; and I do not accept that Mr Nugent was less involved in the redecoration because of this.
66. In my assessment, whatever Mr Nugent's skills and experience as an architect, he has far less expertise in the operation of the faculty jurisdiction than he asserts, and I shall return to this matter later in this judgment. I have regretfully come to the conclusion that from the moment Dr Arbuthnot became aware that works had been carried out unlawfully, Mr Nugent pursued a course of calculated dishonesty which he persisted in up to and during the hearing. He falsely asserted that the activity in the church was spring cleaning when it was clearly redecoration. He falsely claimed that the works were using the same materials as those used in 2013 when he had himself expressly sanctioned clay paint as an alternative to lime wash and, in any event, was fully aware that clay paint had been used as a consequence of his inspection of a test panel. He falsely claimed that he had not been instructed in the 2017 redecoration, whereas all the contemporaneous documentation strongly suggests otherwise. Rather than admitting to a professional error of judgment, and seeking the indulgence of the Court, he ensnared himself in a complex blame game, making increasingly contradictory, and at times incredible, assertions.

#### **The suitability and quality of the unlawful works**

67. The focus of this judgment thus far has been procedural and an examination of the disputed evidence on how it came about that works were undertaken without a faculty being in place on which I have made findings of fact.
68. The guiding principle in determining a petition for a confirmatory faculty is to consider what the Court would have done had a faculty been sought prospectively. It is for that reason that in addition to seeking the views of the DAC, I also directed special notice be given to the CBC, the SPAB, and Historic England. There was no response from SPAB to the notice dated 10 January 2018, and Historic England wrote on 18 January 2018 [179] stating they did not wish to offer any comments.
69. The DAC provided the Court with a detailed minute from its meeting on 8 February 2017 which was inserted into a letter of 14 February 2017 [159]. It stated that had its advice been sought in advance, it would not have been able to recommend the proposal and would have sought a technical report from a qualified specialist. It also considered (as had the DAC back in 2008-2011) that long-term environmental monitoring was essential, and that resolving the damp issue was the first priority. The

DAC was concerned that the clay paint may have compromised the wall paintings, but as it currently lacks a specialist adviser on the subject, it deferred to the CBC.

70. The CBC took the view that because the proceedings had been listed for a hearing it wished the matter to be considered at full Council. The CBC undertook a site visit on 12 March 2018, and considered the case at a Council meeting on 14 March 2018 and its advice was communicated in a letter dated that day [393-396]. Mrs Janet Berry, head of conservation, was appointed to represent the CBC's views at the hearing. I am grateful to the CBC for expediting the matter, and to Mrs Berry for her attendance at the hearing.
71. The CBC noted the long-standing issue with damp and remarked that the works undertaken addressed the symptoms and not the cause. Had the CBC been consulted in advance its advice would have been to resolve the underlying issue of moisture ingress first. This chimes with what the DAC, particularly Professor Park and Mr Andrews, had been saying consistently between 2008 and 2011. Mrs Berry referred to correspondence of 24 August 2007 [363] from Hirst Conservation to Mr Nugent suggesting evidence of medieval wall paintings in the chancel, notably to the right of the east window, and in the vicinity of the western splay of the lancet window in the south wall [365].
72. In relation to the dampness, the CBC's letter highlights inadequacies in the guttering which has the consequence of rainwater overflowing onto the top of the walls, and splashing up soaking them at their base [394]. The defects identified by the CBC are longstanding, an example being given of one place where the chronic discharge of rainwater has carved holes in the masonry causing penetration into the core of the wall. This, the CBC speculates, is the likely source of the damp in the north-east corner of the nave. The floor, which was apparently re-laid recently, is so damp that pews and an old chest are beginning to rot where they stand directly on it. The CBC recommends that the material used in the new floor be checked as this may be contributing to the dampness. The authority for the relaying of the floor is not clear. The CBC recommends urgent works to the roof and guttering, together with enhanced ventilation, to address the saturation, noting that it will take several years for the church to dry out.
73. Microbiological growth has extended as far as the last visible fragment of the wall painting scheme. The internal paint generally is blistering and peeling off the wall, indicating moisture behind the surface. Water may also be entering through the failed and cracked mortar in which the roof tiles are bedded. Several of the long-standing defects noted by the CBC are not mentioned in the 2014 quinquennial report.
74. In respect of the unauthorised works undertaken in 2017, the CBC expresses concern about the use of an algacide on an area that has wall paintings underneath. The CBC's letter continues [395]:

A conservation approach of using the least intrusive method that is sufficiently effective, and checking of its effects on any historic substrate by a professionally qualified and experienced wall paintings conservator, would have been advised. There is not enough data available on

the long-term effects of clay paints on historic surfaces, Therefore the Council would advise the use of materials whose long-term effects on wall paintings are known.

Cracking paint was observed on the sill of the north window, being the result of moisture movement. The interaction of the clay paint on the underlying surfaces is not known.

It is therefore not possible to comment on its removal. Any consideration of its removal would have to be preceded by tests on the suitability of removal, undertaken by a professionally qualified and experienced wall paintings conservator.

75. In short, the CBC considers that, ‘the overarching conservation principles of addressing the building envelope before any internal interventions have not been followed’. Even the use of lime wash is inappropriate until the underlying problem of water ingress has been addressed. Whilst there might be some merit in a risk assessment concerning clay paint and its reversal, Mrs Berry indicated where funds are limited, they would be better deployed addressing the cause of the moisture ingress. The CBC’s letter pragmatically concludes: ‘making the building watertight is the priority’. Mrs Berry pointed to sources of funding such as the Wolfson Foundation Walls and Fabric Repair Grant in respect of urgent repair works to grade I and II\* buildings and assistance in funding investigative conservation reports, such as the Pilgrims Trust.

#### **The disposal of this petition**

76. Had the proposal with which the Court is now concerned been made prior to the works being carried out, it is most unlikely that the DAC would have recommended it. The fifth provision in its earlier certificate of 20 April 2011 [373] made clear the unlikelihood that it would recommend future and further redecoration. There would inevitably have been consultation with the CBC under either r 9.6 or 9.7 of the Faculty Jurisdiction Rules 2015. It can safely be assumed that the use of algaecide and clay paint would not have been recommended and that robust advice would have been given concerning the necessity of addressing first the various defects with the fabric which had led to the interior becoming saturated. The Court would inevitably have given due weight to that professional opinion and declined to authorise the grant of a faculty. Instead, the Court would have sought to steer the parish towards a prudent long term project which would have safeguarded the heritage value of the historic church building, whilst allowing it to meet the mission and witness of the church in its stunning setting.
77. Regrettably, the Court was denied the opportunity of considering the merits and demerits of the proposal, as it was implemented without authority in the circumstances discussed at some length in the first part of this judgment. Had a petition been lodged prospectively, it would have been dismissed. One option the Court has is simply to dismiss the current petition: neither legitimising the unlawful works nor compelling their reversal. That is rarely a sensible solution and would not be in an instance such as this where the rector, churchwardens and contractor have demonstrated genuine contrition for their wrong-doing and where the former have pledged to put matters right. There are various occasions when the faculty jurisdiction might be breached, and the Court must be astute to distinguish between



a bona fide mistake made in reliance of flawed expert advice (as I find to be the case here) as opposed to wilful disregard of the canonical and other legal duties arising out of the office of incumbent and churchwarden.

78. The appropriate disposal in the circumstances of this case is to note the shortcomings in the works that have been undertaken unlawfully and to allow the petition, but to do so on stringent conditions. In reaching this conclusion I have given particular weight to the opinion of the CBC which deprecates the unauthorised redecoration and cannot retrospectively commend the clay paint which was used, but adopts the practical and pragmatic stance of neither requiring the clay paint's removal, nor an expensive risk monitoring, but of encouraging the parish to address as a priority the structural causes of the damp interior, and to channel its limited financial resources accordingly. Unfortunately, as there has been a further decade of neglect and inertia, work to the fabric is now much more pressing.
79. A confirmatory faculty will therefore issue for the works of April 2017 comprising the treatment of the chancel walls algacide, a heat gun and a light brushing to remove dead spores and the application of white clay paint. This will be subject to the following conditions:
- i. That within three months the parish are to prepare a long-term management plan to address the moisture ingress at the church;
  - ii. That such plan is to be phased, costed and timetabled to allow for ecclesiastical and secular consents and for funding applications;
  - iii. That a petition for at least the first phase of the plan is to be lodged at the registry by no later than 1 February 2019.

There will be liberty to apply to include an application for an interim faculty in the event that any urgent works are identified. For the avoidance of doubt, no works are to be undertaken without the prior approval of the Court. For the time being, I do not consider that it would be appropriate for proposals affecting All Saints, Buncton to be considered under List B, having regard to past neglect and the need for a consistent approach under the management plan. I invite the archdeacon to indicate that for the next twelve months she will decline to give notices under rule 3.3 of the Faculty Jurisdiction Rules 2015. If she is unwilling to give such an indication, I will consider making an excluded matters order under r 3.8. I will, however, waive my fees for determining any matters which would ordinarily have been the subject of List B.

### **The architect's position**

80. If there is one learning outcome from this case, not merely for the Diocese of Chichester but for the Church of England as a whole, it is that inspecting architects and contractors should always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works. This should already be best practice, and it is unfortunate that neither the architect nor the contractor in this instance thought of asking for a copy of the faculty. The contractor took everything on trust and assumed that the acceptance of his quotation signified that all consents were in place. He was wrong to do so. The architect's position was already compromised by his mistaken belief that a faculty had been granted for earlier works. If Mr Nugent had taken the simple expedient of asking for a copy of

the relevant faculty before procuring the engagement of Mr Slater in 2013 and again in 2017, neither of the unlawful sets of works would not have been undertaken, and the parish would have been alerted by the Court to need to address the long-standing damp problem at All Saints rather than, to put it crudely, tarting the church up for Easter.

81. Whilst I cannot comment on Mr Nugent's competence as an architect, I have considerable concerns about his familiarity with the operation of the faculty jurisdiction. He seems unable to differentiate between the advisory function of the DAC and the adjudicatory role of the chancellor. I previously had occasion to criticise Mr Nugent in a judgment in *Re St Mary Magdalene, Lyminster* (Chichester Consistory Court, 13 February 2011, unreported) for proceeding with works in the absence of a faculty. It troubles me that Mr Nugent denied on oath that he has ever been criticised and self-evidently took no heed of what I said seven years ago. It is true that elsewhere in the judgment I commend Mr Nugent in another respect, but his memory seems to be highly selective.
82. Mr Nugent was not fully conversant with Lists of Minor Works, continuing to use the term 'de minimis' which became obsolete more than a decade ago. His written submissions included reference to the 'Ecclesiastical Exemption Act' and he persisted in the use of this terminology in addressing me from the witness box, notwithstanding that on more than one occasion I informed him that there was no legislation of that name.
83. I set out above what appears as a pro-forma Appendix D to quinquennial reports prepared by Mr Nugent, the content of which he relied on in his evidence. The following extract is particularly relevant:

No works or historic fabric removals that vary from the consents already received must be undertaken without the **written consent** of the DAC and English Heritage.

It is obviously wrong, and very misleading, suggesting that the DAC has power to authorise variations to faculties (the most obvious form of consent). Only the Court can vary a faculty. This seems to be another example of Mr Nugent not appreciating the inherent difference in function of the DAC and that of the Consistory Court. Such misapprehension goes some way to explaining his over-reliance on the purely advisory utterances of the DAC. For example, even in his closing submissions, Mr Nugent states, 'by agreement with the DAC the proposal was amended to redecoration in lime wash'. It is not for the DAC to agree amendments to proposals, merely to advise on successive iterations emanating from a parish. Mr Nugent consistently imbues the DAC with an authorising function which it does not possess, and never has.

84. Mr Nugent suggested in his evidence that he believed he had signed a certificate of practical completion in respect of the 2013 works. Whilst this self-evidently could not have been the case, it reveals Mr Nugent's slender understanding of the faculty jurisdiction. If the works authorised by faculty had been completed and a certificate provided, that faculty would be defunct. It could not be revived years later as he

- suggested. Further, it is extraordinary that an inspecting architect with all of Mr Nugent's experience would not be aware that faculties are time limited with a strict date by which authorised works are to be completed. The prospect of a 2013 faculty still being extant in 2017 was extremely remote, and Mr Nugent should have been aware of this.
85. Mr Nugent presents as knowledgeable and expert in process and procedure, he parades his decades of work on ecclesiastical buildings, he makes repeated references to being included on various diocesan lists of approved architects suggesting that this amounts to a badge of approval. He has a very forceful personality. It follows that parochial clergy, churchwardens and others accept what he says as authoritative. This can lead them into error, as happened in this case.
86. Mr Willink in his closing submissions did not invite the Court to adopt any particular course, but drew its attention to previous instances where architects have been subject to criticism in the consistory court. In *re St Thomas à Becket, Framfield* [1989] 1 WLR 689, Edwards QC Ch considered barring the relevant architects from supervising future works under faculty. In one of my previous decisions in Chichester Consistory Court, *Re Bishop Hannington Memorial Church, Hove* (unreported (2010) 13 Ecc LJ 251), the inspecting architect was required to make written representations as to why his name should not be removed from the list of approved inspecting architects maintained by the DAC. More recently in *Re St Peter and St Paul, Pettistree* [2017] ECC SEI 6, the chancellor considered the same sanction but did not impose it, principally because it was the first occasion on which the architect in question had fallen short.
87. In this instance, sadly, it is not the first occasion on which Mr Nugent has encouraged parishes to proceed with works in the absence of a faculty. He is a repeat offender and his attitude during the proceedings was not one of contrition but of arrogance. He sought to place the blame everywhere but with himself. I have concerns as to his competence to give sound advice to the parishes where he is inspecting architect. He seems to parade his inclusion on the DAC's approved list and parishes interpret this as vouching not merely for his competence as an architect, but also as an adviser on faculty process. It would be wrong for the Court to make an order which effectively prevented Mr Nugent from earning a living, but the Court is responsible for securing compliance with the faculty jurisdiction and for preventing harm to heritage buildings. I therefore direct that Mr Nugent be given 21 days in which to make written representations as to whether I should recommend to the DAC that his name be removed from its list of approved architects.
88. I also direct that a copy of this judgment be sent, for information, to the honorary secretary of the Ecclesiastical Architects and Surveyors Association and to the DAC secretaries, the registrars, and the chancellors of each of the dioceses in which Mr Nugent says he practises (or has practised) whether as inspecting architect or otherwise, namely: Guildford, Oxford, Rochester and Winchester.

### **Costs**

89. There are two issues of costs to be resolved, as foreshadowed by Mr Willink both during the hearing and in his closing submissions. In relation to the parties' costs, the petitioners instructed Mr Willink by means of the Bar's direct access scheme, while Mr Nugent represented himself. The petitioners have not, thus far at least, sought an order that Mr Nugent pay some or all of their costs. I consider such restraint to have been wise, and my provisional view is that there should be no order for costs *inter partes*.
90. In relation to the Court fees under the annual Fees Orders made pursuant to the Ecclesiastical Fees Measure 1986, although the matter has been resolved in less than six months since the lodging of the petition, the statutory fees have mounted up, not least due to the need for there to be a hearing. This was largely taken up with a consideration of the conflicting evidence of the petitioners and Mr Nugent as to the advice given regarding the need for a faculty. This factual matter has been resolved in the petitioners' favour and Mr Nugent has been found to have been less than candid in his dealings with Dr Arbuthnot and less than truthful in his evidence to the Court. My provisional view with regard to the Court fees is that they should be paid by the petitioners with a contribution of two-thirds from Mr Nugent.
91. If the petitioners or Mr Nugent wish the Court to consider making an order for costs other than as indicated above, they should make submissions in writing within 7 days setting out (a) the alternative order for which they contend and (b) their reasons.

The Worshipful Mark Hill QC  
Chancellor

10 April 2018