

Neutral Citation Number: [2026] ECC Ely 1

In the Consistory Court of the Diocese of Ely

In the Matter of a Faculty Petition

The Church of St Mary the Virgin

In the Parish of Beachamwell with Shingham

Application for a Faculty

1. This is an application for a Faculty to restore St Mary's Church which was devastated by fire in February 2022. A great deal of time has been taken to formulating this application and it has involved a substantial amount of work on the part of the PCC, the DAC and the Registry. I regret that further delay has been caused by my temporary illness and pressure of work generally.
2. I have received anonymised objections to aspects of the work from six unnamed individuals and a document which runs to some ten pages which I have assumed, although it is unclear because it, too, is anonymised, has come from a seventh objector. Any of those individuals would have been entitled, subject to whether they live in the parish or could claim some other right to do so, to become a Party Opponent and to address the court at a hearing but none of them have wished to do that. Nevertheless, they can be assured that I have read each of their letters of objection and have taken what they have written into account in coming to my conclusion.
3. I also take note that each of the decisions taken by the PCC in respect of the works to be undertaken have been taken unanimously, that there have been a number of letters written in support of the proposals which outweigh the number of letters from objectors, and I have seen a

petition in support of the PCC's approach although that document on its own carries little weight with the court.

4. In reaching my decision I have first considered in accordance with In Re St John the Baptist, Penshurst, what is the special architectural and/or historic interest of the church as a whole. I have taken as my starting point in relation to answering the relevant Duffield Questions that this is a Grade 1 Listed building. It is also a building of great historical interest both outside and in.
5. In considering whether I should grant the Faculty I have followed the guidance laid down in Duffield, St Alkmund: [2013] Fam 158 insofar as they affect what amounts to a restoration of the church to its condition before the fire. It is in respect of suggested alterations to the original layout of the church that the questions may be of greater relevance. They are:
 - (i) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
 - (ii) If the answer to question (i) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals, Questions iii, iv and v do not arise unless the answer to question (i) is "yes".
 - (iii) How serious would the harm be?
 - (iv) How clear and convincing is the justification for carrying out the proposals?
 - (v) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its rôle as a place of worship and mission) outweigh the harm? In answering this question, the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm

is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.

6. It is perhaps unusual that it is the objectors rather than the Petitioners who are seeking to make use of what is essentially a blank canvas to make alterations which may offend against the Duffield principles.
7. I have also had regard to In Re St John the Baptist, Penshurst where the court referred at the beginning of its judgment to the tension which frequently exists between on the one hand conservation of what is best in our heritage and on the other hand the requirements, or claimed requirements, of present day worship and mission.
8. There is no doubt that the proposed scheme for the restoration has gone through a number of twists and turns which I do not find in the least surprising when there has been so much to consider and so much time for further ideas to come forth, particularly with the assistance of input from the DAC, the amenity societies and the architect instructed on the project.
9. The public notice was displayed between 20th February and 22nd March 2026. Knowing that there had been some amendments to the scheme since the public notice was displayed, the Registry asked the petitioners for a final statement of the works for which they were seeking a faculty which was provided on 22nd May 2026. There are three omissions with regard to the work previously intended:
 - (a) Incorporating in the floor drainage routes in case of future installation of WC and other facilities;
 - (b) Breaking a new pedestrian gateway through the south churchyard wall and laying a path to provide level access to the church through the south door; laying a new accessible path from the new south churchyard gate to the memorial hall for access to WC facilities, and

- (c) Provision of mains water to a standpipe near the new south churchyard gate.
- 10. There is one amendment to the proposed works, namely, the raising and, in part lowering, of the height of the floor throughout the church to provide a level surface and consequential regrading of the north path to the porch.
- 11. Although the provision of a path was of longstanding in this application, it was not until 27th August 2025 that the DAC were informed about the addition of a lychgate at the wall between the churchyard and the village hall.
- 12. On 14th November the DAC advised that they only supported a lychgate if the more pressing issues about access between the church and the village hall (path and lighting) could be resolved with sufficient funds left over for the lychgate on the basis that they should resolve the “need-to-haves” first. The DAC did not understand until a later date in January 2026 that the petitioners had abandoned the access route between the church and the village hall but only that the proposed lychgate was to be replaced by “a simple gate”.
- 13. When the Society for the Protection of Ancient Buildings (“SPAB”) and Historic England (“HE”), were consulted in 2023, the most significant matter raised from HE was that they would like to see a raised floor throughout the church in place of the proposed western platform and ramp. This no doubt led the petitioners to revise their plans. The DAC casework group supported it; eliminating the need for a ramp will significantly increase the useable internal floor area although they recognised that it will see the pier bases buried into the floor.
- 14. As already indicated, I have read all the carefully crafted and clearly expressed submissions by the anonymous objectors. It is clear to me

that there has been a great deal of personal rancour expressed in the various documents of objection, which has had to be met by the PCC and the petitioners in response. Each side will blame the other for the tone of the debate and that is not something that I seek to address other than to suggest that it is the sort of behaviour which should not pervade a Christian community. Insofar as it is possible I do not intend to address those issues nor issues over transparency or funding which are not for me to consider so long as I am satisfied that the decisions which have been taken by the petitioners through the PCC are proper and supportable. I will deal with the major substantive issues which are raised by the opponents and which can be summarised as follows:

- (a) There is a duty not to discriminate against those with mobility issues in terms of access and the petitioners have failed to show that they have done all that they can do to mitigate discrimination with regard to their latest plan to provide level access;
- (b) Similarly, they have failed to show that they have done all that they can do to mitigate discrimination with regard to the provision of a lavatory. Their decision not to provide an accessible lavatory in the church but to rely on the facilities in the village hall which is a significant distance from the church was wrong. There is space within the tower or at the west end of the south aisle for a lavatory to be fitted. The statutory consultees considered that not installing a lavatory is a missed opportunity;
- (c) A retired health and safety professional supports this and states categorically that a failure to install a toilet and other facilities in St Mary's is illegal. Under the relevant Regulations a functioning church is defined as a place of work and as such must have a lavatory, wash basin, running water and a place to eat amongst other things. He is concerned that a prosecution for a failure to provide amenities could lead to a "controlling mind" being fined or sent to prison for the breach;
- (d) There is an objection to parking in the village hall carpark which is a field and will make wheelchair access between the church and the village hall even worse;
- (e) There are safeguarding issues with children visiting the village hall to use the amenities. It will require a key holder to be present or available;

- (f) At the very least pipes should be installed so that they can be used in the future for a lavatory and/or other purposes. The original plan to do so was welcomed by the DAC;
 - (g) The decision not to proceed with the path will inhibit movement between the church and the village hall especially for wheelchair users. The lack of a south path will involve a journey to and from the village hall of at least 439 metres;
 - (h) Access through the south door appears to involve a step or change in levels;
 - (i) The use of pews rather than chairs is an expensive option, and chairs are more practical and comfortable and can better fit the awkward spaces caused by the pillars;
 - (j) The repositioning of the font at the west end of the south aisle does not conform with Canon Law and does not allow the congregation to witness a baptism. It would prevent any future plans to install a lavatory in that area;
 - (k) There should be a servery within the church;
 - (l) Money should not be spent on replacing memorial windows and expensive joinery but used instead on the facilities which the church needs.
15. There are a great many criticisms of the procedures adopted by the PCC and the petitioners in deciding on the way the church is to be restored. On the other hand I have also seen amongst the letters in support of the PCC a number of comments about the diligence and care with which the PCC has gone about its task over a period of four years to try to have the church restored and reopened. I have found it helpful to look at comments made by the statutory consultees and, by way of example, where SPAB stated in a response in October 2025 that “we commend their commitment and determination to bring the building back to life”.
16. Submissions on behalf of the PCC have been drafted by Gregory Jones KC an experienced ecclesiastical lawyer and Chancellor. I understand from the correspondence that he may have visited the Parish which will have allowed him to assess issues about space within the church and

distances outside of it. Whether or not he has made a visit, he has experience of understanding spatial issues from plans and other material.

17. In his report Mr Jones KC submitted that the PCC has carefully considered the request of the DAC to explore the provision of a lavatory within the church. Having done so, it has concluded that an internal lavatory at St Mary's would:

- (a) Harm the building's integrity and significance in a rare and possibly uniquely small Grade I round-tower church;
- (b) Inhibit worship when weighed against space loss, fabric impact and viable nearby provision; and
- (c) Fall outside "like-for-like" insurance for this restoration project where lavatory infrastructure has never existed at St Mary's and the insurer's remit is to return the church to its pre-fire state.

18. He identifies that in making an application for a faculty it is the duty of every person carrying out functions of care and conservation under the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 or under any enactment or rule of law relating to churches, to have due regard to the role of the church as a local centre of worship and mission. He relies, in particular, on "Changing Churches: A Practical Guide to the Faculty System" (Mynors) where it identifies that, although the Measure refers only to worship and mission, it is arguable that these elements of the church encompass, at least, five distinct overlapping elements – worship, fellowship, teaching, service and mission.

19. That leads to a second major question to be asked when considering proposed works affecting a church which is how do they help (or hinder) the mission of the parish? He submits that the PCC has been very clear that the mission of the church is to retain the historic and spiritual integrity of what is an intimate place of worship. The installation of a

lavatory would reduce the available space for facilitating worship, a view supported by the vast majority of the worshipping congregation.

20. This application is also consistent with the presumption against change to historic (especially listed) churches unless it can be shown that such changes are necessary to enable the church to fulfil this role. The basis of the ecclesiastical exemption is that the control system operated by the religious organisation in question must provide a level of protection for the buildings in its care equivalent to that which is provided by the secular system of control. He relies on Duffield to which I have already referred.
21. It is apparent from this guidance that the concept of 'equivalence' does not necessarily require that the same result will be achieved as if the proposal were being determined through the secular system, nor that listed building considerations should necessarily prevail. What is essential, however, is that these considerations should specifically be taken into account, and in as informed and fair a manner as a reasonably possible.
22. Mr Jones KC reminds me of the desirability of preserving the building or its setting or any features of special architectural or historic importance which it possesses, that this is a grade A listed building and that any proposal to alter the structure of such a building must be approached with the same care and be subject to the same detailed consideration as would be necessary if churches were to lose their ecclesiastical immunity and if, therefore, this were an application for listed building consent to a local planning authority, hence the need to consider the Duffield Questions to assess harm to significance, and to give considerable importance and weight to heritage protection with a strong presumption against harmful change even where harm is less than substantial. The Court should also give weight to how the works would

facilitate the congregation's worship. Where reasonable adjustments provide effective access outcomes, the Equality Act 2010 does not require intrusive physical works that would damage a listed church and he provides authority for that proposition, in particular the EHRC Code and FirstGroup v Paulley [2017] UKSC 4.

23. As to the proposed changes, he submits that they are justified because the insurer is funding restoration "as was" in circumstances where the walls did not fall to a statutory "rebuild" height. The PCC has worked throughout to deliver reinstatement consistent with the policy and to return the church to its pre-fire state.
24. It follows that new elements such as a plumbed lavatory which St Mary's has never had are not "like-for-like" and therefore outside the core insurance reinstatement. At the same time, the PCC has explored modest improvements that can be responsibly financed and which align with heritage and mission which has led to the plans for level access.
25. The level access is proportionate to St Mary's size and significance, satisfies the PCC's evidence-based priority from community feedback. Importantly it avoids the irreversible penetrations, and footprint loss that a plumbed lavatory would entail.
26. As to compliance with the Equality Act he concludes that the village hall provides up-to-date lavatories, including a spacious accessible WC with baby-changing facilities, which are always open when the church is in use under an updated Memorandum of Understanding. This is a lawful and effective reasonable adjustment under the EHRC Services Code and FirstGroup.
27. It is suggested that, for larger events, temporary hire units adjacent to the west boundary can be used and the costs accommodated within

event pricing—again meeting need without damaging the listed fabric and is an approach endorsed by HE as non-intrusive alternatives where direct physical compliance would harm significance.

28. He submitted that St Mary's is a very small Grade I Saxo-Norman round-tower church with little floor space; an accessible lavatory would "consume" the tower base, impede tower access and remove essential storage.
29. Achieving water supply and foul drainage in a church with no historic mains water, rainwater-only soakaway, and no deep foundations requires new penetrations through/under medieval fabric and ground—bringing irreversible harm and archaeological risk.
30. He argues that HE's guidance is clear: where improved access cannot be achieved without unacceptable loss of fabric equivalent outcomes may be delivered by other means which is what the PCC's plan achieves.
31. The insurer has a duty to fund restoration and provision of the lavatory is betterment and outside the policy's core scope. It is accepted that this could be done separately at a cost to the PCC and therefore the church, but such funds as are available are being devoted to a level entrance.
32. In FirstGroup the Supreme Court held that the Equality Act duty is to take "reasonable steps", not to guarantee an ideal or preferred outcome irrespective of context. Reasonableness is contextual; it turns on practicability, cost, disruption, resources, impacts on others and the availability of alternative means; and it must be assessed alongside other legal duties, which in this case would be heritage protection.

33. He submits that, applying FirstGroup, the PCC has met the Equality Act duty through reasonable adjustments; insisting on a new internal lavatory would exceed what is reasonable in light of heritage law, practicality, and effective alternative provision.
34. The EHRC Statutory Code of Practice (Services, Public Functions and Associations) reinforces, consistently with FirstGroup, that the Equality Act duty is to take reasonable steps, assessed in light of practicability, cost, disruption, the organisation's resources, and the availability of alternative measures. It also identifies that the duty is anticipatory, applies to disabled people as a class, and may be discharged through policies and practices, not only structural works. The EHRC Code supports the PCC's conclusion that the Equality Act duty is fully met without an internal lavatory, and that the PCC's level access and nearby accessible WC provision constitutes a lawful, proportionate, and heritage-compatible reasonable-adjustments strategy.
35. HE's guidance on Building Regulations & Historic Buildings confirms existing buildings are not generally required to meet newer Building Regulation standards unless specific triggers, such as material alteration or change of use arise. He submits that there is no duty to retrofit lavatories into historic churches.

DECISION

36. Firstly I have considered whether the petitioners should be required to issue a new public notice because of the changes they have made at a late stage to the faculty application. I have decided it is not required, in part because it is clear that both the objectors and supporters seem to know of the changes and because of the conditions I intend to impose of the grant of the faculty.

37. I have considered the application for a faculty against the background that this is a project to restore the building to what it was before the fire and that is being paid for by the insurers. I have not ignored the submissions that there may be money already available through a "Friends of St Mary's" fund but consider that there is no certainty as to whether the money could be used to improve the facilities within the church or whether there would be sufficient money to fund the project in circumstances where there has been no audit and there are no accounts known to exist supporting the value of that fund.
38. Whilst I have had regard to the submissions of Mr Jones KC that, in answering the Duffield Questions the installation of a lavatory within St Mary's would not be permitted, I am not convinced that that would be the case and it ignores what may be another potential site to the west end of the south aisle. I do not have to decide that issue because there is no faculty requesting this and I do not consider that I should require the petitioners to amend their application so as to include the installation of a lavatory as part of their faculty application to restore the church.
39. The PCC and the petitioners have decided not to install a lavatory within the church. In my judgment they have justified their reasons for not doing so and their decision does not run contrary to the Equality Act and other relevant legislation and Regulations.
40. I am able to see the advantage in laying the water and foul drainage pipes while the restoration work is being undertaken. The PCC are of the view that such work could not be financed at this time and they cannot be forced to carry out work which is unaffordable. Before that could be undertaken I would have to be able to answer the Duffield Questions in such a way which would allow the work to be undertaken.

41. I reject the arguments put forward by the objectors that it would be unlawful not to install a lavatory in the church and I accept the arguments advanced by Mr Jones KC. Other issues such as safeguarding are not a reason for not granting the faculty and will have to be resolved by the PCC when the church is reopened. I assume that before the fire those attending the church needed a lavatory to be available and this was achieved without insurmountable problems arising.
42. In my judgment the most recent decision of the PCC and petitioners not to provide a direct path from the church to the village hall is misconceived. Accepting their argument, as I do, that there is no requirement for a lavatory to be installed in the church, they are required to ensure that a direct route which can be navigated by a wheelchair user is provided. Their original decision was the right one, albeit that I see no requirement for a lychgate. A simple gate in the wall, so long as it can be operated by a wheelchair user, is sufficient.
43. As to the levelling of the floor, in my judgment the petitioners have listened to this criticism of the previous plan and have come up with a far better solution for which I grant permission as part of the faculty. I reject the criticisms of this part of the plan by the objectors but require reassurance that the amended scheme does permit wheelchair access from outside without negotiating an impassable step.
44. As to the issue of pews and chairs, I applaud the decision to install some pews. Pews will last decades if not hundreds of years longer than chairs; many churches are still using serviceable pews that are over 150, sometimes 200, years old, and some older still. Chairs have a very limited lifespan in comparison, and padded chairs even less. The decision to restore the church “as was” is wholly supportable and that must include the use of pews. There is no evidence that a modern pew

is any less comfortable than a wooden chair and an application to introduce padded chairs in a church of this importance, age and size would be unlikely to succeed. There will in any event be chairs as well as pews in the church.

45. Leaving to one side what impact it could have on any future plan to install a lavatory in the church, I have serious concerns about the positioning of the font at the west end of the south aisle in terms of sight lines, I require the petitioners to consider this further in conjunction with the Archdeacon who can provide liturgical guidance as to the appropriate placing of the font. I do not know whether the new plans for the floor will now mean that the font could return to its original position or whether there is a position nearer the front of the church which would allow everyone to see a baptism taking place. There are many churches who have obtained a faculty for a font to be in a place other than that required by Canon Law.
46. I do not find the issue raised over parking in the village hall carpark an impediment to granting a faculty. I assume that worshippers used cars to come to church before the fire and they can use the same space as they did then whether it was in the carpark or on the road.
47. The suggestion that a servery is installed in a church of this size is very unlikely to succeed were an application to be made. No plans were provided by the objector as to where the servery could be placed and, in any event, a moveable servery is to be installed as part of the faculty application and provides a sensible solution.
48. The replacing of the memorial windows is unobjectionable and appropriate bearing in mind the legitimate aim by the PCC and petitioners to return the church to how it was before the fire.

49. I make the following conditions on the grant of the faculty:

- (a) The petitioners are to carry out the works in conformity with the DAC's provisos and in consultation with the DAC;
- (b) The DAC are to be consulted about the make and design of the pews and chairs. If agreement is not reached between them, the matter is to be referred back to me;
- (c) A path suitable for use by wheelchair users is to be constructed between the church and the village hall by the shortest practical route. If not already obtained, the local planning authority is to be consulted as to whether planning permission is required and, if so, planning permission is to be obtained. If planning permission is refused, the matter must come back to me. The petitioners should consult with the insurers as to whether they will fund this work, it being a necessary part of the restoration;
- (d) The petitioners should consult the insurers as to whether they would fund the laying of water and foul drainage pipes into the church in case at any future stage a decision is taken to install a lavatory. The Registry is to be informed of the insurer's response. If, and only if, they are willing to fund this work should the matter be referred back to me so that I can decide whether I would grant an amendment to the faculty for that work. I shall need to see a submission from the DAC's archaeological advisor as to any concern there are about such work being carried out;
- (e) Further consideration must be given to whether the font can be positioned elsewhere than the west end of the south aisle. The Churchwardens must consult with the Archdeacon and submit their joint findings as to any other possible location for it and

whether they would support an amendment to put the font elsewhere within the church. When that information is available I must be informed and I will make a final determination.

50. Work can begin on the restoration of the church now that the faculty has been issued and subject to the conditions I have set out above.

POSTSCRIPT

51. The size of this project after the devastating fire will have put an enormous burden on the Churchwardens and the PCC in circumstances where they have to lead the church without a full time incumbent, I have no doubt that they will have devoted hundreds and hundreds of hours to getting the church restored and will have felt frustrated by the time it has taken to obtain a faculty and disappointed and no doubt hurt by those who have opposed parts of what they have been trying to achieve.
52. Whilst the terms in which the faculty application was made was the result of long meetings held by the elected members of the PCC and supported by many of the congregation, it is unlikely that a scheme of this size would not yield objectors; two people with the same love of their church and the same devotion to the Christian faith can come up with different solutions to the same problem.
53. Now that a decision has been reached and the arguments are over I hope that the whole congregation of St Mary's can look forward to returning to worship together in their church.

His Honour Judge Leonard KC
Chancellor of the Diocese of Ely
22nd July 2026