

**Neutral Citation Number: [2021] ECC Ely 1**

**In the Consistory Court of the Diocese of Ely**

**In the Matter of a Faculty Petition**

**The Church of St Mary Magdalene in the Parish of Stilton**

**Revd Richard Gibbs  
Stuart Reed (Churchwarden)  
And  
Marion Hodson (Churchwarden)  
Petitioners**

**PRELIMINARY MATTERS**

1. On 11<sup>th</sup> January 2021 the petitioners applied for a faculty to remove and dispose of two pews from the front of the nave to create a larger performance area and four pews from the back of the nave to provide a children's area.
2. There is nothing controversial in either of those applications which have been successfully trialled under a Licence for Temporary Minor Reordering issued by the Archdeacon of Huntingdon and Wisbech on 19<sup>th</sup> December 2016 and which expired on 19<sup>th</sup> March 2018. No extension to the licence was sought; for a period of over three years the re-ordering remained in place without lawful authority.
3. The application for a faculty is also in regard to the replacement of the pews "...with chairs with blue upholstery...".
4. The church neither sought a temporary licence nor a faculty before purchasing and installing blue upholstered chairs, the cost of eight of which was sponsored by members of the congregation. This was done despite early advice from the DAC that they would not recommend the proposal for chairs of that colour. I have identified "the church" rather than "the petitioners" because it is not clear to me that the present petitioners had anything to do with this application in its early stages; the correspondence tends to be in the name of the Treasurer.
5. Whilst I do not suggest that it was done deliberately, and whilst it may be permissible to place a sample chair or two in the church temporarily, the church acted unlawfully in installing a row of twelve chairs on a permanent basis without permission, and, if the petition is not granted, have left the PCC liable to recompense the generous members of the congregation who have purchased the chairs.

6. The faculty process is there to protect the significance of the church as a building of special architectural or historic interest from harm. The purpose of the Diocesan Advisory Committee is, in part, to assist parishes in making an application for a faculty which is likely to be approved or, if despite the views expressed by the DAC, the parish wants to press ahead with an application, that they are aware of the risks.
7. The faculty process not only protects the buildings but is there to protect the petitioners from exposing themselves to complaints or to a financial penalty by making an alteration to the building which has not been fully considered and, if necessary, adjudicated upon.
8. I shall set out the sorry history to this application before considering its merits, and will consider its merits unaffected by the way in which the petitioners have acted.

#### **THE HISTORY OF THE APPLICATION FOR A FACULTY**

9. The following steps in the process are of relevance:

19/05/16: Email from the Treasurer to the Archdeacon: application “this time” is temporary permission to remove pews and replace with folding metal chairs.

15/06/16: Email Sue Dickinson (Church Buildings and Pastoral Dept Administrator) to the Treasurer: suggestion of a temporary licence and need for more information. As to the chairs, “you seem to have...a preference for royal blue upholstery; and from what I can tell, you are anticipating the purchase of 30 of them. The choice of chairs will have a very significant impact on the appearance of the church and will be subject to faculty consent, so I wonder if (as Jude suggested) you might be able to negotiate the loan of some chairs, rather than going ahead with the purchase of so many at this stage? Often the preference (visually) is for un-upholstered chairs. but if they are to be upholstered, the choice of fabric and colour will be very important so I would urge caution before spending significant sums of money.” She wrote that she would put their proposals before the DAC.

24/06/16: In a further email Sue Dickenson reported back the DAC’s furnishings expert’s view. More information was required as to pews. As to the chairs, “...please make it clear to the parish that both the design and the colour of chair and

fabric must be approved by the DAC and chancellor. The suggested chairs are unlikely to be approved. They need to be told this as soon as possible, before they buy any. A darker wood is needed. If they insist on upholstery then that must be in a colour that blends with the wood. I hope this is of some help.”

Sue Dickinson added “As you can see, it is unlikely your preferred chairs would be approved, so please do not rush ahead with any purchase.”

- 19/12/16: The Archdeacon granted a temporary licence to remove a total of six pews on condition that they must be stored securely and in a dry place.
- 19/02/17: A presentation by the Archdeacon to make the church more attractive to families and the younger generation to prevent the church becoming extinct. This led the parish to look at heating, seating, and sound and video.
- 12/01/18: “A Request for a Faculty to Replace Some Pews with Chairs” was produced. It was not, in fact, a petition for a Faculty but at best a Statement of Significance and a Statement of Needs rolled into one, and which failed to cover in sufficient detail the Significance of the building. The photographs clearly show that the chairs had already replaced the pews at the front of the nave and included *in memoriam* plaques. Under “Seat Options” the document read; “we are conscious of the DAB's (*sic*) preference for wooden based chairs but these are not acceptable to our parishioners. We had a selection of chairs on loan, including wooden based, for 2 months trial. We broke it down to a shortlist of 3 and from this the congregation were asked to vote on the options and the following is the result of that vote. We have chosen the colour blue to match the carpets in the Chancel and at the Altar.”
- 26/01/18: A report for the DAC from Lynne Broughton generally welcoming the scheme and congratulating the parish on finding wider uses for their building. However, it was her view that the project had not been thought through. She offered various alternatives based on what had been done at other churches. She maintained that the colour of the chairs was unacceptable and felt that the parish had not taken advantage of the guidance provided particularly on colour; “...bright blue is very harsh. Moreover it is not

sensible to choose a colour of chair to match the ephemeral strips of carpet. It is doubtful whether any permission was ever sought or given for carpet in that colour to be laid... It seems as though the parish have already bought some of these chairs. If so, this should not be considered a reason for DAC approval. The committee has disallowed such chairs in the past...and needs to reaffirm its policy. The parish was given clear advice 18 months ago on the choice of chairs and the need for DAC approval. It is clear from the wording of the proposal that the parish in fact wishes eventually to replace all the pews with chairs... Care needs to be taken to (a) ensure that this does not happen gradually by default without explicit permission and (b) the chairs that are acquired are of such a design as would look good *en masse* should such permission be forthcoming in future.”

- 01/02/18: The DAC considered and confirmed its previous recommendation in respect of the proposal to remove six pews and their replacement with blue upholstered chairs. They were happy to recommend the proposals in all respects other than the bright blue colour of the upholstery which it considered was to the detriment of the dignified atmosphere of the church. A more neutral colour would have been recommended.
- 08/02/18: Sue Dickenson informed the Treasurer of the DAC's decision and the reasons for it. She suggested that they consider an alternative colour and told him that they were free to petition the Chancellor for a faculty despite the DAC's advice. He was reminded of the suggestion made at a visit to the church that the chairs already purchased could be used in the meeting room.
- 15/02/18: The Treasurer responded that he was minded to petition the Chancellor. Sue Dickenson replied setting out the formalities involved in obtaining a petition.
- 19/03/18: The Archdeacon's temporary licence for the removal of the pews expired.
- 01/05/18: Letter from the Treasurer to Sue Dickinson: it resolved certain issues which had been raised. In respect of the chairs the Treasurer confirmed that there was no intention to increase the number of chairs in the nave. He set out

that the choice of chairs was the result of a long survey and the view expressed at the APCM that at night the colour gave a warm feeling of welcome, that, from behind, the colour of the chairs would not be noticed, that the chairs have now been sponsored by parishioners without a request for funding and that they could not see any advantage changing to another colour but a strong disadvantage if this was to be decided against the wishes of the parishioners. The Treasurer wrote “if you cannot accept our reasoning then I assume that we have to put up notices of non-compliance and that you will be supplying these and I would very much appreciate your advice as to how to proceed from here.”

- 25/02/20: The Registry asked the parish about the current situation regarding the Archdeacon’s Licence. The parish administrator advised that she now had the papers from the incumbent and would be displaying Public Notice. The public notice period spanned March/April 2020; no objections were received.
- 15/06/20: “A Request for a Faculty to Replace Some Pews with Chairs” was updated and produced in very similar terms to the earlier document accompanied by a note from Revd Gibbs dated 12/01/2018 “We hereby submit a petition for faculty”. No application form accompanied these documents. This did not amount to a petition.
- 11/01/21: Petition for a Faculty for removal of the six pews and their replacement with chairs with blue upholstery. The number of chairs was unspecified. However under financial information there is a note which reads “12 chairs £100 each, 8 have been sponsored”. An entry under Time for Work reads “chairs in place following a temporary licence granted by the DAC”.  
In my examination of the papers I have seen nothing to support that claim, nor does the DAC have the power to grant a temporary licence. The Archdeacon’s temporary licence was attached to the petition; it does not grant permission to install chairs.
- 11/01/21: A letter accompanying the petition referring to a faculty application made two years’ earlier and stating “...we have implemented what we said we were going to.” No such application was, in fact, ever made.

25/03/21: The PCC Minutes approved an application for a faculty for removal of six pews and replacement with twelve padded chairs. This resolution should have been passed before the application for a faculty was made.

30/03/21: DAC submitted a fresh Notification of Advice following further consideration but raising the same objections.

#### **CHANCELLOR'S VISIT TO ST MARY MAGDALENE**

10. Because of the controversy over colour I visited the church on Saturday 8<sup>th</sup> May to see for myself. However good the photography, nothing can replace seeing the chairs *in situ*. I am grateful to Marion Hodson for coming to the church and allowing me access.

11. St Mary Magdalene's is a listed Grade 2\*, 13<sup>th</sup> century, church which seems to have remained reasonably untouched. Most of the glazing involves clear glass. Overall, even on a very rainy day, it impressed me as a church full of light. The curtain behind the Altar is in royal blue as is the carpet which extends to the chancel step. There is another carpet at the start of the nave extending across it. I note from a photograph of the nave on Stilton Village's website that the blue carpet used to extend the length of the nave. There is no evidence that any application was made for any of the coloured fabric now present. At best it is thought to have been there since at least the 1980's. However the removal of the nave carpet and the replacement (it would seem) with a different carpet at the east end of the nave has never been the subject of faculty proceedings.

12. The churchwarden could not help me with the name of the manufacturer of the chairs. It seems to be a standard chair and comfortable.

#### **APPROACH**

13. Before considering the first of the Duffield Questions, in accordance with In Re St John the Baptist, Penshurst, I must first decide 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 2\* listed building. I consider that it is the church as a whole rather than any particular aspect of it that makes this church of special architectural and/or historic interest.

14. In considering whether I should grant the Faculty I have followed the guidance laid down in In Re St Alkmund, Duffield. The first question I have to decide is would the proposals, if implemented, result in harm to

the significance of the church as a building of special architectural or historic interest? I agree with the conclusion of the DAC that they will not. In those circumstances 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, It follows that Questions iii, iv and v set out in that judgment do not arise. However, they provide useful guidance when deciding whether the presumption in favour of things as they stand can be rebutted.

15. I have to consider how serious would the harm be were I to grant a faculty. The standard Victorian pews are plain in the extreme and have already been altered to prevent children from falling through their open backs. Removing six of them would do no harm other than that potentially caused by mixed seating. Were the pews of greater interest I might consider that they should be altered to make them easily moveable and retained. As to the chairs, I am in agreement with the view expressed by the DAC on Form 2 that the chairs themselves in the position at the front of the nave with the pews behind them, does not cause any harm, let alone serious harm to the building overall. The proposal is justified as is the public benefit of more flexible accommodation within the church.
16. As to the colour of the chairs, whilst I fully support the DAC’s objection to the colour and its potential effect on the church, seeing them in the church and restricted to a single row leaves me to question whether the presence of twelve chairs in that colour is so detrimental to the “the dignified atmosphere of the church” that I ought not to allow them to remain. Had the application been to remove all the pews and replace them with chairs of this colour I would have undoubtedly rejected the petition.
17. One factor which I have had regard to is the relatively short life of an upholstered chair.
18. It follows that I will grant a faculty to allow for twelve blue upholstered chairs in a single row to replace the first two rows of pews in the nave, together with the removal of the four rows at the back of the nave and the disposal of the pews which should initially be offered for sale or be given to any church who might want them. If after six months there has been no disposal by sale or gift, they may be discarded. There is no application to place any upholstered chairs in the area at the back of the nave and, were it to be made, it will be refused.

### LESSONS TO BE LEARNED

19. The whole process of this application has been very poorly managed by the church. The purchase and installation of the chairs ahead of obtaining a faculty was wrong. I would be entitled to take action against the PCC and consider imposing a fine. I do not believe that it would assist the church in its mission were I to do so, particularly when church finances are stretched as a knock-on effect of the pandemic.
20. The diocese provides a wealth of advice not only online but through the Diocesan Office, the DAC and the Registry. It should not result, as here, in the petitioners believing that they had submitted a petition for a faculty when they had not. It should not result in the delay that was occasioned here in trying to put matters in order so that the petition could come before me.
21. Had there been more engagement with the DAC and a willingness to discuss colours more widely before any were ordered or the APCM was asked to express a view it may have led to a far better solution.
22. If, as seems likely, the parish is going to petition in relation to further work arising from their desire to improve the heating and otherwise promote the laudable aim of making the building more accessible and more comfortable, I would encourage consultation with the Diocesan Office and the DAC in particular to see the project through without delay and with support.
23. For the avoidance of doubt, were any application to be made to add to the number of upholstered chairs in the present colour I would not be minded to grant it. If another colour more suited to the surroundings was chosen and found to be acceptable, then it is likely that I would require, as a condition of the faculty, the present chairs to be re-upholstered to match the new chairs.

His Honour Judge Leonard QC  
Chancellor of the Diocese of Ely  
21<sup>st</sup> May 2021