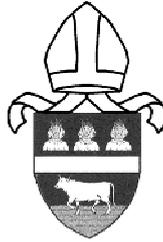


Neutral Citation Number: [2021] ECC Oxf 5



Faculty – Grade I listed rural church – Unopposed application for installation in the churchyard of a new bench made from metal and recycled plastic– ‘Not recommend’ Notification of Advice from the DAC – Conditional faculty granted

Application Ref: 2021-057884

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 27 June 2021

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Mary the Virgin, Ashbury

THE PETITION OF THE REVEREND CANON PAUL RICHARDSON (Associate Vicar) Mrs MARGARET MAUNE SIMONS (Churchwarden) and Mr ROGER SIMONS (PCC Secretary)

Unopposed petition determined on the papers and without a hearing.

No case is referred to in the Judgment

JUDGMENT

1. This is an unopposed online faculty petition, dated 14 May 2021, by the Reverend Canon Paul Richardson (the associate vicar), Mrs Margaret Maune Simons (the churchwarden) and Mr Roger Simons (the PCC Secretary) to install a new bench made from metal and recycled plastic in the consecrated churchyard of this Grade I listed medieval church which is situated within the Ashbury Conservation Area in the Archdeaconry of Dorchester. There is already one bench in the churchyard which, from the evidence of the photograph downloaded to the online faculty application, does not appear to have worn well. The church of St Mary the Virgin is an aisled church of Norman origin, mostly of chalk with brown stone dressings, which was restored by J. W. Hugall in 1873; and there were later repairs by W. D. Caroe in 1905-1910. According to the current volume of *Pevsner's Buildings of England* for Berkshire, published in 2010 and edited by Geoffrey Tyack and Simon Bradley, at pp 139-141, the village of Ashbury has some pretty chalk-built cottages, some of them thatched; and the downs above Ashbury are said to be especially rich in pre-historic antiquities.

2. According to the online petition, in January 2021 the Parochial Church Council ('the PCC') originally resolved to install a metal and wooden bench in the churchyard. This resolution, originally passed unanimously at a virtual meeting attended by all nine members of the PCC held remotely via Zoom on 13 January 2021, was in the following terms: *"The PCC agrees to the installation of a bench with a metal base and wooden slats, to be positioned near the tree to the left of the entrance gate to the churchyard."* The PCC later decided by email that they would prefer to install a bench made from recycled materials; and it is this proposal that forms the basis of the present faculty application. The PCC ratified that decision at a meeting on 12 May 2021. The PCC feel that using recycled materials is right for the environment and is what the wider church is encouraging them to do. They point out that the diocesan website encourages churches to be better stewards of the environment. The petitioners also point to the fact that the PCC know and love their rural churchyard and the surrounding area and that they would not want to put anything in their churchyard that would spoil it. They emphasise that this is a unanimous decision of the PCC. Based on an estimate from the manufacturer, the cost of the bench will be £475.

3. The manufacturer's specification for the proposed bench reads:

"This economical outdoor seating solution made from recycled material is ideal for school yards, playgrounds, parks, and community gardens.

Eco-Rest Seat is robust and economical with recycled slats and a sturdy steel frame.

The Eco-Rest range comprises Enviropol ® Material sections with two steel frame supports. All slat-fastening nuts have a tamper-resistant feature to prevent unauthorised removal of sections. Ground fixing is strongly recommended."

A copy of the manufacturer's photograph of the proposed bench appears as Photograph 1 below.

4. The existing bench appears on Photograph 2 below. The parish wish to place the new bench to the nearer side of the tree which appears on Photograph 3 below, just in front of, and parallel to, the existing boundary fence. The existing bench will look towards the proposed new bench.

5. By a Notification of Advice, dated 10 May 2021, the Diocesan Advisory Committee ('the DAC') have stated that they do not recommend this proposal for approval by the court for the following principal reasons:

"The DAC does not recommend the installation of this bench due to its design and materials. The bench is made out of recycled materials and steel. The slats are made from recycled plastic which will lighten over several years. The bench is designed for busy public environments such as schools and city centres where it is likely to receive a high amount of wear and tear. Ashbury is a quaint historic village with a picturesque churchyard. The DAC resolved that a steel-framed bench made with plastic slats would look out of place in this environment. The existing bench of a similar design is in poor condition and the DAC do not recommend that the parish endeavour to duplicate it."

The DAC acknowledge that the proposal is not likely to affect the character of the church as a building of special architectural or historic interest.

6. The present application had originally come before the DAC as a List B application but the archdeacon had rejected the application because of the design of, and the materials proposed for, the bench. As part of that process, one of the Church Buildings Officers had sent an email to the churchwarden acknowledging receipt of a photograph of the parish's proposed choice of bench. The email continued: *"We feel that a softer style of bench ... would be more fitting in your historic churchyard. The style of bench you have chosen is designed for busy public environments such as schools and city centres where it is likely to receive a high amount of wear and tear. A bench made from FSC timber would be more fitting in your picturesque churchyard."* There followed links to three websites displaying samples of responsibly and ethically sourced teak wood memorial and garden benches which are available at prices similar to that quoted for the PCC's proposed choice of bench. The email concluded: *"If you are concerned about the legs rotting over time, you may wish to consider creating a shallow stone/pebble base on which to rest the bench. That way the water will drain through the stones to the soft ground beneath. Soft ground anchors can still be used with this method."* I note that the Church Buildings Officer had previously visited the village and had formed the view that (as stated in the Notification of Advice), *"Ashbury is a quaint historic village with a picturesque churchyard"*.

7. Despite this discouraging response to their proposal, the parish have decided to proceed with their preferred design and materials nonetheless; and they have therefore submitted the present faculty application for their preferred design of bench.

8. The relevant excerpt from the minutes of the PCC meeting held on 12 May 2021, after the DAC's Notification of Advice, reads:

"The proposed bench is a Glasdon Eco Rest weather resistant seat made from Steel frame and Enviropol slats. Enviropol is an environmentally friendly material made from recycled materials including used supermarket carrier bags. The density, strength and weather resistance ensures a long, virtually maintenance free service life. It is self-coloured and needs no painting or surface treatment. In style the seat matches the existing older bench in our new churchyard. [Mrs Simons] showed the PCC a photo of the proposed bench and it was agreed unanimously to apply for a faculty to purchase this bench using the funds kindly donated by the Fete Committee and other donations rather than one with wooden slats."

According to the petition, the PCC comprises nine members. The parish have not offered any further justification for keeping to their preferred design for the proposed bench despite the DAC's recommendation that the court should not approve it; nor have they suggested any alternative design.

9. The public notices were displayed between 14 May and 13 June 2021 on noticeboards both within and outside the church and no objections have been received to the proposal.

10. There is no issue as to the installation of a second bench in the churchyard, or as to its location. From the photographs I have seen, the installation of a second bench will be a useful addition to the churchyard, which is likely to be welcomed by persons tending or visiting the graves or by those simply wishing to enjoy the peace and quiet of what has been referred to as 'God's acre'. The only issue relates to the design and the materials of the proposed bench.

11. Although the DAC have advised me not to grant the faculty sought by the petitioners, as no-one has objected to the proposal I can either decide the case on the papers or direct a full hearing. Sometimes, a full hearing may be desirable, or necessary, even where everyone concerned agrees that the petition should be granted because there are matters which can only be resolved at a full hearing, where witnesses can be called and examined. In the present case, however, I am entirely satisfied that I can properly determine this petition on the papers. The issue is clearly identified, the petitioners have uploaded some helpful photographs, and the opposing views of the parish and the DAC have been clearly articulated, and they are easy to understand.

12. The Oxford DAC comprises a body of people with great collective expertise and wisdom. They make a hugely important contribution to the faculty process in advising the Chancellor on faculty applications. I am particularly fortunate that the Diocese of Oxford also benefits from the services of a number of professionally qualified, and highly experienced and dedicated, Church Buildings Officers who support the DAC. I always welcome, and I am grateful for, the DAC's advice; and I always consider it very carefully and thoughtfully. However, it is, and remains, advice; and the actual decision on any faculty application is my own. The court must take all the relevant features and circumstances of the case into account when arriving at its decision, including the advice of the DAC. Whilst considerable weight must always be afforded to the expertise and experience of the DAC in the exercise of its statutory duty to advise the court, a chancellor cannot fetter his or her discretion by routinely rubber-stamping any and every notification of advice which the DAC produce. The Chancellor's function is independent of the diocese and is to be exercised having regard to all the relevant material, and any applicable law. Where the Chancellor's decision relates to matters requiring or involving technical expertise, the DAC's advice is particularly helpful. In the present case, however, the issue in dispute essentially involves an aesthetic evaluation of the type of bench proposed by the petitioners, and its suitability for this particular rural churchyard.

13. I share the reservations and concerns so clearly entertained, and articulated, by the Archdeacon of Dorchester, the Church Buildings Officer, and the DAC as to the suitability for this particular rural churchyard setting of the type of bench which has been proposed by the PCC. Having viewed the samples of benches that are available on the web-sites to which the Church Buildings Officer has helpfully directed the PCC, I am most concerned that there are other benches available in teak wood, at similar prices, which would be far more suitable for this particular churchyard setting, and which are also responsibly and ethically sourced. I am concerned that members of the Fete Committee, and the other donors, who are funding this bench may not share the views of the PCC as to the merits of this particular form of bench when judged against the other designs and materials that are available. I am also conscious that the burden falls on the petitioners to satisfy the court, to the civil standard (namely, on the balance

of probabilities), that a faculty should issue authorising the installation of this particular form of bench.

14. Against these considerations, however, I must also bear in mind that in the present case, the DAC have advised me that this proposal is not likely to affect the character of the church as a building of special architectural or historic interest. I must weigh in the balance the fact that the installation of this particular bench is not irreversible: subject to either list or faculty approval, a future PCC will be able to replace this bench with one of a design which is both more suited to this particular churchyard and more acceptable to the views of the DAC and the Diocese's Church Buildings Officers. I must also consider the strength of feeling and the reasoning of the PCC on this issue, and the fact that it is they, and not the DAC or the Church Buildings Officers, who will have to live with this bench on a daily basis. Taking all of these competing considerations and factors into account, it seems to me to be neither necessary nor appropriate for me to overrule the strongly-held views of the PCC by reason of an aesthetic evaluation. I am satisfied that the petitioners have made out their case for a second bench in the churchyard; and I do not consider that I should interfere with their choice of design and materials, motivated (as I am satisfied that it is) by a genuine aspiration to be better stewards of the environment and a knowledge of, and love for, their rural churchyard

15. What I therefore propose to do is to grant the faculty sought; but to impose a pre-condition that before placing any order for a bench for the churchyard, the petitioners are to supply each member of the PCC with a copy of this judgment. They are then to cause a PCC meeting to be held at which the PCC are to re-consider the design and the materials of the proposed bench. If they then endorse their existing choice of bench, so be it. If, however, they approve a different form of bench, this faculty will authorise such alternative form of bench as may be chosen by the PCC and approved by the DAC or their officers under the DAC's delegated authority. The period allowed for the proposal to be implemented will be six (6) months from the date of the grant of the faculty.

16. I make it clear that by allowing the petitioners' preferred design of bench, this judgment sets no precedent for the future in relation to this churchyard. If any further (or replacement) bench is to be introduced into this churchyard, then it will fall to be considered on its own merits, and in the light of how the existing benches have weathered, and have been received by the parishioners and other members of the public, over the intervening period.

17. Although this petition is unopposed, it is only right that I should explain my failure to follow the DAC's advice on this occasion with full reasons, which I hope I have set out in this short judgment. It is also right that I should waive any fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

The Fourth Sunday after Trinity 2021

Photograph 1: The proposed bench



Photograph 2: The existing bench



Photograph 3: The location for the new bench

