

Neutral Citation Number: [2022] ECC Lon 2

IN THE CONSISTORY COURT

DIOCESE OF LONDON

IN THE MATTER OF ST MARY THE VIRGIN, PRIMROSE HILL – Faculty 4247

-and-

**IN THE MATTER OF THE PETITION OF THE REVEREND PREBENDARY
MARJORIE BROWN (VICAR), ELAINE HEDGER (CHURCH WARDEN) AND
RODDIE MONROE (CHURCH WARDEN)**

-and-

**IN THE MATTER OF THE INTRODUCTION OF 150 NEW CHAIRS INTO THE
CHURCH**

November 29, 2022

Etherington Ch:

INTRODUCTION

1. This faculty petition has had a somewhat unfortunate history in that the works were undertaken and completed prior to any faculty being granted. The explanation as to how this happened fell into two parts: first, the need for the works to be completed before the Bishop of London's visit for the church's service of dedication on July 3, 2022 (the occasion of the church's 150th anniversary of consecration) and, second, because the Petitioners understood

the recommendation of the Diocesan Advisory Committee (“DAC”) to be conclusive of the fact that the faculty would *likely* be granted.

2. That the Petitioners felt under a self-imposed, but very real, pressure to have everything ready because of the impending visit by the Bishop of London is something I understand. This would obviously be a very important occasion for the church and clearly they wanted it to be in good order. It does not justify what they did but it does give an explanation and context to what might otherwise look to be high-handed action, dismissive of this court. I accept that this was not the intention of the Petitioners.
3. The second reason (that of the DAC recommendation) I treat with more scepticism. It is an explanation often given by petitioners when this situation of pre-emption arises. I find it is hard to accept for several reasons. First, the DAC’s recommendation is just that, a recommendation, as is clear on the face of the Notification of Advice. Second, it suggests that the consistory court would be no more than a rubber-stamp. Third, it fails to appreciate that, even if the court did grant a faculty, it may also impose conditions. Finally, in very clear terms and in bold type the DAC’s Notification of Advice states **“This advice does not constitute authority for carrying out the works or proposals and a faculty is required.”**
4. It is, of course, not surprising that the court will very often be in agreement with the recommendations of the DAC. There are also occasions when it may not be in agreement – often, but not invariably, in respect of a particular aspect of the works or the need (or otherwise) for conditions. The criticisms of the DAC for (it is said) not notifying the Petitioners of the Church Buildings Council guidelines, not consulting the CBC itself, and not recommending that the Petitioners should consult the CBC are in my view misplaced. If the Petitioners had followed the procedure correctly, they would never have purchased the chairs at all, let alone in a multi-coloured combination, before the court had granted the faculty. I also detect in the correspondence submitted that there were reservations expressed about the multi-coloured aspect and that the Petitioners nevertheless strongly desired to incorporate this feature. In any

event, whether I am correct or incorrect in drawing that inference, the procedure envisages the Chancellor being able to direct that consultation with specified bodies must take place prior to determining whether the faculty will be granted as prayed, granted with conditions, granted in part or refused altogether.

5. When the papers were put before me originally, I was suspicious that the Petitioners and Parochial Church Council (“PCC”) had simply thought it clever to present the court with a *fait accompli* in the (mistaken) belief that the court would have to acquiesce because it had no alternative.
6. On reading the explanation by the Petitioners, however, I am satisfied that this was not their intention. I consider it much more probable that the need for speed arose in the Petitioners’ minds because of the impending episcopal visit and from a decision to take a calculated chance that the court’s decision would reflect the DAC’s recommendation. I give the Petitioners more credit than to believe that they thought there would be no reaction at all from the court to their ‘jumping the gun’.
7. Both of their issues (the episcopal visit and the question of whether the DAC’s recommendation would be conclusive) could have been addressed by a simple phone call or email to the Registry where they would have learned that the court can deal with matters quickly where there is good reason, that the DAC’s recommendation does not guarantee the grant of a faculty and that, in any event, works may not commence until the faculty has passed the Seal.
8. I accepted the Petitioners’ immediate and unreserved apology on behalf of themselves and the PCC and that is the end of that matter from the point of view of any question of contempt. I also accept the Vicar’s assurance that this will never happen again. It goes without saying that this should not and will not disadvantage in any way my consideration of this petition for a faculty, but nor will it place the Petitioners in a better position than if they had followed the proper procedures as other petitioners have to do, subject to one consideration to which I will turn later on in this judgment.

THE PETITION

9. The petition, dated August 7, 2022, sought the introduction of 150 new chairs into the church. In answer to the question “How soon will the work start after the faculty is granted?” the Petitioners gave the startling answer: “We have already purchased the chairs based on the positive DAC.”
10. The advice of the DAC had been given on February 24, 2022. The DAC recommended the works or proposals for approval by the court and stated that, in its opinion, they were not likely to affect the character of the church as a building of special architectural or historic interest.
11. The church is a listed building, grade II. Public Notice was given on March 24, 2022 in the appropriate form until April 22, 2022. No objections were received.
12. One unusual feature about these chairs was revealed in the PCC’s resolution which was passed on January 19, 2022. The proposal was for 65 white chairs, 65 light blue chairs, 10 pink chairs and 10 lavender chairs. It was said that if additional money was raised for the remaining 22 chairs, 11 would be white and 11 would be blue (presumably the light blue). The petition, however, only asks that permission be granted for 150 chairs.

DIRECTIONS AND CONSULTATION

13. I gave Directions on August 11, 2022. I commented in similar terms to the Introduction above upon the fact that the works had already been carried out. I expressed my preliminary view that the chairs (particularly in respect of the colour scheme) may both affect and potentially harm the (specified) character of the church. I made clear that this was a preliminary, and not a final, view but that if I found such harm had occurred, I would apply what is colloquially known as the *Duffield*¹ test.

¹ *In Re St Alkmund, Duffield* [2013] Fam 158

14. I directed that both the CBC and the Victorian Society (VS) should be consulted and gave specific Directions as to how this should be done.

15. The CBC responded to the consultation on September 5, 2022 and commented as follows: *The Council understands the wish of the parish to introduce new seating and feels that the chosen chair type is an appropriate choice if it was purchased unupholstered but notes that the upholstered design has been selected. As set out in the Council's guidance on seating, the Council generally advocates the use of high quality, wooden, unupholstered chairs.*

16. In respect of the proposal for chairs of different colours, the CBC commented: *The proposal for multi-coloured upholstered chairs does not give due regard to the guidance or give a strong reason to depart from it. The Council notes that the parish has considered the colour choices to coordinate with colours in the ceiling of the building, but did not find this compelling, even adding confusion to the careful use of colour in the building.*

17. The CBC also recommended that a minimum of ten per cent of chairs had arms, but, since the Petitioners assure me that they have complied with this (and indeed exceeded it) I need not detail this aspect.

18. The CBC stated it did not wish to become a formal objector but left its views to be taken into account by the Chancellor.

19. The VS did not respond on this occasion.

THE PETITIONERS' RESPONSE TO THE CBC

20. The Petitioners responded by email on October 17, 2022. They said that they had consulted with experts and were successful in gaining the DAC's approval (sic) for this particular iteration of their scheme. The Petitioners made the point that the majority of the chairs are in muted colours and it is only a few chairs that are in brighter ones to reflect the colours (principally) of the ceiling.

21. The Petitioners also defended their use of these upholstered chairs in general as against the CBC's general guidance but I do not intend to rehearse these points as it is not the texture of the chairs that is my principal concern in this case, particularly as the Petitioners say they are not to be used around food and drink, but rather for worship, talks and concerts.

22. I also take note of the point made by the Petitioners that a number of parishes have this kind of upholstered chair and some have brightly coloured ones. These churches are from a number of dioceses around England. They provided me with a helpful list.

FURTHER DIRECTIONS AND FINAL SUBMISSIONS

23. In my Second Directions (November 1, 2022) I made clear that the concern of the CBC in respect of the 'multi-coloured' chairs was also my concern but that I was satisfied that the Petitioners had established a case for upholstered chairs of suitable quality (as these are) in this particular instance.

24. I said that I was satisfied that the one aspect of concern (the use of different coloured upholstery) was suitable for determination by written representations ("on the papers") but that I would give an opportunity to the Petitioners to make submissions on that aspect if they wished. In the event, they concurred with my view but did make final submissions on the merits as I had also invited them to do if they wished.

25. In their final representations the Petitioners sent me some additional photographs to the ones that had already been submitted. These were helpful, as were some further disclosures which I have read. Some of the photographs submitted showed the chairs in question and the later photographs showed clearly the red structure on the ceiling and the beams.

26. The Vicar, Prebendary Marjorie Brown, commented that St Mary's had undertaken an extensive consultation with the congregation over a number of

months before choosing the style and colour scheme. A member of the choir who is also a professional graphic designer had suggested the idea of "accent colours" to link with the roof beams and this idea met with an enthusiastic response. There was a real sense of joy and excitement about having the new chairs in time to celebrate the 150th anniversary of consecration (at which the Bishop of London officiated in July 2022) and to raise community spirits after the pandemic. The chair appeal was launched in the summer of 2021 and all the money, some £23,500, was speedily donated by members of the congregation. A number of people specified that they wished to sponsor a chair in the pink or blue colours.

THE CHURCH

27. St Mary the Virgin, Primrose Hill dates from 1872 and is Grade II listed. It was built by Dove Brothers with a south aisle and chapel added in 1891-2. I have read the Statement of Significance and looked at the photographs of the church contained therein. It has an impressive interior and I have noted the particular colours to which the Petitioners wished to draw my attention.

STATEMENT OF NEED

28. I have already indicated that I accept that the Petitioners have established a need for the chairs and, as I have said, I am persuaded that the upholstered chairs are acceptable notwithstanding the CBC's general guidance, particularly given their intended use. Upholstered chairs are permitted in some churches and each case depends upon the particular circumstances. My attention has been drawn to the fact that a number of churches throughout England have used the very chairs proposed by the Petitioners. As I say, each case depends on its own merits. I accept that sufficient chairs have arms, as recommended by the CBC.

29. There is in my judgment no *need* as such for chairs to be in a particular colour and it is a matter determined by aesthetic considerations. It is true that some churches have seating that is in the form of upholstered chairs and sometimes

in strong colours. The objection to strong colours, often red or blue, is that the colour in question can be too dominant. That, however, depends upon a number of factors specific to the church in question including whether it is a listed building.

THE ISSUE HERE

30. The issue here is specifically about a combination of colours amongst the seating: where the majority of the chairs are in one of two muted (and more neutral) colours and where a minority of the chairs are in two more dominant colours: pink/red and lavender/blue.

31. I take into account that some people may have wished to sponsor a chair and may have expressed a preference for a colour – say the colour described as pink, which I take to be the model that looks nearer to red. That preference for a particular colour is very different from making it appropriate within a larger number of chairs of a different colour. I also understand that the Petitioners, partly following a suggestion, say that the different colours pick out like colours from within the interior structure of the church.

32. The CBC did not regard this latter consideration as compelling and, indeed, thought that it added confusion to the otherwise careful use of colour in the building.

33. I share the concern of the CBC and would go somewhat further than it did in my concern as to the overall effect. I fear that, whatever the intentions of the Petitioners and however much they may have persuaded themselves that the effect is beneficial because these chairs are said to pick out dominant colours in the church, I very much doubt whether any objective visitor would view them in the same way. It seems to me that the overall effect on someone whose attention had not been specifically drawn to the Petitioners' intentions would probably be to cause puzzlement because of what they saw and probably induce thoughts that the church had been unable to find enough upholstered

chairs of the same colour and had simply improvised the seating arrangements with what they had.

34. I sense from some of the correspondence that in discussions with the diocese considerable weight was given to the desire of the Petitioners to have chairs of different colours, despite some reservations, because that wish itself was very strong. The strength of feeling about proposals is an important consideration and should be taken into account but it cannot of itself override legitimate concerns about the proposed works.

35. The particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Peshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund, Duffield* [2013] Fam 158 in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. It is this:

- a. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
- b. If the answer to (a) is “no”, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
- c. If the answer to the first question is in the affirmative, it is necessary to ask is how serious the harm would be;
- d. Then, it is necessary to assess how clear and convincing is the justification for the proposals;
- e. Generally, the greater the harm, the greater the benefit that will need to be demonstrated to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II*, if serious harm would result then the justification would need to be exceptional.

36. Applying this to the red/pink, blue/lavender upholstery, I find that the proposal to have some chairs (10 pink/red and 10 blue/lavender) in these strong colours will result in harm to the significance of the church as a building of special architectural or historical interest. I have to assess how serious the harm would

be. I find the damage would be *at least* moderate because it is very distracting to the eye and in the photographs I have been shown these strongly coloured chairs have been placed singly amongst the more muted colours. I accept that chairs are not permanent fixtures but seating has a marked effect on the appearance of a church.

37. The justification is neither clear nor convincing. It is certainly not a 'need' in any usual sense of the word and I agree with the CBC that the strongly coloured chairs create a confusing effect rather than picking out or harmonising with colours within the church's interior. I am afraid that I am unable to conclude that there is any objective justification for these more strongly coloured chairs and that therefore they must be removed.

38. I turn then to the more muted colours: the white and the light blue. Had they not already been purchased I would be likely to have ruled that the chairs had to be one of the two more muted colours rather than both. Whilst, as I have said, the Petitioners should not benefit from having wrongly proceeded with the introduction of these chairs without faculty, I am now faced with the fact that a large number of both light blue and white chairs have been purchased at no little expense.

39. The difference between these chairs and the others is that because of their considerably more muted tones, I regard the harm to the special architectural and historical significance of the church is correspondingly and substantially lower. There is no more justification for having two of the more subdued colours than for the more strikingly coloured ones but, bearing in mind the money already spent on these more neutrally upholstered chairs and the level of harm likely to be occasioned I find the balance by a small but definite margin favours their retention.

40. If further upholstered chairs are purchased then equal quantities of both colours must be achieved. The petition in fact requested permission for 150 chairs, so further chairs would require a fresh faculty or a variation of this one.

41. In conclusion, I grant a faculty for a maximum of 150 upholstered chairs inside the church. I refuse permission for the more deeply coloured pink/red, blue/lavender chairs being placed in the church and they must be removed from it.

42. I impose the following conditions:

- a. The chairs permitted must be upholstered in the white or the light blue upholstery;
- b. The white and light blue upholstered chairs which I am permitting must consist of fifty per cent white chairs and fifty per cent light blue chairs.
- c. The more strongly coloured pink/red and blue/lavender upholstered chairs must be removed from the interior of the church by May 31, 2023.
- d. The PCC must certify to the Registry on or before June 1, 2023 that the pink/red and blue/lavender chairs have been removed from the interior of the church.

COSTS

43. The Petitioners must pay the costs of this judgment which will be taxed by the Registrar.