

In the matter of St Mary, Washington

## Judgment

1. By letter dated 7 November 2012, Mrs R Luckin, the Clerk to Washington Parish Council, invited the Court to review the faculty which had been granted in this matter on 16 March 2012. This letter was sent in error to Chancellor Bursell QC, one of the Archbishop of Canterbury's Commissioners conducting a Visitation in the diocese and there was a delay before it reached the registry. Rule 33(2) of the *Faculty Jurisdiction Rules 2000* gives the Court power to set aside or amend a faculty if the Chancellor considers it just and expedient to do so. The Court issued directions on 21 December 2012 in consequence of which the following material has been lodged to assist me in determining the matter:
  - a. Letter from Mrs Luckin setting out Washington Parish Council's position;
  - b. Written observations from Professor Milner-Gulland (also in the names of David Whyberd, Lesley Britt and Alison Jennings);
  - c. Observations from the Diocesan Advisory Committee;
  - d. Observations from the Church Buildings Council;
  - e. Response from the petitioners in the form of a letter from Mr Nigel Baker with various enclosures.The material submitted by Mr Baker dealt also with the petitioners' separate application arising from their breach of condition 2 of the faculty which prohibited the ordering of congregational chairs until their design and manufacturer has been approved in writing by the Chancellor.
2. To the extent that it is material, the faculty provided for the 'removal of existing pew platforms and fixed pews, replacement with timber floor and loose chairs'. It has been acted upon. The Parish Council object to the removal of all the pews. It was suggested in the Parish Council's letter of 7 November 2012 that at some stage prior to the reordering Councillors met the Reverend Chris Maclay 'and were assured that the Victorian pews would be retained'. The Parish Council expresses itself to be 'deeply disappointed that assurances regarding these pews have been disregarded'. Having regard to this allegation, the Court made an interim direction maintaining the status quo pending fuller investigation and further submissions which have now taken place.
3. It is far from clear from the papers whether any such assurance was given. What was proposed for this church had been the subject of widespread and ongoing consultation and inevitably it has been the subject of evolution. Public notice and newspaper advertisement (in this instance the West Sussex Gazette) for the proposals expressed them as 'Removal of existing pew platforms and fixed pews, replacement with timber floor and loose chairs'. No comments were received by the deadline prescribed. I take the view that it ought to have been obvious from this wording that the proposals extended to all of the pews.
4. I can find no compelling reason why neither the Parish Council corporately nor Professor Milner-Gulland personally failed to write to the registry to express their views which seem to be strongly held. Notification was given not merely to church-goers (by notices at or near the church building) but to the local community more generally

through a newspaper. There seems to me to be nothing irregular in the process such as to undermine the validity of the faculty.

5. However, in deference to the views expressed by the Parish Council and by Professor Milner-Gulland, I have reviewed the evidence and considered whether I would have determined the petition differently had their arguments been expressed prospectively. I understand that the pews have been retained pending the outcome of this review, and were the Court to order it, they (or at least a substantial number) can be reintroduced and affixed to the pew platforms. I hope I do justice to the points made when I summarise them as follows:
  - a. That the pews are a major feature of this grade II\* listed building;
  - b. They are an integral part of the church's 1860s reworking;
  - c. The faculty jurisdiction should safeguard Anglican patrimony as expressed in its built heritage;
  - d. That a compromise solution should be sought, and that even if the pews are not to be re-introduced into the church, they should not be disposed of.
6. The Consistory Court does not act in a vacuum. It relies upon the Diocesan Advisory Committee whose diverse membership provides expertise in matters of architecture, aesthetics and a vast array of heritage matters. It benefits, amongst other things, from a representative appointed to promote the interests of the National Amenity Societies. In the course of the current review, the DAC has been consulted a second time in relation to these proposals and asked specifically to comment upon the pews. It has advised the Court as follows:
  - a. the pews were not of any outstanding quality or historical merit;
  - b. there was no merit in retaining some of the pews either in storage or within the church itself;
  - c. there was no appropriate position within the building to which the pews could be relocated.
7. I also note that the proposals met with the approval of the Victorian Society and the Society for the Protection of Ancient Buildings. Having regard to all of the matters, even if I were to be persuaded that it would be just and expedient to set aside the faculty, having regard to the additional matters now before the Court, the petition would not be determined differently and a faculty in identical terms would issue.
8. It therefore follows that the petitioners are at liberty to dispose of all of the pews and replace them with chairs. This may be phased as resources permit or the petitioners may (if they wish) retain a number of pews in a specific location. A faculty is permissive. It does not compel the petitioners to act. But they have authority to remove and dispose of them all if they so wish.
9. Turning to the pews, Mr Baker has graciously taken full responsibility for the unlawful act of the petitioners in introducing chairs into the church in breach of an express term in the faculty. This Court deprecates the violation of its orders. If the authority of the Court is flouted, it brings the ecclesiastical exemption into question. However, I accept that Mr Baker's actions were not an act of contempt but an honest mistake made through an excess of enthusiasm. He has apologised to this Court, and due to the whole

faculty being reviewed, both his oversight and his apology have become widely known in the community, doubtless causing him embarrassment. I am confident that this will not be repeated. I accept his apology without hesitation and regard the matter as closed.

10. As to the merits of the chairs, there is a difference of opinion between the DAC which favours them and the CBC which does not. Had my permission been sought prospectively in accordance with the condition, I am in no doubt that it would have been granted. This court therefore gives approval retrospectively.
11. Unless application is made to the Court within 14 days of dissemination of this judgment, the additional Court costs will be borne by the petitioners.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

17 April 2013