



Re St Michael and All Angels, Berwick

Court of Arches: Ellis, Dean, 17 May 2022

[2022] EACC 1

Appeal – pews – hearing proceeding on incorrect basis

The appellants had sought a faculty for the replacement of fixed pews with stackable pews. The Church had three forms of seating: Victorian and twentieth century fixed pews, and a set of rush-seated chairs. The pleaded petition related to the pews only. The DAC and Historic England both regarded the rush chairs as having historical significance as a reference point to mural paintings by Quentin and Vanessa Bell and Duncan Grant, which were themselves historically significant.

At a hearing of the petition, the appellants' counsel submitted that their case was 'all or nothing' (i.e. that all three sets of seating should be allowed to be replaced, or none at all). On this basis, the court refused the petition as not meeting the *Duffield* criterion for clear and convincing need.

The Arches Court held that whilst the court correctly applied the *Duffield* framework in principle, it fell into error by applying that framework to an incorrectly presented case. This was because the submission by the appellants' counsel was not in line with the appellants' pleaded case, which only referred to the two sets of pews rather than including the rush-seated chairs. Accordingly, it found that the conduct of the original proceedings was fatally flawed. The appeal was allowed and the petition was remitted to the consistory court for re-determination of the original petition.

In relation to costs, the Court of Arches noted that counsel for the appellants took responsibility for an error in his submissions which neither the parties nor the Deputy Chancellor spotted. It reached the provisional view that the appellants should bear the costs of the appeal, but granted liberty for written submissions to be put in if the appellants wished to seek to persuade the court otherwise. [Jack Stuart]

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Re St Michael and All Angels, Berwick

Consistory Court in the Diocese of Chichester: Hill Ch, 1 June 2022

[2022] ECC Chi 3

Case management directions – application to vary/set aside – court's discretion

Following the Arches Court's decision at [2022] EACC 1, noted above, the court issued directions on its own initiative to determine the original petition at an oral hearing. Thereafter the petitioners' counsel wrote to the court taking issue with