



## 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

the directions made, which the court treated as an application to vary or set aside the directions.

The court noted that orders on the court's own initiative were encouraged by rule 18.3 of the Faculty Jurisdiction Rules 2015. Further, the order complied with rule 18.3 (5), concerning a party's right to apply to set aside, vary or stay such an order.

The Arches Court had ordered the remission of the petition for redetermination under rule 27.8(2)(b). The petitioners argued that the absence of an order for a new hearing under rule 27.8(2)(c) meant that the directions for an oral hearing were unlawful. The court held that the Arches Court's decision placed no fetter on the consistory court; the direction for a re-determination did not preclude that re-determination being at a hearing.

It was not argued that, if the court had such a discretion to order a hearing, it should not do so. However, the court reviewed its decision of its own initiative, and reaffirmed its decision. It would be more efficient than a disposal on paper, which would still require a visit to the church and a fuller written judgment. It would prevent further miscommunications such as those that had affected the previous hearing. Finally, it should be recalled that the default position is that faculties were determined at a hearing; if the expediency test is not met in relation to disposal on paper, proceedings would default to a hearing.

The costs of the application were reserved to the hearing, the court noting that the costs order made on the appeal did not relieve the petitioners from any liability for the costs of the petition itself. Given that the petitioners had declared themselves unable to fund the litigation, the court ordered security for costs of the re-determination. [Jack Stuart]

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### **McGuigan, re Application for Judicial Review**

High Court in Northern Ireland: Rooney J

[2022] NIQB 38, 20 May 2022

*Departmental policy on exhumation for reburial – definition of 'exceptional circumstances' – Articles 8 and 9 ECHR.*

Mrs McGuigan's husband had been murdered in her presence in 2015. She wanted his remains to be exhumed and reinterred in the same grave as their daughter. Where the exclusive rights to burial have been purchased, a grave cannot be opened without the owner's permission; and Mr McGuigan's mother, the owner of the exclusive rights of burial in the plot in which he was buried, refused her consent, having previously refused her terminally ill granddaughter's request to be buried with her father. The Department for Communities refused to authorise the exhumation, citing its 2021 revised