

In the Consistory Court of the Diocese of Leeds

In the matter of the Church of St Lawrence, Aldfield

In the Parish of Fountains

**Petition for retrospective permission for works
2022-074876**

JUDGMENT

1. By a petition dated 15th July 2022 Mr David Ferguson (Church treasurer) and Revd Ian Kitchen (Rector of the Parish of Fountains) make petition for retrospective permission for works performed upon the Church organ without any form of permission having been sought through the usual channels. In explaining why the Church treasurer is the main contact regarding the petition, rather than the Churchwarden(s), Mr Ferguson explained “*The Church Warden is Mrs Bernice Ferguson, wife of the petitioner [, who] has asked me to act on her behalf as I have more experience and suffer less stress in preparing such documentation.*” Upon the petition there is a question that concludes “*what are the reasons for asking for permission for the proposals?*” Mr Ferguson has responded “*Because we were told to make it 'legal' and to recover the VAT*”.
2. It is worthwhile repeating here that in law no item may be introduced or

significant change be made to a Church building, its fixtures and fittings or within the churchyard without the appropriate consent, whether that be the general consent for matters included in List A, the consent of the Archdeacon for items included in List B, or in all other cases the permission of this Court. (Of course, there is some limited relaxation of that rule in that the Incumbent or Priest-in-Charge has delegated authority of this court to permit certain memorials that comply with set rules to be introduced without faculty). It is important that the Clergy, Churchwardens and members of the Parochial Church Council are aware of the obligations in law to seek permission for works performed on, in and around our places of worship. Assistance is always available from the Archdeacon, the Diocesan Advisory Committee or from the Diocesan Registry for those uncertain as to what rules apply. There can be consequences of failing to abide by the rules, including the issuing of a restitution order, a requirement that those responsible pay all the costs and legal fees relating to correcting or permitting works performed without permission and even, in extreme cases, the power of the Court to make an excluded matters order (s78(3) of the measure) so that a Parish may not perform any works, even those ordinarily permitted under list A or list B, without seeking a faculty.

3. With the petition was a document entitled Works Summary. It described the works as : *“The work which has been completed and for which we are seeking formal approval comprises [sic]:*

- 1. Treating of woodworm, cleaning of pipework and fitting 2 new sets of sliding*

tuners.

2. Testing of a sample of blower chamber insulation and obtaining a report on the asbestos fibre type.

3. Removal of blower chamber complete, asbestos removal and chamber cleaning at [organ restorer's] works, returning and re-installing at Aldfield."

4. I do not here mean to detract from the good intentions of Mr and Mrs Ferguson who, like many others across the land, are the back-bone of the parochial system. Without the support of dedicated volunteers, willing to place both their time and financial resources towards good works, many of our beautiful places of worship could not function. However, it does seem surprising that anyone involved with the organisation and day-to-day ordering of a Parish Church, let alone a Grade II* listed church like St Lawrence's, would not realise that removing parts of the workings of a pipe organ, taking them away from the church building and later returning them for reinstallation, were works where formal permission will be required. The same can also be said for the firm that carried out the works on the organ and the firm that was engaged to remove asbestos. Any firm providing such services to a parish church ought to be aware of the obligations in law, not least because they could find themselves made a party to action before the Consistory court and at risk of financial or other penalty. It would have been advisable for a representative of the organ repairers at least to have sought confirmation that formal permission had been obtained before ever disassembling and then removing parts from this pipe

organ. In my experience it is usual practice for many firms that habitually carry out repairs relating to tower clocks and the bells of a church to remind the church representatives that formal permission for the works will be required. The same procedure should ideally be adopted by this firm of organ builders. I shall ask for a letter to be sent to the organ builders from the Diocesan Registry suggesting that they should gently and politely ask parishes for confirmation that appropriate permission is in place for works to a pipe organ.

5. I looked in vain in the petition and the other documentation enclosed for any explanation why the works were performed without permission being sought. It also appeared, on the face of it, that the works were performed without the Parochial Church Council first being consulted, for the PCC minutes of 4th July 2022 include only this mention of the works performed:- *“An e-mail had been received relating to retrospective List B consent for the organ repairs. Rev Kitchen would contact the Archdeacon about the email, which had caused some disquiet. Bernice and David Ferguson were thanked for funding and organising the organ repairs, which were much appreciated.”* There are no other Parochial Church Council minutes provided suggesting that the works had been discussed and approved. (Note - I had not seen the email referred to in the PCC minutes until after my actions described in paragraph 7). The only other indication why the works were performed without permission was in the statement of needs, which includes this following : *“In a report from [the relevant named firm], pipe organ specialists; restorers and tuners, it is stated*

that the instrument works well, but suffered from an infestation of woodworm which had affected some of the Bass Stopped Dispason [sic] pipes. It was recommended that this was treated as a matter of urgency. Therefore, the following works which [sic] have been completed in April 2022, due to their reported urgent and complex nature . . .” I do note that the report from the Organ restorer is dated May 2021, so that rather defeats the suggestion that works performed in 2022 were so urgent they could not wait. In any event, the Consistory Court is very used to dealing with urgent applications, where an Interim faculty can often be granted very swiftly to deal with truly urgent works. That is another reason why Parish representatives should always be advised to seek advice from the diocesan representatives when confronted with information that works are required.

6. When the petition was considered by representatives of the Diocesan Advisory Committee on 16th September 2022 it was decided that a notification of advice recommending the proposal be issued.

7. When the petition for this faculty was presented to me through the on-line faculty system on 5th October 2022 I was concerned that there was no explanation how or why these works were performed without permission AND there was no apology that the situation had arisen or any indication of contrition from those responsible. The statement of needs repeats the reasoning for seeking a retrospective faculty as being *“The PCC wishes to seek formal*

approval for the above works so that it can claim back the VAT”. Quite frankly, the desire to reclaim VAT should be one of the last concerns of Church representatives who have been found to have performed works without permission - they should seek to regularise the situation of works being unlawful without authorisation as soon as possible. (I also note that the works were not paid for from Parish funds but were paid for entirely by others without involvement of the PCC bank account - according to the endorsements on the invoices - so I do query whether VAT is reclaimable in any event under the relevant scheme, although that is not my concern. I do, however, add that to my mind the better practice in such situations would be for the person wishing to pay for such works to donate an appropriate amount to the church - preferably through the gift aid scheme - so that all works are formally performed by or through the Parochial Church Council). In those circumstances I returned the petition to the Diocesan registry to seek further information from the petitioners, stating the following : *“There is no explanation why this work was carried out without permission, and seemingly without consulting either the Archdeacon or the Church Buildings Support Officer or the DAC office for any guidance. The PCC minutes also suggest the work was performed without the PCC being consulted. It is stated that the work was urgent, but there is no explanation why an interim faculty was not sought. There has been no apology for carrying out work without permission, . . . nor assurance that it will not occur again. It is my usual practice when works have been performed without permission to require the PCC to pay the faculty fee; is there any reason why*

the Church should not be ordered to pay the faculty fee?"

8. I have already mentioned the only PCC minutes with which I have been provided. I raise a further issue of concern, that being the petition includes a declaration that *“The parochial church council at its meeting on 04/07/2022 passed unanimously [of ____ to ____] among those present and voting a resolution relating to the works or proposals. A copy of the resolution is not included with this petition”*. That clearly is not a correct assertion according to the minutes (see the text of those minutes in paragraph 5). The petition has been signed with a declaration that the facts stated in the petition are true. It is clearly appropriate to here reiterate the position that signed petitions are taken on trust to be accurate. I should raise here a word of caution that on finding a false or misleading statement in a petition the [Deputy] Chancellor will understandably be perturbed and there could be consequences, including dismissal of the petition. Parish representatives should take great care to ensure that petitions have been completed accurately before they are submitted. Fortunately in this case I am now assured (see below) that the Parochial Church Council was aware of the works needed. Unfortunately that means that no-one from the Church leadership raised the issue that clearly formal permission would be required for these works.

9. In response to my request for further information the Revd Ian Kitchen provided a schedule of emails concerning the Church leadership realising that

the works needed retrospective permission. The earliest in time was from June 2022 when the Churchwarden asked the Archdeacon to provide retrospective permission.

“We are trying to claim back the VAT for refurbishment of organ, blower and removal of asbestos which took place in April this year. Unfortunately we omitted to seek the appropriate permission as we knew the refurbishment was urgent and complex. It was all carried out by [named firm], the recognised organ builder . . . The PCC was aware and happy for the renovation to go ahead. Would it be possible to have retrospective permission for this essential work so that we can claim back the VAT?”

The Archdeacon correctly responded that retrospective permission would need to be sought by way of faculty. The immediate response to that was that, as applying for a faculty was stressful, the Church would not make such an application and would forego the VAT reclaim.

Fortunately the Archdeacon responded that the faculty system should not be stress-inducing, pointed out that the Diocesan staff would assist and finally suggesting that *“It would also be a good idea to regularise the situation”*.

A member of the Diocesan Church Buildings and Pastoral Reorganisation team then also communicated with the Churchwarden, and reassured her as follows :

“applying for a faculty need not be stressful, although you would be forgiven for thinking it an arduous task. The reality is not quite as complex as you may initially think, and my colleagues and I can help you through the process”. He then described the process and promised that someone from the diocese would

be able to assist.

The Church Buildings Support Officer then also offered reassurance and advice, pointed out that the Churchwarden had recently had experience of the Online Faculty System from a List B application she had lodged, provided guidance on the documents that should accompany the petition, but also stated as follows:

“After a conversation with the DAC Secretary we would wish to strengthen the Archdeacon’s advice, in that applying for a retrospective faculty is not just a means to the end of reclaiming VAT (though that’s a benefit of it), but a legal requirement on the Incumbent and Churchwardens” He then, quite correctly, pointed out that in Leeds Diocese when a retrospective faculty is sought the petitioners are usually expected to pay the faculty fee.

I suspect that this email was the one mentioned in the Parochial Church Council minutes as causing ‘disquiet’

All of the above is indicative that advice and assistance from the Diocese is always available to Parishes unsure how to proceed when told works must be performed. I trust it will be a reassurance to Parish representatives to know that there is help available whenever they are unsure of the procedure or uncertain what steps should next be taken. A good maxim should be ‘If in doubt, ask’.

10. In response to the last email mentioned above the Revd Kitchen wrote to the Diocesan Advisory Committee Secretary, copying in the Archdeacon and others, and stated the following:

“In the wake of . . . email correspondence with [the Treasurer and Churchwarden] over the omitted permission for organ repairs at Aldfield, can I make a plea for as much flexibility over this as possible.

Mea culpa first in that I didn't check that necessary procedures were being followed - I try not to get involved in faculties but that's no excuse for not checking.

Failing to apply for the [necessary] approval was a one-off, partly due to scurrying around in an attempt to deal with asbestos as well as the repairs which were necessary.”

So, there was some indication of contrition from the Parish leadership, but he then indicated that his treasurer and Churchwarden felt that the requirement for a retrospective faculty, and for the parish to pay the fee was heavy-handed, and he feared he would lose the services of those two trusted and invaluable servants of the Church.

In response the Diocese agreed to pay the faculty fee on behalf of the petitioners in this matter.

Again, this is an indication that the staff of the Diocese do listen to the Parish representatives and are aware of the realities of trying to run a Parish, especially in these times of financial constraint.

11. Given that I have now had some explanation of how and why the situation arose that no formal permission was ever sought I am content to permit the issuing of a retrospective faculty. It would have been advisable for the

Petitioners to have provided that explanation when submitting the petition, but now at least they know for the future what systems there are in place to assist the parishes (and, of course, there is warning what potential consequences there could be in not following the rules). I am reassured by the Revd Kitchen's assurance that ordinarily the Parish does seek permission and will do so in all future cases.

There will be no costs order as the Diocese has agreed to pay the faculty fee.

Let the requested retrospective faculty be issued.

Condition : The petitioners shall ensure that full details of the works performed have been entered in the Church log book.

Glyn Ross Samuel
Deputy Chancellor
7th October 2022.