

Faculty Jurisdiction Rules amendments

Drafted by Liz Kitch July 2018

Items to add to List A

These are items which have been deemed by the Chancellor not to require a faculty.

Removing carpets but not wishing to replace them

Installation of swift boxes

Disposal of non historic safes

Introduction of bee hives in the churchyard if the bees are being kept by the incumbent or PCC then he is content that they may do so without the need for a faculty. They should though consult the PCC's insurers to check that their public liability insurance covers the risk of people being stung.

List A1.3 does not specify that the window should not be removed from site during the works

List A references not 'lifting a bell from its bearings' which is meaningless with most bells being hung with captive ball bearings nowadays (making it impossible to 'lift' a bell at all without first unbolting and lifting the bearings with the bell).

Items to add from List B to List A

None

Items to add to List B

Parishes sometimes interpret works as falling within List A to avoid having to make an application. More works being covered by List B may alleviate this.

Ideally this should include anything that does not alter the character or significance of a church (unless liturgical). DAC officers, members or advisors and architects all have oversight of List B applications so due consideration would still be given to all these items. If not affecting the character or significance of the church is there a true need for a public notice period (except for changes impacting worship of the congregation) and consultation with amenity societies such as Historic England and SPAB would remain possible where extensive repairs or conservation were proposed.

Installation of a phone line or broadband connection provided that no excavation is involved and that what is proposed does not affect the character of the listed building.

List B1.13 does not include provision of a sound desk for the collation of the equipment allowed under this List B. This should be amended to include it so that a faculty application is not required.

Installation of a defibrillator

Extension of existing audio visual systems, even where items need to be fixed to the church fabric. You can install a whole new sound system under List B1.13 which could have significantly greater visual impact. This should exclude the installation of screens but may enable the

Installation of CCTV for organ players or streaming services (also for security purposes ideally, although this may have GDPR implications)

Replacement of an electronic organ with another electronic organ (speaker location and fixing details would have to be provided to the DAC)

The relaying of a loose gravel path with bound or bonded gravel

Repairs to stained glass or historic plain glass (excluding major conservation or installation of isothermic glazing)

Extension of an existing lighting system within main areas of the church

Replacement of lighting units from halogen to LED

B.1.1 the use of the word 'routine' and the requirement for the works to be noted within the QI report (or subsequent architect letter) within the specified condition means that works following impact by vehicle/vandalism/lightning strike cannot be carried out under List B

The List B provisions about works to heating systems should be strengthened to ensure that contractors are properly qualified for non-domestic work, often requiring an element of design. This could be dealt with by way of a specified condition such as: all contractors employed to work on wet heating systems in churches must hold a minimum qualification of Level 3 NVQ Diploma in Heating and Ventilating Industrial and Commercial Installations (City & Guilds 6188-30, or equivalent) and non-domestic qualification from Gas Safe or, for oil systems, be an OFTEC Approved Technician.

Like for like replacement of a shed within the churchyard

Clarity should be given to the permission required for works to historic fabric which improve the situation— such as replacing UPVc downpipes with cast aluminium.

Investigative works, such as opening a roof or digging a trial pit with archaeological conditions

Redecoration of clock face, using colours to match the existing

The introduction or disposals of plain altar frontals

List B tree removal – the specified condition does not require consultation with the LPA, it should

The disposal of a bench within a churchyard

The introduction of bird netting

List B1.9 should have a specified condition which stops replacement or alteration of historically significant roofs under List B.

List B1.7 All new gas boilers must be condensing boilers (except where a certificate of exemption has been issued by a Gas Safe engineer) and these need a flue so the list b entry is currently useless and all boiler replacements therefore require faculty permission. The location and provision of a condensate drain will also almost always require impact on historic fabric.

The re-setting of memorials in churchyards by the heirs at law.

List B1.2 allows for the replacement of crown staples but the specified condition stipulates that no drilling is to be involved. However usually cast in crown staples must be drilled out in order to be replaced. Either the List B works may need to be amended to omit crown staple replacement, or drilling for this purpose be permitted

List B references work being allowed only 'if a bell is currently capable of being rung', but in nearly all cases the work is only required because the bell is NOT currently capable of being rung – so strictly speaking all the listed work will require a full faculty.

Rules that are unclear and suggestions on improving clarity

FJ Process more widely

In August 2017 the Oxford DAC emailed all the churchwardens and incumbents of the diocese and asked for their feedback on the DAC and the faculty process. The responses below incorporate elements of the responses received, as well as our own considerations of the systems. The document produced summarising that feedback, and changes the DAC are making, has been forwarded to the Chancellor of the Diocese and Dr David Knight.

The entire system can seem a mystery to applicants, even with explanation from DACs. There are strong feelings of distrust and suspicion within parishes towards the DAC, and faculty process, which lacks transparency and accountability. It is impossible to produce a guidance note that makes the whole process clear, and an entire 420 page book is needed to understand the whole process. It is clear to those in DACs, at the front line of parish support, that the inherent complexities within the system must be amended for parishes to find the system easier; an absolute requirement in the current climate.

Complication and bureaucracy

The complicated process of DAC advice, petition, consistory court and hearings is extremely difficult for applicants to understand; one vicar has described it as 'mystifying and demoralising'. This gives the impression to parishes that the diocese is out of touch and enforcing bureaucracy onto volunteers who are at breaking point. There is a misconception that the DAC is the faculty process maker and understandably parishes are extremely frustrated.

Continual complaints from applicants and the frustrations of working to the existing system is causing talented and experienced staff to consider leaving the world of DAC. This would be a great loss.

Vicars and Area Deans report that although Lists A and B have made things simpler they hear of many parishes trying to bypass DAC and the faculty system.

One vicar noted to the DAC recently that there was a learned perception amongst parishes that the faculty system 'was at least a pain, if not demonic' which parishes will do anything to avoid but that a 'collective sigh of despair' could be heard when the need arises to apply for permission.

It is certainly clear to DAC staff that parishes find the system extremely taxing and time consuming and that this acts as a deterrent to application. Parishes tell us that that the present system encourages a 'why bother?' attitude.

Considerable simplification of the system would also mean that DAC staff could spend more time making valuable contributions to schemes, supporting parishes, or on proactive projects with partner organisations. The DAC needs to be able to assist parishes to deliver their projects on time and on budget, but we are currently hindered by the legislation. This would also ensure that large, complex schemes of reordering buildings receive the care and attention they deserve and demand, from both the DAC officers and DAC committee. This can currently be very hard to achieve due to the volume of schemes to be discussed.

Reliance on volunteers

Applications for Listed Building Consent are often made by the professional advisor appointed to deliver the scheme. Applications for List B and faculty permission are often made by overstretched, under resourced parish volunteers with little or no experience in the conservation of buildings. The faculty system is inherently weakened due to its reliance on dwindling numbers of aging volunteers and the system puts the onus on these volunteers, to both make the application (parishes) and to review it (DAC members and advisors). As a result, applications are often insufficiently detailed or not thoroughly evidenced or explained, and the subsequent review by DAC volunteers can be delayed, with the DAC staff not able to chase a response as you would if these were paid members of staff.

The membership of DACs is also limited as a result of this volunteer status. Those with the time to give to such a commitment are often retired and therefore may not be keeping up to date with conservation techniques or other industry standards.

The number of volunteers the Church of England can rely upon are falling – people retire later, have lower incomes in retirement, and many will need to be carers for parents or grandchildren due to the state of social services. It is therefore of the utmost urgency that this dependency is altered or lessened.

If a greater number of DACs were staffed with conservation professionals, with a background in architecture or surveying, then it would be easier to provide them with more authority to review applications for minor works without needing to consult members of the DAC. This is the way of working within Local Planning Authorities, and many of the amenity societies, and will clearly help alleviate delays and complications. Should the Miscellaneous Provisions Measure come into effect we are hopeful that the Oxford DAC will resolve to delegate much of its minor applications (around 60% of its workload) to its officers, and trust them (and ultimately the Senior Church Buildings Officer) to identify those instances where additional expertise of a member or advisor is needed to suitably review an application.

One response received from a vicar in the diocese noted the extreme impact the process has on churchwardens and congregations and *'having to beg those involved with faculty applications to keep going'*. This is not uncommon, the Oxford DAC regularly hears comments from churchwardens that they have, or will, resign over the stress caused by faculty applications. In Oxford we take regular opportunities to review the advice given and improve our working practices. But there is only so much DACs can do. The legislation to which we work naturally dictates what we can do.

Regional variation in policy

A submission for Listed Building Consent, or planning permission, is determined by a Local Planning Authority against national policy and guidelines. Caselaw is considered when a faculty petition is reviewed by a Chancellor. However, there is no DAC equivalent. Lack of policy and criteria about how schemes are considered by DACs leads to enormous regional variations in what is and is not supported and allows the subjective opinions of the members of a particular DAC to shape the projects of that diocese to an undesirable extent. This lack of policy also leads parishes to ask how the DAC has come to its decision, why it is giving the advice it is giving, and compounds suspicion of an old boy's club whose power has gone to its head. In Oxford we are presently working on writing a brief policy note to meet this need, explaining to parishes what criteria are considered when the DAC reviews a scheme and any policies it has on common issues, such as upholstered chairs, the replacement of lead with an alternative material, where to site new facilities etc. This will meet an immediate need but if the faculty system is to be able to defend itself to criticism, and comparison with the secular system, it must be at least as well, if not better equipped by a national system of policy amongst the advisory bodies.

The Online Faculty System

The OFS requires Statements of Significance and Need to be uploaded before being able to submit any faculty application but does not provide any guidance about when these are required. Not all applications for faculty permission will require these documents but a parish is not told this and cannot submit unless the forms are completed or at least left intentionally blank. The template for these forms has long caused confusion and stress to applicants and does not often lead to a useful statement. There is no mention of the need to include photographs, evidence of user groups or numbers of people attending activities or how often they are held.

The OFS requires the petition form to be completed PRIOR to consultation with the DAC – this is unnecessary and results in the parish being put off by the long form just to send something to DAC. Often the form is no longer accurate if the works have been revised because of consultation with the DAC and amenity societies, and parishes do not revise it before submitting the case to the Diocesan Registry. This causes delay at a later stage in the application due to the form being incomplete, or inaccurate, often causing the wording on the faculty to also be inaccurate as the description of works pulls its information from page 2 of the petition form.

Consultation Requirements

The Local Planning Authorities are not aware of their consultation requirements under Schedule 2 and often either advise the parish to make a Listed Building Consent application, or do not respond. This causes confusion and delay.

Schedule 2.2.4 requires consultation with Historic England when works 'are likely to affect the archaeological importance of any building or archaeological remains within the building or its curtilage' This infers that consultation with Historic England is required when any archaeological remains may be affected, which of course could be any proposals requiring excavation. The addition of the word 'important' before 'archaeological remains' would provide clarification. In addition, this clause certainly means below ground archaeology and I think could also mean intervention into complex medieval fabric. This could be clarified.

Use of professionals

Parishes are often frustrated that despite using a 'diocesan approved' architect from the QI list a considerable amount of information is required when applying to the DAC. There is no argument that the amount of information required, or oversight given to a proposal, should be lessened simply because, at some time in the (possibly distant) past an architect or surveyor was added to the diocesan approved list. This is no guarantee that the professional is up to date with conservation philosophy or practice, and puts an undue amount of trust in the people in the 'diocesan club' to just do the right thing. None the less this is often the perception and further highlights the risks associated with 'approved' lists.

In order to avoid incurring costs most parishes will make an application without the input of an architect, surveyor or structural engineer where ever possible. This is understandable but leads to uninformed proposals, insufficiently detailed applications and frustration at the DAC when this is made a requirement.

The petition form

The petition form is long and complicated. One respondent to our call for feedback on faculty and DAC referred to is as 'a load of mumbo jumbo'. Whilst perhaps not helpful in deciphering how to resolve the issue, this does summarise how applicants feel.

The separation of the questions now on form1a from the main petition form seems to offer no benefit at all, an additional form to complete, and yes, some of the information is stored on the CHR, but it still needs to be reviewed and updated and it does not save much time.

The existence of A forms for parochial bodies and B forms for non-parochial bodies, along with another form for a private petition for a memorial outside of the churchyard regulations, is overly complicated. The Online Faculty System cannot generate the B forms for a parish church and so councils looking after closed churchyards cannot apply online easily. Would it be possible to have one form (with the questions from form1a included) for all types of applications and simply a box to tick to denote which type of petition it is and what type of organisation is making the application?

Churchyards

The questions in the rules – and therefore on Form 2 – are concerned only with the character of the church building but NOT the churchyard. This should be included in considerations and may be either a positive or negative impact.

Statements of Significance and Need

The rules need some further explanation in relation to Statements of Significance and Need because:

- 1) Section 4.3 of the rules only states that Statements of Significance are required where the church is listed – does this practically mean that any unlisted church carrying out a major scheme of intervention does not need a statement of significance? The church may not be listed but may still be of architectural interest or of an age (plenty of interesting Victorian

churches are not listed) I fear that reliance on listing can be dangerous as sometimes a very special church simply has not been noticed by Historic England yet.

- 2) There is no definition of what 'changes' means within this Rule. Essentially every faculty application involving a listed church could be considered a 'change' or else there would often be no need for a faculty permission in the first place. This section makes no differentiation between works that will significantly alter the building (such as a re-ordering or installation of facilities) and those that don't (such as replacement of the heating system). The requirement for a statement of significance for the latter will increase the already heavy burden on parishes of completing faculty applications (something we must handle endless complaints about) and parishes will simply not bother approaching the DAC.

Notification of Advice alterations

The section of the form giving the reason for the referral to consultees is inadequate. If consulting the CBC due to Rule 9.6 (rather than as a general consultee) then there is no box to tick to explain this. Additionally, there is nothing to make it clear why consultation with the LPA has been requested (for planning permission or schedule 2) The Oxford Diocesan Registry has asked the DAC to add in the proviso box what the reason for LPA consultation is as there is nowhere else available to explain this. The case officer will have explained this to the parish during review of the application however this does not provide a clear historical record and makes more work for the diocesan registry in trying to confirm what the reason for consultation was.

Similarly, there is nowhere to record consultation with the Society for the Protection of Ancient Buildings (SPAB) or Historic England (HE) in cases of complex conservation or those utilising new techniques. Although not required by the rules, this is carried out in best practice.

It would make things much clearer for applicants if the following reasons for referral were provided on the NOA:

- 1) Because the works may require planning permission
- 2) Because rule 9.6 applies
- 3) Because specialist repair or conservation works are being planned and advice has been sought from HE or SPAB