

RECENT CONSISTORY COURT CASES

Edited by CHANCELLOR TIMOTHY BRIDEN

Re: St. Mary, Sullington

(Chichester Consistory Court; Edwards Ch. November 1991)

A chancellor should, in deciding issues of aesthetics, follow the advice of the D.A.C. unless he is persuaded that he should depart from it. If that rule is not followed his decisions upon such issues would depend upon his personal predilections and taste; in consequence no one else would see any point in turning to the D.A.C. for advice or assistance in this field. Such a state of affairs would rob the work of the D.A.C. of much of its value and purpose. A chancellor may be persuaded to depart from the advice in aesthetic matters he receives from the D.A.C. by evidence tendered at the hearing. There may be other, exceptional grounds for not following the advice of the D.A.C., as where its reasoning or approach is unsound, or it has been led astray by some transient fashion in taste, or the parish concerned simply has not the means to take a course recommended by the D.A.C. A petition to introduce a stained glass window was accordingly dismissed, despite strong support from within the parish, on the grounds of the well-founded criticism of the design of the window by the D.A.C.

Re: Emmanuel Church, Loughborough

(Leicester Consistory Court; Seed Ch. June 1992)

An extension to a church (a listed building erected in 1837) which required more space to accommodate its congregation and provide for matters ancillary to services would not have an adverse effect on the character of the church. In any event, a clear necessity for change was demonstrated in terms of the congregation's actual and potential growth. The choice lay between building to the west or the north of the existing structure; the proper course was to authorise an extension to the west because a building on the north side, envisaged as a separate entity and not an extension, would contravene Section 3 of the Disused Burial Grounds Act 1884.

Re: St. Anne, Clifton

(Manchester Consistory Court; Spafford Ch. June 1992)

A petition 'to introduce a black headstone with a porcelain portrait of the deceased affixed into a corner of the stone' was dismissed. The use of black granite was contrary to guidance given in the Churchyards Handbook, and was opposed by the D.A.C. The introduction of a portrait would create an unfortunate precedent, as well as seeming to be unfair to others who had made similar, unsuccessful requests. A proper understanding of Christian doctrines of death, resurrection and hope did not accord easily with the provision of a portrait. *Re: St. Mary, Grendon* (1990) 2 Ecc LJ 64 followed.

Re: St. Gennys

(Truro Consistory Court; Boydell Ch. July 1992)

Certain general principles govern the making of orders for costs in faculty proceedings. The first is that petitioners are generally ordered to pay their own costs and the Court costs whether the petition is opposed or unopposed. The basis of this principle is that the grant of a faculty is an indulgence. Secondly in certain circumstances the petitioners may be ordered to pay the cost of the objectors. This could occur, for example, where a contested petition is dismissed. Thirdly the petitioners, in certain circumstances, might recover costs against an objector; such an order is rare and is generally made only where the unsuccessful party has acted unreasonably. The practice in secular courts to order that 'costs follow the event' is not applicable in the Consistory Court. Accordingly it was inappropriate to order an objector, whose opposition was withdrawn when English Heritage produced a report favouring the petitioners' proposals, to pay the petitioners' costs. The objector had acted reasonably and had been misled by an earlier letter from English Heritage which had not dealt with the merits of the proposal and contained a factual error concerning the absence of a previous grant to the church.

Re: St. Martin, Castleton Moor

(Manchester Consistory Court; Spafford Ch. September 1992)

A faculty was granted for the demolition of a Grade II listed church which had been built in 1860 by the architect Ernest Bates. The structure was affected by dry rot and the cost of repairs would amount in total to £385,000. Demolition and the building of a smaller dual purpose church would (after receipt of grants) involve the parish in a debt of up to £82,000. The 'hard-pressed' parish could not afford the repairs, but could reasonably be expected to raise the lesser sum for rebuilding. The faculty was made subject to the preservation of certain artefacts from the building and the exclusion of the spire from demolition. There was a presumption in favour of preserving the fine spire, which was a local landmark. Accordingly a report upon the spire and the tower beneath it would have to be prepared before a decision on its future could be made.

Re: St. Peter and St. Paul Teddington

(London Consistory Court; Henty Deputy Ch. August 1992)

The residents of a block of flats, adjacent to which it was proposed to move a stone war memorial fifteen feet high, had *locus standi* to oppose the petition of the vicar and churchwardens for such work to be carried out. The Deputy Chancellor found that there were no aesthetic grounds for resisting the petition, and that there was no other practicable position for the memorial (which had to be moved in order to make way for a committee room). In following *The Burial Board of St. George's Hanover Square v Hall* [1879] 5 P.D. 42 the Deputy Chancellor held that his discretion should not be exercised in a way to cause detriment unnecessarily to a person's private property. The detriment incurred had, however, to be a real and sensible detriment, viewed objectively, and not something of small or trifling consequence or inconvenience; nor could it exist only in the mind of an interested party. Since the Court would be failing in its duty towards the memory of those who fell in armed conflict by consigning the memorial to oblivion, and the detriment suffered by the parties opponent was not serious, there was a necessity and a duty to grant the faculty, subject to conditions as to the number of services permitted at the memorial and the previous notice of such services to be given to the parties opponent.

Re: St. Lawrence, Denton

(Manchester Consistory Court; Spafford Ch. September 1992)

The rector and churchwardens sought a faculty to adapt the south transept of a mediaeval church by installing a sound-proof partition and false ceiling thus creating a room for Sunday School purposes. English Heritage did not object to the proposal. The need for the sound-proof room was made out, and a storage area above the false ceiling would be useful. Both the partition and the storeroom might, if necessary, be demolished in the future. Whilst in principle the scheme was acceptable, the Chancellor directed that no faculty should pass the seal until detailed plans had been approved by the D.A.C.

Re: The Church of the Ascension, Bitterne Park

(Winchester Consistory Court; Spokes Ch. October 1992)

A proposal to introduce a nave altar, set on a platform with detachable rails, into a church built in 1926 was opposed by a significant number of parishioners. The scheme was recommended by the D.A.C. The Chancellor concluded that the nave altar and platform would be an aid to worship for many and yet substantially preserve the character of the church. The effect of the changes upon the character of the church would be less significant than was feared by the objectors. The proposal to make the nave altar movable would enable the high altar and chancel to be used when desired. A faculty was accordingly granted, subject to the condition that no pew should be moved from the nave to the side aisle, in the face of opposition from a surviving relation of a deceased person commemorated on the pew, without further order of the Court.

Re: St. Andrew, Congresbury

(Bath and Wells Consistory Court; Bursell Ch. October 1992)

The incumbent and churchwardens petitioned for the removal of masonic symbols flanking the brass pulpit rail which had been erected in the late 19th century as a memorial to a deceased freemason. The petition prompted numerous objections, whereupon the petitioners sought leave to discontinue with all parties to pay their own costs. The parties opponent sought an order for costs against the petitioners. Before the issue could be determined, the memorial was stolen from the church by persons unknown and was never recovered. The petitioners received the value of the memorial from the insurers. On the issue of costs, the Chancellor held that, whilst it might be appropriate to order a petitioner who withdraws his petition to pay the whole of the costs of the party opponent, the whole subject-matter of the dispute had been lost so the proper order was that, save as indicated below, all parties (who had acted in good faith throughout) should bear their own costs. The Chancellor further held that the petitioners were under no duty to apply the insurance money in replacing the items which had been lost. No such duty arose under ecclesiastical law, unless the provision of the article was directed under the Canons or by the consistory court. The insurance money was, however, a windfall to the parish, and should be paid (in the form of costs) to the parties opponent. It was for the parties opponent to decide whether to put the money towards their costs or to place a memorial to the deceased in the present lodge.

Re: St. Peter, Brown Candover

(Winchester Consistory Court; Spokes Ch. October 1992)

A petition for the introduction of a wooden memorial tablet to complete a family group of similar tablets on the chancel wall was dismissed notwith-

standing that there were few existing memorials; the tablet had already been manufactured; and its proposed position was acceptable aesthetically. Against those considerations had to be weighed the absence of support for the proposal from the incumbent and the P.C.C.; the fact that the deceased had lived away from the parish for many years; and the need to regard the granting of such a faculty as a special privilege reserved for exceptional cases.

Re: Norton in Hales Churchyard

(Lichfield Consistory Court; Shand Ch. November 1992)

Without seeking the authorisation, two sisters placed the Memorial plaque to their father and sister, buried elsewhere, upon the grave containing the remains of their grandparents and mother in a consecrated churchyard. The grave was subsequently desecrated and the plaque removed under mysterious circumstances. The sisters then sought to place another plaque and were opposed by members of the family. The Archdeacon of Salop was called upon to intervene but although various promises were made they were not acted upon. The sisters then submitted a Faculty Petition which was opposed by various members of the family. All parties agreed that the Chancellor should dispose of the matter on the consideration of written representations. The Chancellor dismissed the Petition on the grounds that the Memorial did not commemorate persons interred in the grave on which the plaque was to be placed, they having adequate memorial at their place of burial.

Re: St. Mary, Breedon on the Hill

(Leicester Consistory Court; Seed Ch. November 1992)

The rector and churchwardens sought a faculty to display a framed stained glass panel depicting the arms of the Royal British Legion by hanging it from hooks against an existing window in the south aisle. The D.A.C. considered the panel to be poorly executed and without artistic merit. The Council for the Care of Churches had considerable reservations about the proposal. It was for the petitioners to establish, on the balance of probabilities, that the panel should be introduced into the church. The aesthetic case for the panel failed, and no compelling reason had been advanced for overriding the aesthetic considerations. The petition was dismissed with costs.

Re: St. Laurence, Northfield

(Birmingham Consistory Court; Aglionby Ch. December 1992)

The petitioner sought a faculty to place a kerb of polished black granite, seven feet long and three feet wide, around the grave of his deceased wife. The incumbent, as chairman of the P.C.C., served notice of objection, contending that kerbs caused difficulty in maintaining the churchyard. Although the proposal was not in accordance with the Diocesan Churchyard Regulations, the grave was not close to the church and most of the other graves in that area had kerbs; it would therefore be unfair to refuse the petition and apply the Regulations insensitively. A faculty was accordingly granted.

Re: St. Lawrence, Skellingthorpe

(Lincoln Consistory Court; Goodman Ch. January 1993)

A confirmatory faculty was granted where the P.C.C. without lawful authority had levelled the floor of the chancel and replaced the oak choir stalls by hardwood chairs, disposing of the oak stalls. Although the P.C.C. had been seriously at fault, in particular because a potential objector had been deprived of the opportunity of opposing the change, the work as carried out had been commended by the D.A.C. and met the current needs of the parish. The confirmatory faculty regularised the disposal by the churchwardens of the oak choir stalls; without a faculty they had no right to dispose of such items and could not pass a legal title (*Re: St. Mary, Barton-upon-Humber* [1987] Fam 41).

Re: St. Mary, Wymeswold

(Leicester Consistory Court; Seed Ch. January 1993)

Where a petition for the sale of an early 16th century silver cup, formerly used as a communion chalice, had been withdrawn because there had ceased to be a financial emergency in the parish, it was appropriate to permit its display in a local museum. The cup could not reasonably be kept secure in the parish, where there was appropriate provision for Holy Communion without it. Accordingly a faculty was granted for the display of the cup in the museum for a period of 10 years (renewable under faculty) and the cup was not to be removed without the authority of the Court save into the custody of the vicar and churchwardens.

Re: St. Leonard, Middleton

(Manchester Consistory Court; Spafford Ch. February 1993)

As part of a re-ordering scheme it was sought to move a Victorian font from the Baptistry (near the rarely-used south door) to the third arcade on the south side of the church. The incumbent's practice was to hold a special service each month for baptisms; in order to use the font it was necessary for him to stand on a chair and the congregation had to turn in the pews so as to see the font. The traditional symbolism of placing the font by the main door would not be lost by the intended change, because the south door was not the principal door. The positioning of a font elsewhere (for example, in the centre of the congregation or close to the altar) may also be symbolic. The Chancellor decided to allow the font to be moved to the position proposed by the petitioners.

Re: St. John the Baptist, Great Kissington

(Gloucester Consistory Court; Rodgers Ch. February 1993)

There is no inherent objection to a lavatory being installed in a church, as it is merely another improvement, such as over the years have been added to churches, including clocks, weather-vanes, central heating or sound loops. None of these things are essential to church life and worship, but they do no harm and provide practical improvements (subject to aesthetic acceptability and their effect on historic structures). Where, therefore, there were no available lavatory facilities in the vicinity of the church, and the provision of a lavatory would enable the church to be used by groups such as the Sunday School, it was appropriate to permit such an installation in the north transept (previously used as a storage area) of a listed mediaeval church.

Re: Tonbridge School Chapel (No. 2)

(Rochester Consistory Court; Goodman Ch. December 1992)

There was nothing at common law, and that included ecclesiastical law, which prevented the alienation of consecrated land *per se*. Restrictions which existed in the case of parish churches and churchyards were the consequences of property and trust considerations. Other consecrated buildings and land, such as cathedrals, were inalienable for other reasons. There was no common law rule to prevent the leasing of the consecrated chapel of an independent school, where the freehold was vested in the school governors, to a separate body of trustees. The statutory prohibition against dealing with consecrated land contained in Section 56(2) of the Pastoral Measure 1983 did not apply to the chapel. The sentence of consecration provided that the chapel was consecrated to 'divine' worship as opposed to 'public' worship and the public had no legal right to attend services there: it followed that the chapel was not a church as defined in Section 87(1) of the Measure and it fell outside the scope of Section 56(2). Approval was therefore given to the granting of a lease by the school governors to the trustees.

Re: Copford

(Chelmsford Consistory Court; Cameron Ch. June 1992)

A confirmatory faculty was granted in respect of small stone memorial tablets which had, contrary to the Diocesan Regulations and without a faculty, been placed for some 30 years in the churchyard of an old and important church. The Chancellor considered that it would have been wrong to require the removal of tablets which had been placed in good faith in the churchyard. As the stones were not aesthetically in keeping with the quality of the church, and it was necessary for positive plans to be formulated for an area for cremated remains which was both aesthetically pleasing and theologically sound, the faculty was subject to conditions that no further interments should take place in the area in question, and that a new area in the churchyard should be selected for such interments.

Re: Edith Smith, deceased

(Chester Consistory Court; Lomas Ch. April 1993)

Most men and women desire and hope that when after their death their remains have been decently and reverently interred they should remain undisturbed. Where the burial has taken place in ground consecrated in accordance with the rites of the Church of England it is clear that the intention of all those taking part is that the earthly remains of the deceased are finally to be laid at rest. There is nothing provisional in the Anglican forms of service for the burial of the dead. Situations will arise when even something intended to be as final as burial may have to be reviewed in the light of new circumstances. The exercise of the Consistory Court's discretion to grant a faculty for the purpose is something which ought to be done sparingly and only in special circumstances. Such special circumstances had not been established where it was sought to transfer the remains of the deceased from the churchyard where she had been buried eight years before to a grave space which had subsequently become available in the churchyard where her close relatives were buried. A petition for the deceased's exhumation was accordingly dismissed.