

The court had regard to the Guidance on Contested Heritage issued by the Church Buildings Council and the Cathedrals Fabric Commission for England in 2011. The Guidance emphasised that it was of particular importance to the church that its buildings should be welcoming to all, with symbols of injustice and sources of pain being acknowledged and addressed.

The PCC had queried whether a faculty to remove the plaque was required as it had been installed without permission. Although the plaque had been introduced without a faculty, it was nevertheless now subject to the faculty jurisdiction, and a faculty would be required for its removal. Applying *Re St Alkmund, Duffield*, the court was satisfied that the proposal to remove the plaque caused no harm to the significance of the church as a Grade II* listed building. The petitioner had shown a sufficiently good reason for the removal of the commemorative plaque to overcome the ordinary presumption in favour of things as they stand.

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Re St James, Piccadilly

London Consistory Court: Etherington Ch,
16 October 2023
[2023] ECC Lon 3
Erection of a new building – thatched roof

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The petitioners sought permission to carry out major re-ordering works including the erection of a new thatched pavilion building. Many aspects of the works, including the creation of the single storey thatched building, had also been the subject of a successful planning application to the local planning authority.

The Society for the Protection of Ancient Buildings (SPAB) objected to the proposal to use thatch for the newly created building. Although it declined to become a party opponent, its objections were that:

- i. The use of thatch on the garden building would adversely affect the character of the churchyard or church;
- ii. The thatch may present a fire risk and had been inadequately assessed; and
- iii. Indigenous thatch may be difficult or impossible to source and it may require replacing in less than 30 years.

The court held that the risk of fire was better considered by the planning authority, which had granted the planning application. The ability to source indigenous thatch, its durability and/or obtaining insurance were matters for the petitioners to address. In respect of the remaining objection, namely that the use of thatch would have an adverse effect on the character of the churchyard and church, the court acknowledged it was an unusual choice in an urban setting. However, the building was a modest single-storey new building and physically detached from the church. The use of thatch would not have any deleterious effect on the church or churchyard. Therefore, the petition would be granted.

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Archbishop of Uganda v Joyce and Others

High Court of Uganda: Zeija J, 25 October 2023

HC-17-CV-CS-0034-2023

Episcopal appointment – reviewable by secular courts

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In April 2023, the House of Bishops of the Province of the Church of Uganda elected Canon Godfrey Kasana as Bishop of Luwero. Before his consecration could take place, however, a member of the church submitted a petition alleging that he was unsuitable for consecration on grounds of adultery – and in June the House of Bishops revoked his nomination. The respondents, in effect, sought judicial review of that decision, while the Archbishop argued that the claim was brought against the wrong party and was frivolous, vexatious and an abuse of process.

Principal Justice Zeija said that the general rule was that religious controversies were not the proper subject of civil court inquiry:

It is therefore taken as a constitutional gospel in all the Commonwealth jurisdictions, and also the United States, that courts have no business handling religious questions. In other words, courts should not resolve cases that turn on questions of religious doctrine and practice. This is popularly referred to as the 'religious question' doctrine ... [which] prohibits courts from addressing a wide set of claims even though dismissing such claims will leave plaintiffs without any forum that has the authority and ability to provide redress of serious cognizable harms.