

RECENT CONSISTORY COURT CASES

Edited by TIMOTHY BRIDEN, Barrister

Re: St. Andrews, Bebington

(Chester Consistory Court; Lomas Ch. 24 November 1988)

In considering proposals for the extensive re-ordering of the interior of a church which was a Grade I listed building, the Chancellor considered that the Guidelines given by the Dean of Arches in *Re St. Mary's Banbury (1987) 3WLR 717* were strictly obiter dicta since in that case a faculty was refused for wholly different reasons. The Chancellor derived support in that approach from *Re St. Stephen's Walbrook (1987) 3WLR 726*, and it mattered not that the decision of the Court of Ecclesiastical Causes Reserved did not strictly overrule *Re St. Mary's Banbury*. In having regard to the listing of the building and the possibility that the desired change was the result of passing fashion, the Chancellor concluded that the change in forms of worship (which largely prompted the desire for re-ordering) gave the impression of progressing along a steady line, and was likely to continue for the foreseeable future. On the merits, the proposals (including the provision of a modified Ministry Area) were approved in part.

Re: St. Michael and All Angels, Norton

(Durham Consistory Court; Garth Moore Ch. 10 February 1989)

A few days before the hearing of a petition for a faculty, the parishioners who had objected had attempted to withdraw from the proceedings. The Chancellor dismissed their objections with costs, their attempted withdrawal being too late, but in each instance the amount of costs was limited to £1.00. He made the following observations:

“It should be realised that entering an appearance in faculty proceedings inevitably involves the possibility of costs being awarded against the objector. It should also be realised that a reasonable objection is unlikely to result in the making of such an order. Indeed, there have been occasions when, despite the failure of an objection, I have made it a condition of the grant of a faculty that the petitioners contribute to the costs of an objector. This might well have happened in this case, if the objectors had been sensible enough to put their case to the Court. What cannot be permitted is for objectors to increase the costs by entering an appearance and then to escape all possibility of liability by seeking to withdraw at the eleventh hour.”

Re: St. John Baptist, Wonersh

(Guildford Consistory Court; Goodman Ch. 6 April 1989)

A faculty was sought for the re-ordering of a largely mediaeval church, the interior layout and design being principally the work of Sir Charles Nicholson in the earlier part of the present century. The proposals involved (inter alia) the removal of the rood screen and its re-positioning against the east wall, the bringing forward of the altar towards the nave, and the removal of the screen between the chancel and the Lady Chapel. The formality and solemnity with which services had previously been conducted had been replaced by a more relaxed approach which appealed to the majority of the worshippers. The P.C.C. was in favour of the scheme, which had the support of the D.A.C. and also the C.C.C.

There was opposition from within the parish and from the Victorian Society. The Chancellor found that the changes would improve facilities for worship, and that the re-ordering could be reversed. The rood screen, although a striking feature, was not intrinsically important in the appearance of the church, and was relatively modern. The petitioners had made out a good case for carrying out the proposals, and accordingly a faculty was granted.

Re: St. Peter, Bolton-le-Moors
(Manchester Consistory Court; Spafford Ch. 7 May 1989)

A faculty was granted for the installation of a “Crolla” direct gas-fired warm air pressurised heating system in a 19th century church which was a Grade I listed building. The existing system was unsatisfactory. Whilst some pressurisation systems were unsuitable through causing rapid temperature variations, condensation and excessive noise, on the evidence these difficulties could be overcome when using the proposed system by the use of a soft (i.e. slow) start, by purging the atmosphere of moist air and by the provision of adequate ventilation. Although there was some risk of damage to the pipe organ, that had to be balanced against the available steps (such as the soft start and purging) which ought to minimise the risk. Whilst care of the organ was important, the overriding concern was that the church should be welcoming and warm for worshippers.

(Note: A study is now being conducted involving the monitoring of the Crolla system in churches.)

Re: Christ Church, Brixton
(Southwark Consistory Court; Garth Moore Ch.)

In dealing with the issue of costs, the Chancellor observed that amenity societies had recently by legislation been granted the privilege of being parties, with a right to be heard and to call witnesses and to cross-examine. A corollary to the privilege was that they might be liable for costs, but providing they acted reasonably it was likely that no order would be made against them. There was an alternative course open to them, namely, to submit their views in writing without becoming parties. If they did so, their wishes would be considered by the parties and the court *de bene esse*, but no more.

Re: Christ Church, Woking
(Guildford Consistory Court; Goodman Ch. 27 June 1989)

A faculty was sought for the major re-ordering of a Victorian Church (“good of its type but of no particular importance”) and for the addition of substantial connected hall accommodation on unconsecrated curtilage. The scheme involved the creation of a coffee lounge and hall at the west end, with a further hall on the south side of the church. Although before the hearing the existing church hall had been sold, depriving the parish of facilities for much of its work, the proposals had to be considered on their merits irrespective of the situation which the P.C.C. had created for itself. Whilst the scheme was an imaginative one which would not adversely affect the building, the intended hiring of the accommodation required control. Part of the accommodation would not be erected on consecrated ground, but it was only realistic to treat the whole as being all part of a consecrated building. Conditions were accordingly attached to the grant of the faculty, including general supervision by the Archdeacon, the prohibition of gaming or commercial use, the closing of the premises at 11 pm, and the approval,

sponsoring and supervision of activities by the Incumbent, the Churchwardens and P.C.C. The building was only to be used for such purposes as a church with propriety might be put. The setting up of any corporate body to manage any part of the accommodation was to be subject to the Court's approval.

Re: St. Silas, Blackburn

(Blackburn Consistory Court; Edwards Ch. July 1989)

Where a faculty is sought for the removal or replacement of a heating system, the matter is pre-eminently a matter for decision by the Parochial Church Council. Considerable weight is to be given to the resolve of the Council, especially if it be unanimous. The discretion to refuse to grant a faculty, may, however, be exercised on one or more of the following grounds:

1. There may be insufficient funds to instal the whole system, so the church may be left with no or inadequate heating.
2. The proposal may involve unjustifiable alterations or additions to the fabric.
3. The proposal may involve changes to the appearance of the church, which are not acceptable on aesthetic grounds.
4. The proposed system, although providing a comfortable environment, may in the long term damage the fabric of the church.

The second and third grounds are of special importance in the case of a listed building.

In applying these principles, the Chancellor in his discretion declined to grant a faculty for a direct fired warm air system in a church built between 1894 and 1904 which was a Grade II listed building. The system was liable to have an adverse effect on the fabric; and the necessary alterations to the fabric (in particular, the cutting of a hole in the north wall and the construction of a very substantial addition there) were unacceptable.

Re: St. Mary's, Riverhead

(Rochester Consistory Court; Goodman Ch. 17 July 1989)

A faculty was sought for the replacement of the existing pipe organ by a two manual Copeman Hart electronic organ. In granting the faculty, the Chancellor was impressed by the following matters:

1. The need to replace the existing worn out instrument;
2. The limited nature of the resources of the parish;
3. The fact that a donor was prepared to meet the total cost of an electronic organ, but not the cost of a pipe organ;
4. The praise lavished on Copeman Hart organs by experts;
5. The fact that the D.A.C. was divided;
6. The clear evidence of support within the parish and from the Archdeacon;
7. The fact that the appearance of the church would not be altered.

Every case had to be decided on its particular facts, and whilst the sound of an electronic organ might not be comparable to a pipe organ, and an electronic instrument might have a shorter life than a pipe organ, good grounds had been established for granting a faculty.

Re: Maughold Parish Church

(Sodor and Man Consistory Court; Farrant Ch. 2 August 1989)

A faculty was granted for the positioning of a 13th century stone cross, nine feet high, within the church. The cross, partly secular and partly ecclesiastical, was of considerable historic importance. Although previously kept in the open air, its condition had deteriorated until expert restoration was undertaken. After restoration, it was only practicable to keep it inside the church or in a museum. The Chancellor accepted the undisputed evidence that the cross should stand in the church. The only dispute concerned its positioning. On the evidence, the Chancellor preferred the petitioners' proposal that it should stand at the rear of the church. To place it at the liturgical east end would have the undesirable effect of detracting from the altar and altar cross, as well as requiring the removal of valuable floor tiling.

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