THE COMMUNITY USE OF CHURCHES

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It is by no means uncommon in the present day for proposals to be put forward for the re-ordering of a church in order to enable part of the building to be used for what might be described as secular purposes. In some instances this might mean the nave having all fixed furniture removed so that it could be used as a hall, or as part of the church when required. Sometimes rooms are created in part of the building, perhaps in the tower or close to the entrance. Sometimes a great deal of space can be found in a crypt.

One particular scheme which I have recently had to consider arose where the re-ordering had already taken place following the grant of a faculty some years ago, but the parishioners, whose village did not have a village hall (nor indeed a church hall) wanted to improve the hall end of the building (the former nave) but did not have the funds to do so. They wanted to find a way of making over the nave to a village hall trust which would have access to grants which are available to village halls. Those grants are however normally only available when the trust has at least some security of tenure in the building in question.

LICENCES

If it is intended to allow an outside body to have the use of part of the church on a regular basis (other than by occasional lettings), it would be necessary to grant a licence to use that part to the body in question. In law a licence does not of course give an exclusive right to occupy, and it does not create a tenancy. This means that the church must have access to the part of the building covered by the licence for its own purposes. In the case I had to consider the nave had been cleared of all furniture and fittings except for the font, and was divided from the chancel by large doors which could be opened when the nave was required for large services. The chancel itself was in use as a small church, and included the organ. There was no suggestion that this arrangement should change.

A faculty is always required for the grant of a licence, and the precise terms and conditions of the licence will be considered by the court. Any chancellor is likely to require that the licence be drafted by a competent solicitor and that both parties have been properly advised.

It is not possible to grant a lease over part of a parish church because this is expressly prohibited by section 56(2)of the Pastoral Measure 1983, which declares the common law.

It is generally accepted that licences can be granted over churches for what in reality are 'secular' purposes. In the case of *Re St Mark's, Biggin Hill* (unreported, but referred to in *Re All Saints', Harborough Magna* [1992] 4 All ER 948, [1992] 1 WLR 1235) 13th May 1991), Chancellor Goodman said:

> 'Generally speaking of course, any use of a consecrated church or a consecrated churchyard must be for ecclesiastical purposes. These days "ecclesiastical" is often interpreted generously. Thus it will cover use of part of a church as a meeting room, for providing kitchen, washing and lavatory facilities and so on. Permission is sometimes given to use part of a church for a nursery school or an old people's day centre. But all of those activities can be comprehended within the expression "pastoral outreach". Here however, the use is wholly secular and commercial even if the general public will benefit. There have been cases where faculties have been granted to approve rights of way over churchyards for the benefit of neighbouring

landowners. Part of a churchyard can be permitted to be used for road widening purposes and small electricity sub-stations have been permitted to be erected on the churchyard if it is judged that they will not adversely affect the essential character of the churchyard. Use of part of the church itself for wholly secular purposes is another matter'.

Later in his judgment Chancellor Goodman continued:

'I am fortified in the conclusion I have reached by certain comments made by (the late) Chancellor G H Newsom QC in his recent book on *Faculty Jurisdiction of the Church of England* (1988) at page 99 (now at page 110 of the second edition) when he said "It happens quite often, especially in towns, where land is scarce and expensive, that there is part of a church, often a crypt, which is not needed for worship or for any purpose ancillary to worship. In such cases, and under careful arrangements, it is admissible for the court to allow such an area to be used by third parties for suitable secular purposes, so as to provide revenue which will assist in maintaining the church and its services".

The case of *Re All Saints', Harborough Magna* concerned a petition for a faculty to allow the installation of communications equipment for Mercury Personal Communications Ltd in the tower.

Chancellor Gage heard the matter in open court not because it was opposed but because it was the first of its kind in the diocese (Coventry) and he considered that the principles should be carefully examined.

He granted the faculty, quoting the words from Newsom which I have set out above as authority for his jurisdiction to do so, the benefit to the church being in the not insubstantial licence fee it would receive from Mercury. He said:

'With those observations I agree. I therefore hold that I have jurisdiction to grant this petition. I think I should just add that in general it is my view that a faculty for use of a church for secular purposes only should be granted in rare and exceptional circumstances. In cases such as this one each case must be considered on its merits [...]'.

Chancellor Gage set out a number of matters which would have to be considered, including:

(a) the appropriateness of the licence fee (this would of course be of lesser importance where the proposed use under the licence is of direct benefit to the community);

(b) the length of the licence;

(c) access to the premises;

(d) repairs and maintenance;

(e) insurance;

(f) the financial viability of the licensees;

(g) an undertaking to ensure that the premises are not used for any inappropriate purpose.

A chancellor would probably expect that draft to make provision, in addition to the usual terms, for the following:

(a) that the possession of the licensed part would not be exclusive to the licensee, but the incumbent and PCC would also have to have access to it (this is in fact inherent in the definition of a licence, but I repeat it here for the sake of clarity);

(b) that gaming and/or the sale of alcohol be prohibited (or perhaps in the case of the latter regulated);

(c) that the incumbent or PCC be able to vet the particular use of the premises from time to time (this would mean that they could veto any unsuitable letting of a 'hall');

(d) termination: this would in any event be necessary to take account of the possibility, even if remote, of redundancy, but might need to be exercised in other circumstances, including a breach of the conditions contained in any licence. There have been cases where early termination has been allowed for only with the consent of the court. This would give the licensees some protection against what they might see as an unreasonable termination by the incumbent/PCC.

I should add that the whole question of the grant of a licence in these circumstances is not without controversy. Consideration would have to be given to Canons F 15 and F 16. F15, para 1, reads:

> 'The churchwardens and their assistants shall not suffer the church or chapel to be profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place...'.

Canon F 16, para 1, reads:

> 'When any church or chapel is to be used for a play, concert, or exhibition of films or pictures, the minister shall take care that the words, music, and pictures are such as befit the House of God, are consistent with sound doctrine, and make for the edifying of the people'.

Canon F 16, para 3, requires local authority fire and public entertainment licensing regulation to be adhered to.

Lynne Leeder in her *Ecclesiastical Law Handbook* (1997) at page 216 makes the point that consecration of a church sets the property apart for all time, to be used solely for sacred purposes. On page 218 she deals with the restrictions on the use of consecrated property for secular purposes. She notes that in *Re St John's, Chelsea* [1962] 2 All ER 850, [1962] 1 WLR 706, it was held that the only secular purpose for which a faculty could be granted is to allow part of a churchyard to be used as a highway, or other similar 'rights of user'. She does however say:

> 'In practice faculties are granted for limited secular purposes such as the use of a church crypt by a charity, the conversion of an area within the church for lavatories or a kitchen, or the placing of an aerial on a church tower'.

All of what I have said so far leads me to the conclusion that while it would not be impossible in law for a licence to be granted over part of a church to a body such as a village hall trust, each case would have to be looked at very carefully so that its merits might be examined. It might be necessary to have an open court hearing. The type of building in question would be highly relevant, and the Diocesan Advisory Committee would plainly have its views. If a re-ordering was involved and if the church was of historic interest the Council for the Care of Churches would probably have to be served, and the relevant amenity society and the local authority would

have to be cited. The terms of the licence would have to be scrutinised carefully, as would the composition of the body taking the licence. Local opposition, if any, would have to be taken into account.

LEASES

Whether or not grant-making bodies would be satisfied with a licence and its terms which would also be satisfactory to the court would also be a matter for consideration. In practice, particularly where local authority grants are in question, a licence would probably not give sufficient security of tenure (the 1996 Charity Commissioners' booklet 'Use of Church Halls for Village Hall and other Charitable Purposes' suggests on page 8 that to take advantage of local authority grant aid for improvements or repairs the occupiers of the premises in question should have the benefit of a lease of up to 35 years, and I understand that at least 28 years is usually required).

The only way in which part of a church could be made subject to a lease would be by making that part redundant.

If the church is listed,care would have to be taken to ensure that partial redundancy would not bring the whole of the church within the civil listed building laws as well as remaining at least in part within the faculty jurisdiction.

There is an argument that the faculty jurisdiction would still apply to the redundant part as being within the curtilage of the church. Unconsecrated land within the curtilage of a church which is within the faculty jurisdiction is also subject to that jurisdiction–see section 7(1) of the Faculty Jurisdiction Measure 1964, once again declaring the common law. As the curtilage is usually regarded as the land which protects a building it would no doubt be a matter of fact and degree in each case–it might be said that one building cannot be within the curtilage of another, separate, building. If it could still properly be described as all one building it might be regarded as all within one curtilage.

There might however be a further difficulty over redundancy. The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, which currently gives effect to the ecclesiastical exemption from the listed building laws, defines a church building as a building whose primary use is as a place of worship. It is only a church building within the faculty jurisdiction which has the benefit of the exemption. It might well be successfully argued, notwithstanding what I have said above, that for the purposes of the exemption order a building which was, say, one-quarter church and three-quarters redundant church used as a hall was no longer a building '*primarily* used as a place of worship'. If this were the case the *whole* building would lose the exemption, which most in the church would regard as a disaster. Once again it would no doubt be a matter of fact and degree. If the primary or dominant use of the building was that of a church, even if a larger part was turned into a village hall, the exemption would still apply, and it would also apply to the leased part, provided it is all one building. It would probably be necessary for the church to retain the right to use the leased part on certain occasions.

There is another route which might be taken. If it is intended to make part of the church redundant and lease that part as a quite separate village hall, with no retained right of use to the church (which would have to hire it like any other body) it might be possible to make the physical alterations while the whole building is still subject to the faculty jurisdiction, thereby retaining a degree of control over the alterations. If the building is listed this would have to be done in full consultation with the local planning authority (to ensure that all appropriate fire and other regulations are taken into account and to counter any suggestion that the listed building procedures appropriate to a secular building are being circumvented) and the church architect. The usual bodies would have to be served and cited. Once the work is complete redundancy would be effected.

Any faculty petition presented in these circumstances would have to be considered just as carefully as I have suggested above in the case of a licence.

If the proposal is to do the work after redundancy the whole of the building would remain within the faculty jurisdiction (notwithstanding the redundancy the redundant part remaining within the curtilage at least until physical separation takes place), and both a faculty and listed building consent might be required.

If in reality the redundant part cannot be described as remaining within the curtilage of the church once the work is done, as perhaps where a wholly new and separate hall has been created, then it would not remain within the faculty jurisdiction. In the latter case, there being two separate but attached buildings, there would be no danger of the part which remains as a church losing the ecclesiastical exemption.

In any scheme, whether or not the faculty jurisdiction continued to apply, it would be necessary to remember that planning permission would be required if the exterior of the building were to be altered, and would also be needed for change of use.

CONCLUSIONS

The Church of England holds the ecclesiastical exemption in high regard. There is no need, particularly in view of the recent debate upon the Newman Report, for me to spell out here the way in which that exemption gives to the church a degree of control over its listed buildings which is not enjoyed by most other bodies. Nothing should be done to jeopardise the effect of the exemption in particular cases unless it is absolutely unavoidable.

It is likely that proposals such as I have outlined in this article will continue to be put forward, particularly in times when churches are not full and there is pressure on resources for the provision of community facilities. Many of the churches in question will be listed and of considerable historic interest, and alterations to the layout, furniture and use of such buildings may well be controversial. Some will no doubt argue however that as the church, in both its membership and its buildings, is there for the benefit of the community that benefit should be maximised. Perhaps this is no more than a return to and reinforcement of the concept of the 'people's nave'.

The views expressed in this article are my own and I take full responsibility for them and for any statements of law. I have however been given considerable assistance by David Cheetham Esq, Registrar of the Diocese of St Albans, who read and commented on an earlier draft.