DOCTRINE, CONSERVATION AND AESTHETIC JUDGMENT IN THE COURT OF ECCLESIASTICAL CAUSES RESERVED

J. D. C. HARTE
Lecturer in Law in the University of Newcastle-upon-Tyne

The faculty jurisdiction of the Church of England is the core of what remains as a distinctive system of Church Law in England. It serves inter alia to safeguard the national heritage of parish churches and it is the reason why ecclesiastical buildings in use generally are immune from listed building control under secular planning law[1]. The faculty jurisdiction still provides a model for regulating the conservation of buildings of historic and aesthetic interest and their contents which can be compared favourably with listed building control[2].

The faculty jurisdiction provides a laboratory for developing improved arrangements for conservation, taking account of the public and individual interests involved, whilst safeguarding the special needs for flexibility in the use of church buildings of a living and developing community of believers. Such improvements are currently being worked out by the Church of England in the light of the recommendations of the Faculty Jurisdiction Commission, under the chairmanship of the Bishop of Chichester, following its thorough review of the existing law and practice in its report, "The Continuing Care of Churches and Cathedrals."[3] As reported elsewhere in this journal, working parties of the Ecclesiastical Law Society are contributing to the work needed to implement the recommendations of the report.

The Faculty Jurisdiction Commission was set up to meet government concern that church buildings should not be less well protected than historic secular buildings and in particular to justify the ecclesiastical exemption from listed building control.[4] Despite the justification of the exemption fully made in the report with substantial recommendations for improvement, the Secretary of State for the Enviroment took powers under the Housing and Planning Act 1986, which enable him to withdraw the exemption in respect of individual churches or groups of churches, including Anglican ones, or to abolish it altogether.[5] The present government has stated that it will not use this power over Anglican churches, or at least only in individual cases where sanctions of the faculty jurisdiction are inadequate.[6] The fact remains that the power is available. Therefore the faculty cases which are currently being decided in the church courts are likely to be of considerable importance in justifying the future independence of the faculty jurisdiction and of the church courts themselves.

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1. Town and Country Planning Act 1971, ss. 56 (1) (a), 58 (2) and (3) and 277A (1) as amended by Town and Country Amenities Act 1974.
2. See, e.g. Harte J. D. C. "Church v State in Listed Building Control" (1985) JPL 611 and 690. For a more negative view see Mynors, C., " 'Render unto Caesar' . . . The Ecclesiastical Exemption from Listed Building Control", (1985) JPL 599.
3. Faculty Jurisdiction Commission, "The Continuing Care of Churches and Cathedrals" 1984, Central Board of Finance of the Church of England.
4. See Green paper "Exemption from Listed Building Control: A Consultation Paper" 1984, Department of the Environment.
5. Housing and Planning Act 1986, s. 40(e) and sched. 9 para 5, inserting Town and Country Planning Act 1971, s. 58 AA.
6. Parliamentary Debates, House of Lords, 22 Oct 1986, cols. 387-389.

This article considers the importance of the faculty jurisdiction in the light of the two cases so far decided in the Court of Ecclesiastical Causes Reserved since it was set up under the Ecclesiastical Jurisdiction Measure 1963.[7] Their names are reminiscent of a pair of ecclesiastical detective stories: "The Black Madonna of St. Michael and All Angels, Great Torrington."[8] and "The Henry Moore Altar at St. Stephen Walbrook."[9] In most cases, appeals from Consistory Courts go to the Court of the Province, the Arches Court of Canterbury or the Chancery Court of York. However, in cases involving matters of doctrine, ritual or ceremonial, an appeal in either province goes to the Court of Ecclesiastical Causes Reserved, consisting of three bishops and two senior lay judges. Both appeals are now under consideration.[10] They demonstrate a number of the features of the faculty jurisdiction as a system for arbitrating between the demands of conversation and competing views of aesthetics, as well as balancing against these considerations doctrinal standards and the pastoral needs of both the local and the wider church.

ST. MICHAEL AND ALL ANGELS, GREAT TORRINGTON

The first case before the court of Ecclesiastical Causes Reserved was heard by the Bishops of Rochester and Chichester and the Right Reverend Kenneth Woollcombe, previously Bishop of Oxford, with two Lord Justices of Appeal, Sir Hugh Forbes and Sir Anthony Lloyd. The appeal was by the Rector and Churchwardens of St. Michael and All Angels, Great Torrington, Devon.[11] Without seeking a faculty the Rector of that church had taken out of a side chapel a picture of the Virgin Mary with the child Jesus, and two rows of chairs. These had formed a memorial to a previous Archdeacon of Barnstaple. The Rector had replaced them with a photograph of the Black Madonna of Czetowcha in Poland, together with a portable coin-operated candle stand and a lectionary on a portable stand. The appeal was against a refusal by the Chancellor of Exeter Diocese, David Calcutt, Q.C., to grant a confirmatory faculty for the retention of the new items and against his grant of the cross petition of a Mr. Trimm for the removal of the new items and the restoration of the old ones. Mr Trimm was not represented on the appeal.

The appeal was allowed to the extent that the new items were to be permitted to remain in the church but on the basis that a new faculty should be sought to put them in a more suitable place, and that the Archdeacon's memorial should be restored. In a unanimous judgment it was stressed that the case should more appropriately have been dealt with by the normal appeal procedure to the Court of Arches. The question of whether the Black Madonna icon and other items were doctrinally acceptable had been decided at trial in favour of the Rector and Churchwardens, but, anticipating a cross appeal, the Chancellor had certified that the case involved doctrinal issues. As there was no cross appeal, the Court of Ecclesiastical Causes Reserved confined itself to considering whether the Chancellor had rightly exercised his discretion in refusing the confirmatory faculty on what were essentially pastoral grounds.

7. Ecclesiastical Jurisdiction Measure 1963, ss.1,10.
8. Re. St Michael and All Angels, Great Torrington (1985) Fam 81 and (1985) 1 All ER 993.
9. Re. St Stephen Walbrook (1987) Fam 146, and (1987) 2 All ER 578: Reversing (1987) Fam 146, and (1986) 2 All ER 705.
10. Ecclesiastical Jurisdiction Measure 1963, s 5.
11. See note 8 above.

The Torrington case is of practical importance in several respects. As already stated, the faculty jurisdiction is unusual in having alternative fora for appeals concerned with issues of different sorts. The Chancellor has a duty to certify whether a question of doctrine, ritual or ceremonial is involved to ensure that the appeal goes to the appropriate court. In order to deal with cases where an appeal raises a doctrinal matter which is later abandoned, or where it unexpectedly becomes appropriate for a matter of doctrine to be dealt with on appeal, the judgment suggested that procedures should be introduced to transfer cases between the provincial courts and the Court of Ecclesiastical Causes Reserved as appropriate. Arrangements for transferring cases between the secular courts are not foolproof, and it is to be hoped that this recommended procedural change may be made quickly so as to show that the church courts are no less receptive than the secular courts to the need for continual improvement.[12] The Torrington case contains useful dicta as to where a faculty need not be sought for introducing or disposing of minor items such as individual service books. Also, it stresses the importance of petitions for new furnishings setting out clearly any items which they are intended to displace. It was the removal of an existing memorial rather than the new items which caused trouble at Torrington. In reversing the Chancellor's decision in part, the appeal court accepted his account of the evidence but decided that his exercise of discretion in refusing the faculty was "based on the erroneous evaluation of the facts taken as a whole."[13] The Chancellor had effectively used the jurisdiction to punish the Rector for making changes without proper consultation and for showing an unhelpful attitude, including rudeness, to the Diocesan Registrar. Nevertheless, the petition was supported by the Churchwardens and the majority of the Parochial Church Council. The appeal court therefore approved a modified faculty in the light of the inference which they drew of "at least a considerable body of opinion within the workshipping congregation which approved of these introductions".

RE ST. STEPHEN WALBROOK

Re St. Stephen Walbrook, was heard by the same bishops as the Torrington case, and, again, by Sir Anthony Lloyd, but with Sir Ralph Gibson in place of Sir Hugh Forbes.[14] This time there was a real doctrinal issue but this was overshadowed by questions as to the assessment of aesthetics which are fundamental to the modern role of the faculty jurisdiction. There were separate judgments by the Bishop of Chichester and by each of the Lords Justices. The Church is a masterpiece by Sir Christopher Wren. The appeal was brought by the Rector and by Mr. Palumbo, a Churchwarden, against the rejection by the Chancellor, G. H. Newsom Q.C., of the appellants' petition for approval for a large central Traventine stone altar specially commissioned from the sculptor, Henry Moore.

The Chancellor had originally allowed the altar to be installed temporarily during the restoration of the church so that he could see it in position. This cost £33,000. Unfortunately the doctrinal issue which was to bring the case before the

12. See e.g. Nissim v Nissim, Times newspaper 11th December 1987.
13. (1985) 1 All ER 993, at 998, applying the same test as for the Court of Appeal in secular cases. See Benmax v Austin Motor Co Ltd. (1985) AC (1962) P10 and (1961) 2 All ER 429 at 430-431.
14. See note 9, above.

Court of Ecclesiastical Causes Reserved was not raised at this stage. There was no formal opposition to the petition, but when the Chancellor heard the application to make the altar permanent, the Archdeacon of London entered an appearance at the Chancellor's request to enable the issues to be fully argued. The doctrinal issue, which the Chancellor raised at this stage, was whether a Holy Table, as authorised under the Canons of the Church of England, for the celebration of Holy Communion proper, included such an altar. The Chancellor held that it did not but went on to rule that even if it did the altar was aesthetically unacceptable. The Court of Ecclesiastical Causes Reserved reversed the Chancellor on both grounds.

A DOCTRINAL WATERSHED?

The Court of Ecclesiastical Causes Reserved was set up to ensure that sensitive issues of church litigation, such as disputes on doctrine, were referred to a forum of suitable standing, including senior lay judges who are members of the Church of England, but also including bishops. The retention of separate church courts to deal with (inter alia) alterations to church property, and the partial exclusion of secular planning jurisdiction, provide a valuable safeguard for an important part of the national heritage, whilst helping to protect the Church's freedom to develop forms of worship. Where disputes involve issues of doctrine, ritual or ceremonial, it is particularly inappropriate for secular courts to be involved.

Although the Church of England has its own system of legal adjudication, both for the granting of faculties and for disciplining clergy, it is significant that this has not been used to help resolve modern doctrinal controversies. These have been confined to debates in the contemporary synodical system and in the press. In so far as both the Torrington and Walbrook cases were concerned with issues of doctrine, they seem throw-backs to the litigation of the 19th century between the high and low church wings of the Church at that time. Thus in the Torrington case, a lectionary introduced by the Rector was described as a "Roman lectionary", but, although the Chancellor ordered its removal, this was not because it was found to be doctrinally unsound. Indeed in the judgment on appeal it was identified as nothing more controversial than a selection of scripture readings authorised in the Alternative Service Book!

However, in the Walbrook case, doctrinal issues were raised which would once have been regarded as fundamental. The Chancellor held that the Henry Moore altar was something different from a table for the celebration of Holy Communion as envisaged in the Book of Common Prayer of 1662, which "Doctrinally . . . is still normative"[15] The Chancellor recognised that successive Measures in 1964 and 1974,[16] have allowed a greater variety in the form of the table, in that it may now be of "wood, stone or other suitable material" and may be portable or fixed. However he regarded 19th century authority as still binding on him, notably the Arches decision of *Faulkner v Litchfield and Stearn*.[17] This precluded from being a Communion Table, a structure, "of amazing weight and dimensions immovably fixed", such as the Moore altar clearly was, whatever the symbolism which Moore himself had in mind in making it.

15. (1986) 2 All ER 705, at 709.
16. Holy Table Measure 1964, repealed by Church of England (Worship and Doctrine) Measure 1974, and see Revised Canons Ecclesiastical, Canon F2.
17. Faulkner v Litchfield and Stearn (1845) 1 Rob Ecl 184.

The Court of Ecclesiastical Causes Reserved was clearly not bound by the 19th century authority.[18] It was, therefore, "free to consider the issues afresh, taking account of more recent legislation and of historical and theological knowledge which was not available to the courts in the mid-nineteenth century".[19] In a tour de force, which demonstrates the unique value of the blending of theological and legal analysis in the Court of Ecclesiastical Causes Reserved, the Bishop of Chichester held that the Moore altar was doctrinally acceptable. The Bishop explains how the views of the meaning of the Roman doctrine of the Mass, which were taken both by the 16th century reformers and by the 19th century Anglican lawyers and divines, may have been wrong at the time and have in any event been overtaken by current scholarship.

The Chancellor was of course bound by the old authority unless it had been superseded by recent legislation.[20] He may have been cautious in taking the view that the old authority had not been superseded. However, the appeal decision in St. Stephen Walbrook, and particularly the judgment of the Bishop of Chichester, have the authority to draw a line under many pages of church history in a manner which the Chancellor's decision alone could not have done, had it approved the altar in the first place. In retrospect, this may make the case a historical landmark.

HOW SUBJECTIVE IS AESTHETIC JUDGMENT?

By contrast with the doctrinal issues which brought the Walbrook case before the Court of Ecclesiastical Causes Reserved, the questions of how aesthetic considerations should be assessed, and how they should be balanced against other factors, including the wishes and needs of the parishes, are frequently dealt with in the operation of the faculty jurisdiction, and are central to its modern function in conserving that part of the national heritage entrusted to the care of the Church of England.[21] The treatment of aesthetic issues by the Court of Ecclesiastical Causes reserved makes the Walbrook case of exceptional interest, not just for ecclesiastical lawyers.

It is often assumed that aesthetics are essentially a subjective matter,[22] and to some extent St. Stephen's Walbrook supports this view, as where Sir Anthony Lloyd says, ". . . there are hardly ever any rights or wrongs in matters of aesthetics. There are differences of opinion. 'Quot homines tot sententiae'".[23] However this does not mean that aesthetic judgment is necessarily arbitrary or devoid of principle. The ultimate decision on the merits of the proposal may appear to be subjective, and there may be no absolute answer but, as in matters of faith, the material from which the final decision is made may be assembled with a fairly high degree of objectivity. Like any other exercise of discretion, the decision can, and should, be made and articulated in the light of all relevant information, but there has to be a final personal judgment in the most typical of judicial decisions where inferences have to be drawn from the decided facts. This is so when the final issue is whether given behaviour was reasonable, as, for example, whether it was or was not negligent.

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18. Ecclesiastical Jurisdiction Measure 1963 s. 45(3).
19. (1987) 2 All ER 578, at 580.
20. See note 16 above.
21. For recent examples see Re St Mary the Virgin Selling (1980) 1 WLR 1545; Re St Mary's Fawkham (1981) 1 WLR 1171; Re St Mary's Haydock (1981) 1 WLR 1164.
22. See e.g. Winchester City Council v Secretary of State for the Environment (1978) 31 P & CR 455, upheld 29 P&CR 1; and Lord Luke of Pavenham v Minister of Housing and Local Government (1968) 1 QB 172.
23. (1986) 2 All ER 603 h.

Sir Anthony Lloyd is doubtless right in respect of most cases which get as far as a court hearing. It is where there is strong disagreement on aesthetic issues that a decision may have to be made formally by a court. Even then, however, there may be a measure of general agreement. In the Walbrook case the instrinsic merit of the proposed altar by Henry Moore was recognised by everyone, including Chancellor Newsom, with the exception of a single witness. The dispute was as to whether the altar was compatible with the outstanding Wren church for which it was proposed. As the Chancellor posed it, the aesthetic problem was "whether the introduction of Mr Moore's piece of sculpture is congruent with the geometry of Sir Christopher Wren and whether it is right for so massive an object to be introduced into Sir Christopher's classical work which despite various changes has hitherto been all of one piece."

However difficult the assessment may be of the intrinsic merit of a particular building or work of art in a church, it is less complex than comparing it with other features which may be fundamentally different in period, style or function. The argument was advanced in the Walbrook case that liturgical fashions might change and the altar might cease to be wanted in the church, but it seemed to be generally assumed that it would continue to be regarded as a major work of art. Lesser works may be undervalued at particular periods of time and it may be important to protect an item from destruction or from being removed from a church in case it may be valued in the future. On the other hand, if churches are not to be become museums, there must be scope for adding to them and for clearing out or changing fittings. Analagous decisions have to be made by museum curators and librarians far more casually than they are made under the faculty jurisdiction.[24] Where experts agree on the merit of a proposal, such as an extension to a church, they may at least be endorsing, what is a suitable aesthetic expression of the current period.[25]

The two key aspects of aesthetic decision-making are the allocation of responsibility for making the final decision and the achievement of an informed judgment. Under the faculty jurisdiction, any necessary aesthetic judgment is essentially the responsibility of the Chancellor. He may, and will, be rash if he does not request the advice of his Diocesan Advisory Committee.[26] As St. Stephen's Walbrook demonstrates, he may have the advantage of much other expert opinion, but the judgment must be his. Similarly, on a planning appeal, or a listed building appeal, the decision ultimately will be made by the inspector appointed to hold the inquiry, or by the Department of the Environment in the light of the inspector's report.[27] Indeed, in such secular cases, expert opinion may be treated much more cavalierly than it would be in the church courts.[28] On appeal from a consistory court, the appellate court may be fairly uninhibited in substituting its own evaluation of aesthetic evidence in the light of its reading of the expert evidence given below. Such evidence is likely to have been expressed coherently by reputable witnesses so that the trial judge will have had no special

24. See the current government's proposals for giving museum and art gallery curators power to sell off items from their collections.
25. E.g. Re St Mary's Luton (1967) P 151, and (1966) 3 All ER 638, affirmed (1968) p 47, and (1966) 3 All ER 648, cf.
26. Faculty Jurisdiction Measure 1964, s 13 and note comments by Chancellor Garth Moore in Re St Mary's Balham (1978) 1 All ER 993 at 995 a.
27. See Town and Country Planning Act 1971 ss. 36 and 55 and Town and Country Planning (Determination by Appointed Persons) (Prescribed Classes) Regulations 1981 SI 1981 No. 804, as amended by SI 1986 No. 623.
28. See note 22 above.

advantage in assessing the witnesses' credibility and reliability.[29] As was underlined in the Torrington case, the Court of Ecclesiastical Causes Reserved will only substitute its own conclusion if "the discretion of the Chancellor has been based on an erroneous evaluation of the facts taken as a whole".[30] In the Walbrook case, that meant erroneous in drawing inferences from the expert evidence as to the aesthetic merits of the proposal.

In St Stephen's Walbrook, the crucial aesthetic debate was over the compatibility of the altar with the church. The Court of Ecclesiastical Causes Reserved justified its reversal of the Chancellor's judgment on the aesthetic question on the ground that he had mishandled the expert evidence by setting out to answer a misleading question. He had correctly layed the burden of proof on the petitioners to justify the proposed change to the church.[31] However, he had proceeded to treat Mr Ashley Barker, the main witness opposed to the new altar, as his touchstone, and rejected the petitioners' witnesses on the ground that they had not shown Mr Barker to be "wrong", and therefore, "strictly on the technical evidence", the petitioners had not made out their case. In rejecting this approach Sir Ralph Gibson explained, that an expert could only be said to be "wrong" on an issue of ascertainable fact, or if he "had left out of account any principle or factor by reference to which aesthetic judgment should be excerised" in the context. Therefore it was not enough for the Chancellor to dismiss the petitioners' evidence in general terms as failing to undermine that of Mr Barker. As Sir Ralph Gibson recognised, the Chancellor would have "had all this evidence in mind in weighing the evidence as a whole". However he failed to show what it was in the petitioners' evidence which caused him to regard it as less convincing.

THE PLACE OF AESTHETICS IN LEGAL DECISION MAKING

The expense of legal proceedings is particularly controversial in a church context. However an authoritative decision provides invaluable guidance for the future. Sometimes a much publicised case may even seem justified because of the encouragement it gives to a wider appreciation of significant issues. It may be hoped that the public interest in St Stephen's Walbrook may to some extent have enhanced appreciation of the work both of Wren and of Moore. The role of the church as a patron of the arts both in the past and in the present was certainly vindicated. It may be that it could have been done better in other ways! But the case emphasises the importance of beauty in church buildings as part of the living witness of the church, rather than as something static, or indeed dead, and merely to be conserved for secular academics or voyeurs.

First, the case raises the question of whether, in the words of Mr Palumbo, there is a general proposition that, "any two works of art, each of the highest excellence, can live together and each will set off to advantage the other."[32] The Chancellor rejected this idea and the appeal court did not assent to

29. See note 13 above.
30. (1985) 1 All ER 993, at 996 b-f.
31. (1987) 2 All ER 578, at 592 e-f applying Peek v Trower (1881) 7 PD 21, at 27,per L.d. Penzance.
32. (1986) 2 All ER 705, at 713.

it. "(If) the evidence, when properly assessed, was found to support the view that the altar was damagingly incongruous to the design of the church, which had been designed by another artist of outstanding eminence, then sufficient reason would be made out for rejecting it."[33] Some works of art might clearly be out of place in a church because of their inconsistency with the Christian religion, such as the Venus de Milo if it were put in Westminster Abbey.[34] In other cases, the space might simply be too cramped.

When, then, may a new feature be allowed? The Walbrook case clearly rejects the view which is taken by certain conservationists that major buildings and works of art should at all cost be kept as close to their original form as possible. The case gives an example of a major modern artist designing a central feature for an existing church which, unlike many English churches, had not evolved organically over the centuries, but was a unique whole. Especially in the case of a church originally designed as a unity, a new feature is more likely to be approved where it has been designed for the church in question, that is, where congruity has been specifically aimed at, even if those with different canons of taste may not agree that it has been or indeed could be achieved. Sir Ralph Gibson seems almost to have gone so far as to approve a presumption in favour of such artistic patronage, at least where the proposed addition taken by itself is generally regarded as of exceptional excellence. "It seems to me that the undisputed and exceptional excellence of the altar as a work of art is a factor of separate and substantial weight which should properly have disposed the Chancellor to grant a faculty . . . unless there was some sufficient reason for rejecting it."[34]

The Walbrook case affirmed a view of aesthetics which accords with the use of contemporary additions to churches as an expression of their living, organic and evolving character, even when they were originally built as a unity. Both the Bishop of Chichester and Sir Ralph Gibson quoted with particular approval the conclusion of Professor Downes, having the most obvious credentials as an expert on Wren architecture of all the witnesses: "The proposal is not merely more imaginative, but simply better, than any addition to any Wren church during the last forty years, and perhaps a great deal longer."[35]

Sir Ralph also quoted another telling passage by Professor Downes: "Today, as in the past, the clergy make the justifiable claim that the Christian message is maintained and proclaimed not only through liturgy and teaching but also during the hours that churches are open, through the buildings themselves and their contents. It is not possible to quantify the results, but every churchman, and indeed every committed layman, must know of individual cases of persons who have entered a church for the music or the works of art and came away with the germ of what religious writers call a conversion." Sir Ralph himself concludes that the discretion in considering faculty petitions should be exercised "having full regard to all the circumstances, including the interest of the community as a whole in the special architectural or historic attributes of the building and to the desirability of preserving the building and any features of special architectural or historic interest which it possesses. The discretion is, however, to be exercised in the context that the building is used for the purposes of the church, that is to say, in the service of God, as the church doing its best, perceives how that service is to be rendered."[36]

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33. (1987) 2 All ER 578, at 596.
34. (1986) 2 All ER 705, at 713, c.
35. (1987) 2 All ER 578, at 584 g and 589 j, and see Sir Anthony Lloyd at 602 g 42 (1987) 2 All ER 578, at 600.
36. (1987) All ER 578, at 600a.

Even with secular applications for listed build consent under the Town and Country Planning Act, planning authorities have a wide discretion in granting approval for changes.[37] Churches are in a special position in that they are exempt from listed building control, but the Court of Ecclesiastical Causes Reserved refused to approve any principal that for this reason a faculty should only be granted in accordance with a concept of "necessity", for example, for overriding financial requirements or to allow liturgical changes which could not be accommodated in any other way.[38] The requirements of changing liturgy are such that major internal alterations to historic churches are more likely to be sought than analogous changes to many secular buildings. The Walbrook case is an encouragement for constructive improvements and embellishment of churches.

Any proposal to alter a distinguished building will clearly be less likely to succeed if it is irreversible. In the Walbrook case, the Moore altar was designed to allow for modern forms of communion administered "in the round". Chancellor Newsom was influenced by the likelihood that liturgical requirements might well change again before long, and that further change would be made "only with great difficulty, trouble and expense".[39] By contrast, Sir Ralph Gibson stressed that no physical change will be made to the fabric designed by Wren", and took the view that, "If hereafter those who worship in the church should wish to remove the altar for good reasons, the removal will in all probability be possible for the means of selling the altar in the market as a work of artistic excellence." This would cover the considerable cost of removing it.

A further factor stressed by Sir Ralph Gibson was the relative weight to be attached to the opinions of both experts and informed members of the church concerned. In secular planning appeals, if surprisingly little allowance is sometimes given for expert opinion,[40] the views of ordinary members of the public run the risk of receiving even shorter shrift.[41] In the Walbrook case, the Chancellor treated as of overriding importance an aesthetic dispute between the experts as to the better view of the geometrical effect intended by Sir Christopher Wren. On one view, the altar was congruent with the church. On the other, it was not. Even if the altar was not consistent with the geometrical design of the church, opinion differed over whether enjoyment of the geometry would be impaired by the obstruction of the altar. Here Sir Ralph Gibson showed that the value of an expert's opinion on aesthetics was not a matter of his innate authority, but is as a basis for the court to make an informed assessment of its own. In making this assessment the views of church members, provided they also understood the aesthetic arguments, were of considerable weight.

37. Town and Country Planning Act 1971, s 55.
38. The Relevance of churches being listed buildings but exempt from listed building control was raised on the appeal. The principle of necessity was gleaned from the judgment of Sir John Owen, the Dean of the Arches, in Re St Mary's Banbury (1987) 1 All ER 247 at 250.
39. 714, quoting Chancellor Garth Moore in Re St. Matthew's Wimbledon (1985) 3 All ER 670 at 672.
40. See note 22 above.
41. (1987) 2 All ER 578 at 595.

"When the experts' knowledge has been deployed and their separate and opposing aesthetic judgments explained, it seems to me that athe reasoned opinions of mena and women of experience in matters that the reasoned judgment but of no special skill or authority on the architecture of the building are of value, provided that their opinions, and the reasons they give for holding them, withstand scrutiny in the light of the evidence of the experts. Most of those who will worship in this church or who will visit it out of aesthetic or artistic interest will have no special expertise in the architecture of Wren".[42]

THE RELATIONSHIP OF AESTHETICS TO PASTORAL AND DOCTRINAL CONSIDERATIONS

St Stephen's Walbrook was in a special position as a City of London church connected with the Samaritans organisation. However, although its congregation was small, its numbers were exceptionally well qualified to judge what would be best for its future and to assess the advantages of the proposed new altar, not just for the congregation, but for the wider church. Generally, Sir Ralph Gibson confirmed the pastoral emphasis in the Torrington judgment on the importance of the views of the worshipping congregation. When it comes to deciding between alternatives of aesthetic taste, the views of those who will actually use and visit the church are of great importance. Aesthetics can not be separated from the pastoral need to encourage initiative on the part of a local church where a proposal suits their taste:

"The principle which accords importance to the views of the parishioners is not in my view limited in its application to the familiar parish, where most of those who worship in and accept responsibility for the care of a church live within the parish boundaries, but it is to be applied also to those who care for and worship in the city church such as St Stephen's. The principle, as it seems to me, recognises the importance of the committment of parishioners to the church of encouraging and supporting that committment by giving a positive response to their pastoral work and efforts when such a response is justifiable".[43]

Although the case of St Stephen's Walbrook demonstrates that aesthetic judgment is by no means an entirely subjective matter, at the end of the day the aesthetics advantage of a particular proposal may appear to be evenly balanced. In the event a church court should not impose its own taste or that of the experts who support the status quo, but particular weight should be given to the informed preference of church members. This may mean that the decision will ultimately be a pastoral one. Thus Sir Anthony Lloyd said that "patronage should be given every encouragement, not least by the Church", and continuted, "To deny the petitioners the faculty they seek after all these years would indeed be a harsh reward for their generosity."[44]

42. Ibid.
43. Ibid at 597 j-598 a.
44. Ibid at 604 h.

However, pastoral considerations can not be divorced from doctrinal issues. Chancellor Newsom's judgment in the Walbrook case was criticised by the Court of Ecclesiastical Causes Reserved for treating the aesthetic issue as a technical question as to whether the proposal would detract from the geometrical quality of Wren's design for the church. However the Chancellor approached the aesthetic question from the position that the altar was inconsistent with the existing law on the doctrine of Holy Communion. Although his decision on this point was reversed, he was certainly seeking to comply with the old authorities. If the altar was inconsistent with the doctrine of the 1662 Prayer Book, then it was inconsistent with the liturgical preconceptions of Wren's design. Aesthetically, the Moore altar was designed to express a different doctrinal perspective. Even though both the Bishop of Chichester and Sir Anthony Lloyd preferred to attach no weight to the point, the Rector, Mr Chad Vara, on his own evidence, had "begged (Moore) to forget any altars he had ever seen, if he had in fact seen any, and to think of something going back to the dawn of history, something primitive and inseparable from man's search for a meeting place with God. I implored him to think of the stone altar on which Abraham was prepared to sacrifice Isaac and of the stone . . . set up by Jacob at Bethel, with the declaration 'This is the House of God and this is the gate of Heaven'. . ." Mr Vara's words summarise a very different aesthetic impact from a Holy Table consistent with the 1662 Book of Common Prayer.

Chancellor Newsom was prepared to concede that a central altar of an appropriate sort could have been approved on pastoral grounds. However, the Moore altar would change the geometrical interpretation of the building. By claiming that this was a satisfactory resolution of the Wren design, the petitioners' witnesses were not merely showing that as a matter of taste the building could perfectly well be read in a new way. They seem to have demonstrated that the Moore altar would very effectively give the original architecture a new liturgical meaning. The reason for the Chancellor's approach to the aesthetics may be most explicit in his response to the evidence of Sir Roy Strong, the Director of the Victoria and Albert Museum. "I find it a little difficult to understand how (according to Sir Roy) the building can always have 'needed' a central altar when Sir Christopher Wren was designing it for the liturgical practice of his day and thought of it as an 'auditory' so that the pulpit and not the altar needed the most important place."[44]

Although the Chancellor sought to deal with the aesthetic issue separately from that of doctrine, was it the effectiveness of the petitioners' own experts in demonstrating how striking the altar would be which prompted him to reject a scheme whose aesthetic affect would conflict with the decision which he had already made as to doctrine? Sir Anthony Lloyd's analysis on the appeal shows that the Chancellor did not consider the intermediary question of whether he should have refused the faculty in his discretion, "on the ground that the significance of the altar might be misunderstood, or that it might cause offence or become an object of superstition". Doubtless a 19th century church lawyer could have regarded this as a real possibility.

In conclusion, the factors which primarily motivated the decisions in both cases so far decided by the Court of Ecclesiastical Caused Reserved may have been pastoral, but the significance of the Walbrook case at any rate really does appear to have been doctrinal. In an era when doctrinal and ethical issues are again increasingly the subject of heated debate in the Church of England, the importance of the Court of Ecclesiastical Causes Reserved may become increasingly apparent.

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44. Ibid at 604 h.