Neutral Citation Number: [2016] ECC Lee 4 26 April 2016

In the Consistory Court of the Diocese of Leeds 15-113C

In the matter of St James the Great, Flockton

Judgment

1. By a petition dated 17 May 2015, the priest-in-charge and churchwardens of St James the Great, Flockton (a grade II listed building) seek a faculty for what is described as a 'de-cluttering' and for the decoration of the church interior. The Schedule of Works in the petition is somewhat discursive and makes reference to the content of the DAC Notification of Advice which is in slightly different terms. It transpires that the re-decoration of the church has already taken place and, to that extent, the petition is for a retrospective faculty.

2. The so-called 'de-cluttering' comprises the proposed disposal of a number of items which are described as 'artefacts'. These comprise:
   i. a funeral bier;
   ii. a 'spare' reredos;
   iii. three black painted pews in the north aisle;
   iv. a side altar in the Lady chapel;
   v. a 'spare' lectern;
   vi. four redundant pews located in the entrance porch and at the west end of the nave, apparently moved with the permission of the archdeacon.

3. Mindful of the judgment of the Court of Arches in *Re St Lawrence, Oakley with Wootton St Lawrence* (14 April 2014), I gave directions on 29 July 2015 providing the petitioners with time to lodge additional documentation. In addition I required clarification of the position of the Church Buildings Council which had hitherto been ambiguous.

4. I have considered paragraph 19 of *Wootton* which states in clear and uncompromising language that faculties in disposal cases should seldom if ever be granted without a hearing in open court. I concluded that this is neither necessary nor expedient because:
   i. none of the items amounts to a 'church treasure';
   ii. public notice has produced no letters of objection from parishioners;
   iii. the petition is not merely unopposed: it has the active support of the DAC and the CBC, as well as the concurrence of Historic England;
   iv. it would be disproportionately expensive to convene a hearing, particularly when the items in question are of little or no financial or heritage value.

   I had come to a similar conclusion in Chichester Consistory Court in *Re St Mary Magdalene, South Bersted* (3 September 2014).

5. In a document running to some 55 paragraphs, the Reverend Dr John Marsh, the first petitioner, expressly declined to agree to a disposal by written representations until such time as the court had determined eight separate preliminary points which he had identified and wanted addressed on an interlocutory basis. I was not prepared to accede to Dr Marsh's request. The court's duty to case manage cases includes identifying the issues at an early stage, fixing timetables, controlling the progress of the case, and giving directions to ensure that the resolution of a case proceeds quickly and effectively. Dr Marsh's suggested approach would have caused needless delay, introducing a piecemeal approach to what is essentially a simple and straightforward matter. It would also have incurred substantially more costs which would inevitably have fallen on the petitioners. Fortunately, by email dated 19 April 2016, Dr Marsh relented and provided written consent for disposal on written representations.

6. This is indeed a straightforward matter which has become needlessly protracted and over-complicated. In short, should the court sanction the repainting of the interior of the church which has been undertaken without permission? And should the court authorise the disposal of a number of specific items? Getting the petitioners to focus on these two discrete matters has not been easy, notwithstanding the issuing of two sets of directions outlining what they were required to demonstrate. I propose to address each of the component elements in the petition separately.

Part I: The repainting of the interior of the church

7. Dr Marsh accepts that this work was undertaken without authority and apologises for it. By way of explanation, though not excuse, he points to the procedural history which has included a complex and time-consuming reordering carried out pursuant to an earlier faculty granted by the acting Chancellor in March 2015. Dr Marsh's ministry in the parish is on a house-for-duty basis, covering both St James, Flockton and St Michael, Emley, which during 2015 was also undergoing a major refurbishment project.

8. The works undertaken in Flockton, which included the introduction of a mezzanine floor, were apparently completed just before Christmas 2015. Dr Marsh wrongly assumed that the March faculty included permission for internal painting. It is unfortunate that the inspecting architect, Liz Ashmore, did not put him right. It is expected that architects who oversee church projects make certain that the necessary permissions have been obtained. I expect Ms Ashmore to be more scrupulous in future.

9. At first blush, Dr Marsh's explanation is surprising since he signed a Form 4A Public Notice on 21 July 2015 and a petition in May 2015 both of which expressly included in the proposed works the internal redecoration of the church. Why would he seek permission when, he claims, he believed it had already been granted? I suspect, as Dr Marsh hints at, he had become confused with two major projects under way in the churches in the benefice. He was not assisted by the fact that following the seeking of advice from the DAC, the proposals at St James, Flockton were split with the reordering being covered by one Notification of Advice and the redecoration and disposals by another.

10. I have no doubt that the DAC's intervention was well intentioned. Dr Marsh states that it was the DAC which completed the petition for him. Again I am sure this was intended to be helpful, but parishes need to have 'ownership' of whatever scheme they chose to pursue, and there is a risk that parishes may become disempowered if the important work of filling out and submitting a petition is taken out of their hands and performed by a diocesan institution.

11. Dr Marsh has been gracious enough to apologise for his oversight, and has taken upon himself the resultant criticism which, in truth, should be born equally by his two fellow petitioners (the churchwardens) and by the inspecting architect. I accept his apology and propose to draw a line under these matters. The issue which the court must address is whether a retrospective faculty should be granted. And the question to be answered is would permission have been granted had the application been made prospectively?

12. My concern was aroused when I read an email from Mr Tom Ashley of the Victorian Society, dated 5 February 2015. It read:

> 'At some point in the mid-twentieth century [the interior walls] were insensitively painted with non-breathable white gloss paint which is now peeling in a number of places and, where affected by damp apparently caused by blocked external guttering, has deteriorated to the point where the historic brickwork is quite visible. Happily, this reveals that the historic brickwork – a warm yellow enlivened by parallel string-courses in red – to be both attractive and apparently in quite good condition [...] It would be of immense aesthetic benefit to the listed church for the paint to be stripped and the historic brickwork revealed (and where necessary conserved) rather than for the interior simply to be repainted: indeed, this would represent a substantial heritage gain for the listed church, which would do much to balance out the harm that will be caused by the new structure at the west end.'

13. Mindful of the stance of the Society, I directed that it be specially cited. Ms Sophia Laird replied by email dated 9 December 2015, declining to become a party opponent and referring to the Society's most recent letter by which she meant Mr Ashley's email of 5 February 2015, above. I can only assume that the Society has changed its view with regard to the repainting of the interior. I find it difficult to reconcile Ms Laird's email with the earlier view expressed by Mr Ashley.

14. As I had formed the impression (perhaps wrongly) from Mr Ashley's email that there was a substantive and controversial issue to be resolved in relation to the repainting, and as there appeared to have been no consultation in relation to the proposed disposal of the various items, I directed special notice also be given to Historic England, and that advice be sought from the Church Buildings Council.

15. By an undated letter received in response to a written request dated 2 December 2015, the CBC stated: 'The decoration is a matter on which the Council has not commented and on which it is prepared to defer to the advice of the DAC'. Historic England replied on 5 February 2016 but made no reference at all to the redecoration.

16. The Form 2 Notification of Advice dated 1 June 2015 records that the DAC recommended the works proposed in the petition and, in relation to the repainting, this advice was unconditional.

17. Dr Marsh indicates at paragraph 13 of his written representations that the repainting of the interior was carried out by Techni-build in a cream or off-white colour. He does not specify when this took place, but I assume it to be at some time subsequent to March 2015. He further suggests in paragraph 23 that the alternative proposed in Mr Ashley's email (above) would have been impractical and prohibitively expensive.

18. In all the circumstances, I am prepared to authorise a retrospective faculty in respect of the decoration. I do so for the following reasons.
    i. Dr Marsh has offered a generous and sincere apology for allowing the works to proceed in advance of permission being given. His explanation is understandable and I consider that he acted in good faith throughout. I am a little disappointed that neither of the churchwardens nor the inspecting architect have deemed it appropriate to join in Dr Marsh's apology.
    ii. To the extent that the Victorian Society has expressed contradictory opinions, the latter in time must prevail and I regard Ms Laird's contribution as effectively overtaking and replacing that of Mr Ashley.
    iii. The redecoration scheme has the approval of the DAC (to whom the CBC has expressly deferred) and English Heritage has voiced no objection.
    iv. The inappropriate gloss paint has been removed and replaced with a breathable first coat of Johnstone's pliolite-based masonry paint and with three coats of Slipper Satin matt emulsion manufactured by Farrow and Ball. It would be churlish and wasteful to require work to be undone which has been undertaken by a reputable contractor, using appropriate materials and overseen by a professional inspecting architect.
    v. no harm has resulted to the building in consequence of the unauthorised work: all that has been lost is the speculative – and contested – opportunity of pursuing an alternative once ventured by the Victorian Society but subsequently disavowed. If there is any merit in the initial observation of the Society, it can be addressed on the next occasion the interior comes to be decorated.

19. I do not condone the illegality, but I recognise the value of the work which has been undertaken to bring to completion a thoughtful and effective reordering for which a separate faculty had been properly obtained.

Part II: Disposal of various items

20. A great deal of time and effort has been taken up in dealing with what is a relatively uncontroversial matter. I have followed the approach of the Chichester Consistory Court in *St Mary Magdalene, South Bersted* and interpreted the observations of the Court of Arches in *Wootton* as being applicable solely to church treasures and not to the disposal of chattels generally, where they would be disproportionately onerous. This is a case in point. Dr Marsh all but buckled under the pressure. This cannot have been the intention of the Court of Arches and in the Diocese of Leeds (as it will soon

style itself) the more rigorous regime will apply solely in relation to 'treasures' properly so described.

Consultation

21. The proposed disposals were the subject of conventional public notice and a further notice on the diocesan website and in a local shop. I directed that there be special citation of the Victorian Society and Historic England and that advice be sought from the CBC. No letters of objection have been received from members of the public.

22. By letter dated 22 December 2015, English Heritage requested photographs and further information. These were duly supplied leading to a further letter on 5 February 2016 which concluded: '... we consider the disposal of the items, excluding the spare lectern, will not harm the significance of this Grade II listed building'.

23. The DAC Notification of Advice which recommended the disposals contained two conditions: first, that the PCC investigate if the bier could go to a museum; and secondly, that the reredos, altar and lectern are offered first to other churches in the diocese before being placed on the open market. The DAC further stated that

'the work or part of the work proposed was likely to affect:

- the character of the church as a building of special architectural or historic interest
- the archaeological importance of the church
- archaeological remains existing within the church or its curtilage'

With the greatest possible respect to the collective experience and expertise of the DAC, I do not consider that the second and third bullet points could possibly have been engaged by the redecoration or the disposal of the various items. Further, although it is more a matter of subjective judgment, I would not have concluded that the redecoration came within the first bullet point. However, out of deference to the DAC, I considered myself bound by its certification and this further protracted the consultation with the CBC and amenity societies.

24. By letter dated 24 August 2015, the CBC listed the information it would require in respect of each of the items proposed for disposal. In a further letter (undated but written in response to an enquiry from the registry on 2 December 2015), it was stated:

> 'The Council does not wish to object to the proposals on which, as you note, it has already commented.'

This can only be a reference to the proposed disposals as the decoration is addressed separately. It is slightly odd, because the only comment to have been previously forthcoming from the CBC was the list of matters to be addressed and not advice as such. There is, however, an email dated 28 October 2015 from David Knight of the CBC addressed to Dr Marsh which states:

> 'Thank you for taking the trouble to provide further information. The Council is now content to leave the matter with the DAC and will not object to the proposed disposals.'

25. Turning to the items proposed for disposal, I will consider them in the order in which they appear on the petition. I have been greatly assisted by the written representations of Dr Marsh, as I had been struggling to piece together a jumble of prior documents where various emails of uncertain provenance were interspersed with other comments including various observations of his own, together with those of the Reverend Laurie Brookes, a retired priest who apparently searched through a large number of historic church records. I have also been assisted by photographs which, though of rather poor quality, were sufficient for these purposes.

Funeral bier

26. Dr Marsh outlines the history of the bier which is believed to be contemporaneous with the church. It was provided by the executors of Mrs W Stansfield. The gift was recorded as being 'on condition of it being kept for the sole use of parishioners'. There was a time when it seems to have been kept in a small wooden hut in the churchyard. There is conjecture that it may have been restored to more regular use in the Second World War when petrol was rationed. It would seem that in the 1980s the bier was in the custody of Mr Wilman Rhodes, a local resident who restored it after it had been abandoned in the churchyard. It was brought to the church when Mr Rhodes moved to a smaller property where it has remained, latterly as a display stand for second-hand books. It takes up valuable space and has not been used for at least 15 years.

27. Dr Marsh has made sterling efforts to find an appropriate home for the bier: he has approached the Tolson Museum in Huddersfield, and the National Coal Mining Museum at Middlestown, just a few miles from Flockton. Neither has responded. Dr Marsh comments that this is particularly disappointing because many local miners would have been carried to their final rest on the bier in previous generations.

28. I do not consider the bier to be a treasure, and there is no suggestion that it is of particular value or interest. Notwithstanding its use at funerals, it has no religious significance as such and would not ordinarily be housed within a church building. It is not inappropriate to retain it following the reordering. All the professional consultees support its disposal. I agree. But I will suspend the operation of the faculty for six months to allow further attempts to be made for a home to be found for the bier. It may be that publicity attendant upon this judgment might produce fresh leads.

Spare reredos

29. This oak reredos stands in front of the west window, having been moved from its original position in front of the east window. It was acquired as a memorial to the Reverend Robert Jackson French and dedicated in 1920, but lasted less than twenty years in that location before being moved elsewhere in the church. There was a proposal for it to be removed to St Andrew, Bruntcliffe in 1938 but a contemporary PCC minute reveals that this was defeated by 7 votes to 5. This decision seems to have been reversed at an APCM the following year following which a sale price of £70 seems to have been agreed.

30. The reredos cannot be returned to the west window following the reordering and the creation of community space. There is no suitable place in the church to which it can be relocated. All the professional consultees support its disposal. Again I agree. But I would encourage the petitioners to try and find another church which can accommodate it prior to placing it on the open market.

Three black painted pews in the north aisle

31. The pews are of no particular merit. They are fabricated of pine, probably in the 1860s. At some stage they were painted black although the paint is fading. I wholly reject Dr Marsh's bold submission that: 'The original permission for the re-ordering, we contend, carried with it the reasonable expectation the surplus pews could be removed from the building and disposed of'. On the contrary, the reasonable expectation is that a faculty is a permissive right to undertake what is stated on its face and nothing more. On the material now before me, however, there is sufficient for me to conclude that the pews are of no intrinsic value. All the professional consultees support their removal and disposal. Once again, I agree.

Side altar in the Lady chapel

32. This small oak altar stands at the east end of the north aisle. The 1982 terrier records that a faculty was granted for its installation, together with electric lighting, in 1936. This was augmented by a further faculty in 1941 for an oak pedestal, a statue of the Virgin and Child and blue damask hangings. The altar was provided as a memorial to the late Lady Beatrice Lister-Kaye, a member of a local land-owning family which had been a substantial benefactor of the church over several generations. I assume no objection has been forthcoming from the Lister-Kaye family.

33. Dr Marsh states that the altar has not been used for many years and there is little likelihood of it being brought back into use in the future. The parish wish to use this area for a prayer space, and to retain the statue for devotional purposes together with the oak pedestal. I assume that there is no objection from any surviving family members. I am of the view that the petitioners have adequately made out their case for the altar's proposal.

Spare lectern

34. In paragraph 38 of his written representations, Dr Marsh indicates that the petitioners wish to accept the advice of Mr Brookes that this lectern be retained. It was presented to the parish by its first incumbent, the Reverend Robert Jackson, in about 1869. It is the only matter in relation to the disposal of which Historic England has objected. In the circumstances I treat this matter as having been withdrawn from the petition. It is not to be removed from the church.

Four redundant pews

35. Apparently these pews, which are currently located in the entrance porch and at the west end of the nave, were moved with the permission of the archdeacon during the reordering works. Precisely the same considerations apply as with the three pews in the north aisle (above) and accordingly I am similarly agreeable to permit their removal and disposal.

Guidance for future cases

36. This has been an unduly lengthy judgment, in part because matters were complicated by the doubtless well-intentioned decision taken while the matter was under consideration by the DAC that these two matters be hived off from the substantial reordering for separate consideration. This led to confusion over whether permission had been granted for the repainting. However, the evidence concerning the disposal of the chattels has taken a long time in coming and was put before the court is a piecemeal and disjointed manner. Dr Marsh's eventual written representations comprehensively addressed these matters where the burden of proof lies on the petitioners although this was all but concealed amongst irrelevance, ill-founded procedural observations, and flights of whimsy. It might assist in the presentation and determination of future petitions if I were to indicate the matters which petitioners need to address in disposal cases such as these.

1. Does the item constitute a 'church treasure' properly so described? If so, the more formal process will apply. If not then,
2. What is the history of the item?
3. What is the connection (past and present) of the item with the church?
4. If the item was a gift, has the donor (or any surviving family members) expressed a view as to its proposed disposal?
5. If the item was given in memory of an individual, have that person's surviving family members expressed a view?
6. What attempts have been made to find an alternative home for item in another church, a local museum or civic building or some other appropriate location?
7. What is the monetary, aesthetic, artistic or heritage value of the item?

37. If this information is systematically set out, and accompanied by an ordered bundle of relevant documentation, the matter should be capable of determination with relative ease. In this case, although the route to determination has been more arduous than all those concerned would have wished, the court is now in a position to order that a faculty pass the seal:

i. retrospectively for the internal decoration;
ii. to permit the disposal (subject to the conditions expressed in this judgment) of all the items listed in the petition with the exception of the spare lectern which is to remain.

The petitioners must pay the additional court costs which will include a correspondence fee for the registrar as this matter has been particularly time consuming. No item is to be disposed of until the court costs have been satisfied in full.

The Worshipful Mark Hill QC
Chancellor 26 April 2016