

RECENT ECCLESIASTICAL CASES

DEPUTY CHANCELLOR MARK HILL

Re Edward Charles Lee, deceased

(Sodor and Man Consistory Court; Farrant Ch. November 1995)

Monument—inscription and emblems—aesthetic considerations

Barbara Ann Lee petitioned for a faculty to erect a monument on the grave of her late husband in Braddan New Churchyard. The churchwardens, acting during a vacancy in the benefice and in the absence of any diocesan guidelines or regulations, had declined to permit its introduction since they considered the devices of a heart inscribed 'Ted' and the representation of a motor-cycle to be inappropriate and unsuitable for a memorial in a parish burial ground. The DAC did not object to the motor-cycle, regarded the heart as 'sickly' and would have preferred 'Father, Grandfather and Edward' to 'Dad, Grandad and Ted'. The Chancellor quoted at length from the judgment of Bullimore Ch. in *Re Holy Trinity Churchyard, Freckleton* [1944] 1 WLR 1588 and from *The Churchyards Handbook*. He considered that different aesthetic considerations apply where the memorial is to be erected in what amounted to a public cemetery well away from the parish church and concluded that a reasonable incumbent could not seriously object even though he may have had some reservations about the proposed memorial and the inscriptions to be placed thereon. A faculty was therefore granted. Adopting what was said in the handbook under the heading 'Comfort the Living', the Chancellor commented that nothing could be more unfortunate than wrangling over matters of taste at the very graveside when the purpose of the enterprise is consolation. He further stated that had there been in existence any valid churchyard regulations in the diocese his decision might perhaps have been different.

Re Holy Trinity, Louth

(Lincoln Consistory Court; Goodman Ch. October 1996)

Rebuilding of church—aesthetic considerations

In 1991 the church, which was a listed grade II building, was ravaged by fire, only the tower remaining, which the local planning authority insisted be retained and be incorporated into any new design. A faculty was granted in June 1994 in relation to which there had been no objection as to the design from the CCC or any of the amenity societies. Subsequently, a smaller and less costly design, more oriented towards community use, had emerged. The revised proposal, somewhat utilitarian in appearance but still retaining the tower, received planning permission in March 1996. The DAC considered it unfortunate that the local planning authority insisted, and the parish wished, that the tower be retained. However, the architects having met most of the DAC's specific concerns, the DAC did not object to the proposal. Of the parties specifically cited, Louth Civic Trust gave general support to the scheme and English Heritage and the Victorian Society had no criticisms to offer. The Royal Fine Art Commission stated that it did not feel able to make any contribution on the basis that it considered the whole conception was invalid. The CCC, whilst appreciating the changes that had been made by the

architect in the light of its earlier constructive criticism, felt that, if the tower had to be retained, there was no imaginative synthesis between old and new in the proposed design. The Chancellor accepted that the design might not be wholly satisfactory from the aesthetic point of view, particularly because of the requirement that the tower be retained, but appreciated the evident need for a building of this kind to further the mission of the church in this part of Louth and he granted a faculty accordingly.

Re St Peter, Oundle

(Peterborough Consistory Court; Coningsby Ch. November 1996)

Carved caricatures of living persons—appropriateness—ballot of parishioners

The incumbent and churchwardens, acting on behalf of the PCC, sought a faculty for the erection of two 'label stops' at the top of columns in the nave where arches met in a 'v'. The location was chosen because each of the other five columns was adorned with a human likeness dating from medieval times and the two which were missing had probably been removed during early Victorian restoration. The project, modest in cost and to be funded by private donations, was proposed as a light hearted finishing touch to a major re-ordering of the church and as a mark of appreciation for the incumbent and the diocesan bishop each of whom was nearing the end of his ministry and had in fact retired by the time of the hearing. Four parishioners pursued their objections to the hearing. The Chancellor accepted expert evidence called on behalf of the petitioners (no contrary evidence being tendered by the objectors) that the inclusion of carved likenesses of living persons within church architecture had been common over many centuries and contemporary examples were numerous. He therefore rejected the argument that the erection of these label stops was wrong in principle or would establish a precedent. Further, he accepted the proposition advanced by counsel for the petitioners that since the label stops were not memorials, the test of 'exceptionality' propounded by the Dean of the Arches in *Re St Margaret's, Eartham* [1981] 1 WLR 1129 was of no application. In a very detailed judgment the Chancellor rejected each of the other objections which were advanced. These included: that there should be no representation of a person other than Jesus Christ in a church; that living persons should never be represented lest they subsequently 'fall from grace'; that the caricatures would be a focus of disunity; that they would distract from worship; that the project represented self-aggrandisement on the part of the persons being honoured; and that approximately one-third of those on the electoral roll who participated in a ballot were opposed to the project.

Whilst the application was at an interlocutory stage, the objectors had agreed with the petitioners that the rural dean would conduct a secret ballot of all those on the electoral roll and in the event that the majority favoured the proposal they would withdraw their objections. However, when it became known that the majority did support the proposal, the objectors indicated to the Chancellor that they wished to persist in their objection. The Chancellor, mindful that faculty applications concerned a permissive right and were not proceedings *inter partes*, and not having himself condoned the ballot, did not hold the objectors to their agreement since, even absent any objection, the petitioners would still have had to prove their case, a hearing would have been necessary and the participation of the objectors would assist the court. He also felt constrained to disclose to the parties the voting figures in the secret ballot which had been communicated to him in confidence by the rural dean. On the question of costs, neither the petitioners nor the objectors sought costs *inter partes* but there was argument as to the payment of court fees.

The Chancellor took the view that some form of hearing would have been required even had the petition been unopposed. Nonetheless the objectors ought to make a contribution particularly for the period following receipt of the petitioners' expert evidence when their position became all but untenable. Accordingly, he ordered that the objectors indemnify the petitioners to the extent of 50 per cent of their costs from May to October 1996 and 65 per cent from October 1996 to the conclusion of the case.

Re St Margaret, Brightside
(Sheffield Consistory Court; McClean Ch. November 1996)

Fonts—number, type and position

Towards the conclusion of a 'major and notably successful' re-ordering project the petitioners sought a confirmatory faculty for a deep plastic tank used for total immersion baptism which was fully concealed beneath the floor when not in use and which had been installed during the course of the re-ordering without permission or any consultation with the DAC. In addition, a faculty was sought to introduce a free-standing font to be located in the sanctuary. The Chancellor considered the growing body of case law on the subject including *Re St Nicholas, Gosforth* (1988) 1 Ecc LJ (5) 4; *Re St Barnabas, Kensington* [1991] Fam 1, [1990] 1 All ER 169; *Re St George's, Deal* [1991] Fam 6; *Re St Andrew, Cheadle Hulme* [1994] 1 WLR 880; *Re St James, Shirley* [1994] Fam 134; and *Re Emmanuel Church, Loughborough* (1995) 3 Ecc LJ 430; and the *Response by the House of Bishops to questions raised by Diocesan Chancellors* of June 1992. The Chancellor drew out the following:

- (1) Provision for baptism by immersion may be authorised, but the court needs to be satisfied that there is a genuine demand within the congregation and will be alert to the risk that the provision of two forms of baptism can lead to doctrinal misunderstanding.
- (2) In general there should be only one font; to provide more than one font can only be regarded as anomalous and is not to be encouraged.
- (3) A font can be designed so as to allow for baptism to be administered in a variety of ways. Such designs are to be encouraged.
- (4) A font should be a substantial object, making a point to those who enter a church about the significance of baptism.

Regretting that the opportunity of providing the type of font envisaged as (3) had been missed in this instance, the Chancellor granted the confirmatory faculty 'until further order' thereby marking the anomalous nature of the two-font situation, and he gave to the archdeacon liberty to apply lest doctrinal concerns emerged in the future. He granted a further faculty for the introduction of the conventional font and the removal of an existing stone font. The spatial separation between the two was less concerning here since the immersion font was invisible except when in use.

Re St Philip, Alderley Edge
(Chester Consistory Court; Lomas Ch. December 1996)

Licence—appropriate fee—approval by court

The incumbent and churchwardens sought approval for a licence for the installa-

tion and retention of telephone communication equipment by Orange Communications. The installation of the equipment* had been approved when the petition was originally dealt with. Orange, who had been added as a party to the petition, had offered an annual fee of £2,000 to which the parish had signified its consent. The Chancellor considered the proposed fee to be inadequate and required a hearing so that the court might consider the terms of the licence. At the suggestion of Orange, the Chancellor authorised the registrar to appoint a valuer who produced a fee of £6,300 per annum for five years in this instance and a scale of fees designed to obviate future hearings in relation to similar licences in the diocese. The Chancellor stated that the incumbent, churchwardens and PCC are 'mere trustees of the property under their control and . . . the interests of those succeeding them must be borne in mind. It is the responsibility of trustees to obtain the best bargain possible for their beneficiaries present and future'. The approval of the court is required for all terms in any licence made pursuant to faculty, including the fee payable. The Chancellor further ordered that a contribution of one-sixth of the licence fee be paid to the Diocesan Board of Finance for the first year of the licence period. This was designed to reflect the work done and fees incurred by the diocese in achieving an increased windfall payment to the parish and was based on a willingness to share which the Chancellor identified as a Christian principle.

* *Note: The equipment comprised up to 6 antennae and 2 dishes together with a base receiver station and cabling, all of which were to be housed internally within the church tower.*

Re Christchurch, Wheelock

(Chester Consistory Court; Lomas Ch. December 1996)

Memorial—parish guidelines—exception

The petitioner sought a faculty for the introduction of a memorial over the place in the churchyard where the cremated remains of his mother and father were interred. The petition was opposed by the incumbent and churchwardens on behalf of themselves and the PCC. The proposed triangular memorial had been fashioned in York stone and was intended to represent the bow of a liner because the petitioner's parents had travelled to Tasmania by ship, later to return. Since 1982 the parish had followed the diocesan regulations relating to memorials and they had been carefully adhered to ever since, being formally adopted as a matter of PCC policy in June 1984 and subsequently reaffirmed. During that time two memorials falling outside those permitted by the regulations had been permitted by faculty. In this case the Chancellor, concurring with the advice of the DAC, did not see any exceptional artistic merit in the memorial such as to justify a departure from the parish policy. He also accepted evidence that its introduction would render the maintenance of the churchyard more difficult since the triangular memorial would have to be removed from its base to permit the passage of a lawn mower. Accordingly the petition was dismissed with costs.

St John the Baptist, Hartford

(Chester Consistory Court; Lomas Ch. December 1996)

Extension of church building—effect on existing graves

The incumbent and churchwardens sought a faculty for a substantial extension to the church building to provide additional seating, kitchen facilities and toilets. The

works were necessary and uncontroversial save for the consequences of the proposal upon a number of graves. The DAC approved the plans and there were no objections from English Heritage, the Victorian Society or the British Legion. The Chancellor heard evidence as to extensive efforts made to trace relatives by notices in local newspapers, through parish registers, electoral registers, telephone books and in other ways. It was proposed that in all cases except where there had been agreement with relatives the remains should not be disinterred but left in situ and that merely the memorials be removed and re-erected. The Chancellor was concerned about whether he should permit a grave to be interfered with and in some cases completely covered whilst leaving the remains in place. Whilst in some cases the relatives were content for this to be done, different considerations arose where no relative could be traced. The Chancellor therefore granted the faculty upon condition that the remains of those buried in graves where no contact had been made with anyone interested therein should be reverently exhumed and reinterred elsewhere in the churchyard. However, he exempted from the condition two graves where the burials had taken place nearly 100 years ago. For these he permitted the parish to leave the remains in situ but re-site the memorials.

Re Byron Memorial, St Mary Magdalene, Hucknall
(Southwell Consistory Court; Shand Ch. December 1996)

Memorial—inscription—theological objection

Ashfield District Council, with the support of the incumbent, petitioned for the erection of a memorial to Lord Byron in the Byron Memorial Garden in the churchyard. In the absence of any indication of opposition a faculty had been granted in principle leaving the controversial issue of what inscription it should bear to be determined. The proposed inscription was taken from verse 137 of Childe Harold's Pilgrimage, Canto the Fourth, and was identical to that in Westminster Abbey and to a tablet within the church itself. It concluded the couplet,

*But there is that within me which shall tire,
Torture and Time, and breathe when I expire;*

The objectors feared the inscription might be an incentive to the young who congregated in the garden to dabble in the occult. More significantly they asserted that the text was unchristian in that it depicts man as master of his own destiny, that it eternalises the human spirit above the eternal God and that it advances the idea that human suffering is greater than the everlasting and redeeming love of God. One interpretation categorised it as expressing a gnostic heresy. Recognising a risk that people unacquainted with Byron or the context of the verse might place all sorts of bizarre and unfortunate interpretations upon it, the Chancellor ordered that an explanatory leaflet be drafted and made available in the church. Subject to this proviso, the faculty was granted.

Re St John the Baptist, Bishopsteighton
(Exeter Consistory Court; Calcutt Ch. December 1996)

Extension—necessity—disturbance of remains—opposition—written representations

A petition was sought for the construction of a building comprising toilets and a meeting room to accommodate a crèche and junior church which would be sited in the churchyard to the north of the church and linked to it by a lobby. Citation

gave rise to widespread and sustained opposition. Initially the proposal had the unanimous support of the PCC but, once local opposition had been voiced, a further PCC meeting was held at which the voting was 11 in favour and 3 against, the chairman not voting. The DAC recommended the proposal and planning permission had been granted. English Heritage was opposed. The visual impact of the proposed building would not enhance the appearance of the church but this factor, alone, was not considered sufficient to justify refusing the petition. The Chancellor noted the similarity between this case and that which had been the subject of an appeal to the Court of Arches in *St Michael and All Angels, Tettenhall Regis* [1996] Fam 44, [1996] 1 All ER 231, the judgment of which was extensively cited. Having regard to the absence of adequate facilities at the church itself but noting the existence of alternatives in 'civic' and private buildings nearby, the Chancellor was satisfied that the test of 'necessity' was made out although he 'did not believe [it] . . . to be as deep as it might be in other comparable cases'. However, there was genuine and deep-felt unhappiness about the disturbance of remains (estimated in the order of fifty) and the resiting of memorials. The Chancellor concluded that the balance came down against the proposals and dismissed the petition accordingly. Since the issues were perfectly clear and probably more intelligible in written form the Chancellor had earlier concluded that he would have learned no more of the case by a hearing in open court. It would have been a costly operation and would only have exacerbated the bitter conflict within the parish. For these reasons, whilst noting the Court of Arches' comments in *Tettenhall Regis* that in general a hearing in open court will be useful and necessary in this type of case, he exercised his discretion on the special facts of this case in favour of a determination simply on written representations.

Re Victoria Road Cemetery, Farnborough (Guildford Consistory Court; Goodman Ch. February 1997)

Disinterment—general principles

The petitioner applied for a faculty to disinter the plastic urn containing the cremated remains of his late mother from the consecrated section of Victoria Road Cemetery, Farnborough in Hampshire so that they could be reinterred in the parish church of St Andrew, Bishopstone, East Sussex. He was an only child, raised in Liverpool, who in 1978, after a short and unsuccessful marriage, had moved to Farnborough to be nearer his young son. It was intended that his parents should join him but his mother became ill and died in 1983 aged 74. Neither the petitioner nor his father had settled accommodation, the father having sold the house in Liverpool, and the question arose as to the disposal of his mother's cremated remains. They chose the cemetery in Farnborough being closest to the temporary digs which they then shared. The petitioner's father died in 1994. His remains were cremated but retained by the petitioner until he had found a permanent home for himself. In due course and for health reasons he moved to Sussex and settled there. He wished for his mother's remains to be disinterred and removed to Bishopstone churchyard where he wished his father's remains and subsequently his own also to be interred. The Chancellor referred to his judgment in *Re Chiddingfold Churchyard (sub nom Re Pamela Violet Eaton, deceased)* (1997) 4 Ecc LJ 689 in which he had reviewed the approach of various Chancellors since the definitive judgment of Edwards Ch. in *Re Church Norton Churchyard* [1989] Fam 37. Those cases affirmed the following principles which were relevant to the present petition:

- (1) Once a body or ashes have been interred in consecrated ground, whether that consecrated ground be in a churchyard or local authority cemetery, there should be no disturbance of the remains save for good reason.
- (2) It will not normally be sufficient to show that the spouse or another close relative of the deceased has subsequently been buried elsewhere or that it is intended to do so.
- (3) The fact that a relative has moved from the area where he or she had been tending the grave and now wishes to have the remains removed to the vicinity of his or her present home is not a good ground in itself as the court should resist a possible trend towards regarding remains of loved relatives and spouses as portable.
- (4) The passage of time, especially when it runs into a number of years, makes it less likely that a faculty will be permitted.

Whilst he had considerable sympathy with the petitioner, the Chancellor did not consider that the petitioner's increasing difficulty in visiting Farnborough justified a departure from the general principles referred to above for fear of creating an undesirable precedent which would make similar applications impossible to refuse. The petition was therefore dismissed with costs.

Note: A petition similarly based upon the inconvenience of visiting a relative's final resting place was dismissed following written representations in Re David James Boyce, deceased (unreported) Portsmouth Consistory Court, Aglionby Ch. 20 February 1997.

Re St Chad, Romiley (Chadkirk)
(Chester Consistory Court; Lomas Ch. April 1997)

Listed building—'necessity'—conflict of authority

The incumbent and churchwardens sought a faculty for a substantial extension to the church and a major internal re-ordering. The church was grade II listed and planning permission had been granted. The Chancellor drew attention to the difference of approach of the Court of Ecclesiastical Causes Reserved and that of the Court of Arches as to whether or not necessity for change was a pre-requisite to the granting of a faculty relating to a listed building. He cited *Re St Mary's, Banbury* [1987] Fam 136, [1987] 1 All ER 247, and contrasted it with *Re St Stephen, Walbrook* [1987] Fam 146, [1987] 2 All ER 578, which was critical of the 'clearly proved necessity' test propounded in *St Mary's* by the Dean of the Arches. The Chancellor reviewed *Re All Saints, Melbourn* [1992] 2 All ER 786, [1990] 1 WLR 833, *Re St Luke the Evangelist, Maidstone* [1995] Fam 1, [1995] 1 All ER 321; *Re St Mary the Virgin, Sherborne* [1996] Fam 63, [1996] 3 All ER 769; and the unreported judgement of Cameron Ch. in *Re St Helen's Bishopsgate* (26th November 1993; 3 Ecl LJ 256).

He stated: 'Regardless of whether the Court of Ecclesiastical Causes Reserved is binding on the Court of Arches and the Chancery Court of York it must be observed that both courts were in the instant cases acting in the faculty jurisdiction and considering the exercise of that jurisdiction in the context of listed buildings. Is a Chancellor therefore to apply one standard in relation to a matter before him which might possibly be appealed to the Court of Arches or the Chancery Court of York and another in a case which might be appealed to the Court of Ecclesiastical Causes Reserved? That appears to me to be untenable, undesirable and if I may be permitted to say so in this context, an unnecessary situation.

'In my judgment I must exercise my discretion as best I can, taking into account:

first, the architectural importance of the building as evidenced by its listing and appreciating that Parliament has relied upon Chancellors to ensure that such a building is protected; secondly, that I must have regard to and take into account the aesthetic quality of its interior and fittings and furnishings; thirdly, the liturgical requirements of those using the building; and fourthly, the interests of the worshipping community as a whole and together with the interests of the community at large, including therein future generations: for we are but trustees of this building, always when considering and taking into account those factors, bearing in mind that the church is for use in the service of God. Those considerations will assist me to guard against mere passing fashion. I then have to decide whether or not the faculty should be granted in whole or in part or whether it should be refused. If I reach the conclusion that a faculty should be granted, then it can be said that it ought to be granted having regard to the pastoral well being of this Parish and to enable the service of God the better to be rendered in this Parish.'

The Chancellor proceeded to determine the petition.

Re All Saints, Bradley

(Winchester Consistory Court; Clark Ch. April 1997)

Memorial—'exceptionality'

The churchwardens sought a faculty for the erection of a memorial tablet within the church to the memory of Mr Harry Lailey who had died at the age of 86 having been churchwarden for 60 years. The bishop of the diocese had attended a service to mark Mr Lailey's fiftieth year in office and the Chancellor described his record of service as 'truly remarkable'. There was one objector. Applying the principles enunciated in *Re St Nicholas, Brockenhurst* [1978] Fam 157, [1977] 3 All ER 1027 and, more particularly, *Re St Margaret's, Eartham* [1981] 1 WLR 1129, the Chancellor found this to be an exceptional case and that there was no compelling reason for refusing the petition. He took into account that there was a suitable and appropriate place for the tablet to be sited and that alternative methods of commemorating Mr Lailey had been seriously considered by the PCC and rejected.

Re St Michael, Aveley

(Chelmsford Consistory Court; Cameron Ch. May 1997)

Reordering—reasonableness of objection

A petition was sought, inter alia, for the resiting of the chancel screen at the west of the church which was grade I listed. There was no objection from the DAC, the CCC, English Heritage, the Ancient Monuments Society or the Victorian Society. The proposal would remove restrictions experienced by those conducting services, create space, facilitate concerts and other activities and provide an opportunity for developing forms of service and events involving children and young people. There was a difference of opinion on the PCC but a clear majority was in favour. The Chancellor encouraged the objectors to view the proposal as part of a general effort to preserve the church for the future and to keep its doors open for worship and mission, thereby continuing the tradition of their forebears in being prepared to accept change as part of the enduring life of the church. The Chancellor made reference to chapter 11 of the Report of the Archbishops' Commission on Rural Areas, *Faith in the Countryside*, emphasising that church buildings be seen as places which can properly be used for purposes other than worship. The

Chancellor deplored one objector's personal attack on the minister and her 'emotional tirade which she herself recognises comes from a form of paranoia about the screen'. A faculty was authorised. The hearing was determined on written representations and the Chancellor formed the view that some of the eight objectors had approached the petition with closed mind, declining the opportunity of seeing the result of a similar change in a nearby church. 'Informed opposition with a democratic church is acceptable but an unwillingness to look at a matter objectively and on the basis of information is in my judgment unreasonable and unacceptable'. She ordered that the parties opponent reimburse the petitioners' costs in the sum of £50 each in respect of two of them and £25 each for the other six.

Chancellor of the Diocese of Exeter, Exeter Diocesan Faculty Office v. Exeter Diocesan Society for the Advancement of the Christian Faith [2012] Fam 100 (Q.B.)

See also: [2012] Fam 100 (Q.B.)

Chancellor of the Diocese of Exeter, Exeter Diocesan Faculty Office v. Exeter Diocesan Society for the Advancement of the Christian Faith [2012] Fam 100 (Q.B.). The Chancellor of the Diocese of Exeter authorised a faculty to allow the installation of a new altar in the nave of Exeter Cathedral. The objectors, a group of lay members of the cathedral community, argued that the installation would be a breach of the cathedral's ancient constitution and that the Chancellor's decision was ultra vires. The Chancellor found in favour of the faculty and ordered costs to be paid by the objectors. The objectors appealed to the Court of Appeal. The Court of Appeal dismissed the appeal, holding that the Chancellor's decision was within his jurisdiction and that the objectors had not shown that the Chancellor's decision was ultra vires.

Chancellor of the Diocese of Exeter, Exeter Diocesan Faculty Office v. Exeter Diocesan Society for the Advancement of the Christian Faith [2012] Fam 100 (Q.B.)

See also: [2012] Fam 100 (Q.B.)

The objectors argued that the Chancellor's decision was ultra vires because the cathedral's ancient constitution prohibited the installation of a new altar in the nave. The Chancellor found that the cathedral's ancient constitution did not prohibit the installation of a new altar in the nave. The objectors argued that the Chancellor's decision was ultra vires because the cathedral's ancient constitution prohibited the installation of a new altar in the nave. The Chancellor found that the cathedral's ancient constitution did not prohibit the installation of a new altar in the nave. The objectors argued that the Chancellor's decision was ultra vires because the cathedral's ancient constitution prohibited the installation of a new altar in the nave. The Chancellor found that the cathedral's ancient constitution did not prohibit the installation of a new altar in the nave.