

the properties on which the FLK held Tai Chi classes were not entitled to be classified as exempt, and the FLK submitted that she had erred in applying the proper legal test for an exemption under the Act, that the test of what constituted ‘worship’ within the meaning of the legislation had been improper and that the facts of the case had been assessed ‘through an impermissible Judaeo-Christian lens thereby committing an error of law’. The Divisional Court held that the issue before it ‘[did] not require the court to engage in questions of religious doctrine or arbitrate disparate views among a particular religious group’. The application judge had held that the evidence supported MPAC’s position that people engaged in the Tai Chi classes at the locations under dispute were not worshipping through Tai Chi and that no exempting act of worship occurred. There had been no error of law in her conclusions and she had not applied ‘an improper analytical lens’ in her judgment: ‘in order to create an exemption for those properties, those activities must constitute acts of worship, a more narrow form of activity than the simple act of conducting a practice that has religious connotation’. Appeal dismissed. [Frank Cranmer]

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Re St John, Clayton

Leeds Consistory Court: Hill Ch, 19 October 2021

[2021] ECC Lee 5

Duffield framework – ‘public benefit’ – ‘centre of mission’ – s35 Ecclesiastical Jurisdiction and Care of Churches Measure 2018

While granting a faculty for various works of re-ordering, the court considered the scope of the phrase ‘public benefit’ in the *Duffield* framework, and noted that the examples given therein were not exhaustive. s35 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provided:

A person carrying out functions of care and conservation under this Measure, or under any other enactment or any rule of law relating to churches, must have due regard to the role of a church as a local centre of worship and mission.

The church in question was a Resourcing Church, assisting others in the area and becoming a beacon. The court took the view that s35 should be read expansively, and the term ‘centre of . . . mission’ should be read in the context of radiating outwards and conferring missional benefits upon neighbouring parishes and the deanery and diocese more widely. If that was wrong, and a

more narrow reading of s35 was called for, the public benefit of a resourcing church might nonetheless constitute a justification: the generous sharing of resources with other churches (such as in training, events, support and mission teams) and the gracious sending of people to revitalise nearby congregations. [DW]

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Re St John the Baptist, Bishop Monkton

Leeds Consistory Court: Hill Ch, 8 November 2021

[2021] ECC Lee 7

Pews – upholstered chairs – faculty conditions

The remaining pews had been removed from a Grade II-listed church under an archdeacon's licence for temporary re-ordering. On a petition for the permanent removal of the remaining pews and the introduction of chairs to match existing, upholstered chairs, it emerged that the existing chairs had been introduced without a faculty, although their purchase had been referred to in an earlier petition. The court treated the present petition as one additionally for a confirmatory faculty in relation to the existing chairs.

On the confirmatory faculty, the court considered that had a faculty for the existing chairs been sought prospectively, it would not have been granted. The chairs were so far removed from what was appropriate in a Grade II-listed church that no consistory court, properly directing itself, would have authorised them. A confirmatory faculty would not, therefore, be appropriate. However, a restoration order would be oppressive and disproportionate, and the chairs could remain, notwithstanding their unauthorised introduction.

On the main petition, the *Duffield* framework supported the removal of the remaining pews. However, the presence of the inappropriate chairs did not justify the introduction of more of the same; the *Aston Rowant* principle of reducing harm by achieving a proposal by less harmful means required that a more appropriate chair be selected. The petitioners therefore had a stark choice: to remove the pews permanently, replace them with appropriate chairs, and phase out the routine use of the inappropriate chairs; or to retain the inappropriate chairs but also retain the pews, which would have to be returned to the church under FJR rule 8(3), as the court's decision terminated the archdeacon's licence. A faculty would be granted subject to the condition that the current chairs be removed from regular use within two years. If such a condition was unacceptable to the parish, the petition would stand dismissed; the PCC was given six weeks to make its choice. [DW]

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