

RECENT CONSISTORY COURT CASES

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Re: St John the Evangelist, Hartley Wintney
(Winchester Consistory Court; Spokes Ch. 18 April 1988)

It was proposed that the interior of the church, which had been built in 1870 and was not a listed building, should be re-ordered. The principal alterations were to be the replacement of the pews with chairs; the provision of an altar midway down the nave on the south side; and the carpeting of the whole of the nave. The Chancellor refused to grant a faculty for two reasons. First, an altar on the southern side of the nave in a church with an emphatic east-west orientation could prove to be aesthetically unsatisfactory. If the pews were removed, for practical purposes they could not be restored. Secondly, there was significant opposition within the parish to the proposals, including the removal of the pews. There were active and loyal worshippers among the opponents, although the supporters of the petition might still be in the majority. The burden was upon the petitioners to establish that a faculty should be granted, but they had failed to satisfy the Chancellor that he should do so.

Re: St Nicholas, North Walsham
(Norwich Consistory Court; Ellison Ch. September 1988)

A faculty was granted for the re-ordering of the interior of a medieval church by moving the pulpit and making alterations to the seating arrangements. That part of the petition which involved the provision of an altar at the junction of the chancel and nave, with the consequential removal of a medieval screen from that position and the re-siting of its parts elsewhere in the church was, however, dismissed. The screen was probably in the position in which it had originally been installed. The upper part, consisting of a rood loft, was missing, but the surviving lower section was in itself an important work of art. It contained painted panels of high quality. The Chancellor concluded that it would be wrong to allow any interference with the screen. To eradicate it would change the basic nature of the building, because in its absence there would be no division between chancel and nave. Artistically and aesthetically in its original position the screen amounted to a treasure possessed by the parish. There was a risk that it might be damaged if it were to be removed and reconstructed. The appropriate course was to provide a movable altar in the nave without disturbing the screen.

Re: St Nicholas, Gosforth
(Newcastle Consistory Court; Blackett-Ord Ch. 27 October 1988)

A faculty was sought to remove pews from the north aisle of the church and to move the font from its position at the west end into the vacant space. Having regard to Canons B21 and F1 the Chancellor concluded that Holy Baptism was normally to be administered at Sunday worship, near the entrance to the church, using a font conveniently situated there and kept solely for that purpose. The practice (which had prevailed in the church for three years) of using a movable bowl at the chancel steps instead of the font was uncanonical. There was limited room around the font where it stood at the west end, whereas there would be ample space in its intended position. Moreover, the proposal would have the advantage of bringing the font back into proper use. The pews were not of particular interest. The proposal ought not to be rejected on aesthetic or historical grounds. A faculty was granted, the direction about position in Canon F1 not

being absolute and the Chancellor being satisfied that the position of the font was not convenient. A compromise solution that there should be two fonts could not be authorised. There can only be one font, just as there is only one baptism.

Re: St John Baptist, Sutton-at-Hone

(Rochester Consistory Court; Goodman Ch. 5 December 1988)

The Vicar and Churchwardens sought a faculty (1) for the sale of a silver chalice and paten of 1621 and a tankard of 1724 and (2) for the installation of an inexpensive Makin electronic organ in the organ case of the existing organ. The net proceeds of sale of the silver were to be put towards the cost of the organ. The petition was dismissed. The recommendations of the Council for the Care of Churches and the Diocesan Advisory Committee were against the proposals. Although the pipe organ was in a poor condition, and in need of a major overhaul if it was worth keeping at all, there was no evidence that the Makin instrument would be a suitable replacement for it in the long term. It was doubtful whether the plate was truly redundant, despite the fact that it had not been used for some time. In any event, the proposed purchase of the organ utilising the proceeds of sale did not satisfy the test in *Re: St Gregory's Tredington* [1972] Fam 236. In order to justify a sale it must be shown that there is something to be done with the proceeds of sale which will be of lasting benefit and value to the parish. In the present case the parish was not intending to use the proceeds for a purpose of adequate importance.

Re: St Edmund, West Kingsdown

(Rochester Consistory Court; Goodman Ch. 24 February 1989)

The Rector and Churchwardens wished to set aside an area in the churchyard for the interment of cremated remains against the east wall of the church. The Diocesan Advisory Committee approved the provision of such an area, but was unable to recommend the suggestion that plaques 10 inches square commemorating the deceased should be laid at ground level. Instead the Committee favoured the use of a single wall plaque, a limited number of monuments, or a commemorative book kept inside the church. The Chancellor (after referring to the 1988 edition of the Churchyards Handbook) concluded that the tide had definitely turned against the use of individual plaques, especially where they were going to cover a sizeable area in a prominent position, because they were out of scale in relation to other monuments and the church itself. It would be extremely undesirable for this substantial area to be largely covered by individual plaques of the kind proposed, maybe with many gaps. The introduction of such plaques could not, therefore, be permitted.

Re: Holy Trinity, Stratford upon Avon

(Coventry Consistory Court; Gage Ch. 11 March 1989)

A faculty was granted for the modification of a pipe organ involving the relocation of parts of the instrument and the elimination of some stops. On any view the organ was in need of substantial repair, but the objectors wished it to be restored to its pre-existing condition. The organ was of historic importance, having been built by William Hill in 1841 and thereafter extended. The Chancellor accepted the expert evidence adduced by the petitioners that there were defects in the existing layout of the organ, and concluded that the alterations would produce an improved instrument. The external appearance of the organ would remain unchanged. The cost of £200,000 was not unjustifiably great, since the

parish was used to dealing with much larger sums of money than the average parish, and the treasurer was confident that the whole sum required could be met by way of a special appeal. A faculty was accordingly granted, on condition that any discarded parts of the organ should be stored and not sold without the leave of the Court.

Re: St Mary-le-Bow

(London Consistory Court; Newsom Ch. 19 January 1989)

The Case of the Vegetarian Restaurant and the Court of Arches.

“This petition (as amended) is by the incumbent, one churchwarden and the Parochial Church Council of St Mary-le-Bow and Crypt Restaurants Limited for authority to execute a draft licence in respect of part of the crypt of the church and to do certain works in connection therewith. The fourth petitioner is the proposed licensee. It is a limited company controlled by one William Sewell who appears in the draft licence as guarantor of its covenants.

“After discussion at the hearing on 7 November last, the draft licence has been amended and is now presented to me in the form agreed and signed by the solicitors respectively for the four petitioners and the Archdeacon of London who at my invitation had entered appearance to put the petitioners to proof of their case.

“The petition also seeks authority for certain works which I need not at this stage detail in full. The Diocesan Advisory Committee has advised that there is no aesthetic or historical objection to them.

“The proposal is that the fourth petitioner shall conduct an unlicensed vegetarian restaurant in the part of the crypt of St Mary-le-Bow nearest to Cheapside, the restaurant being approached down the existing staircase from the vestibule of the church on the ground floor. The proposal is put forward by the first three petitioners on the ground that it will be a pastoral advantage to have meals available for people coming to services at the church and in the chapel below it. They said that there is a dearth of good vegetarian restaurants in this part of City, so that it will also be an advantage to the community.”

The Chancellor reviewed the evidence concerning the revival of worship at the church and the finances of the Parochial Church Council, and continued: “I am prepared, therefore, in principle to grant the faculty in respect of the matters mentioned in the schedule of the petition. But there are important complications. The crypt consists of three chambers: the one nearest to Cheapside is the proposed restaurant. The central one is known as the Court of Arches, and the furthest one is a chapel used for some of the small services and for private prayer. Near the chapel is a small room at the foot of the stairs leading down to it. The three chambers are separated from each other by walls with openings in them. The chapel can be approached either through the other two chambers or down its own steps from the paved area on the west of the church. The room known as the Court of Arches, as its name implies, has for some considerable time been the seat of the appellate court of the Province of Canterbury. Moreover it is used for purposes of the other functioning court of that Province, namely the Court of the Vicar General. The Court of Arches has also been found on various recent occasions very convenient for the venue of this Court, the Consistory Court of the Diocese of London. It is a compact chamber and I have been grateful to have had it available when I have had to try not only the two cases concerning St Mary-le-Bow itself but also a very lengthy (and reported) case about St Stephen’s Walbrook.

The present Dean of Arches has not in fact used it as his Court in the eight years during which he has been in office and its use for that Court would only be occasional. But the Vicar General has used it quite frequently, perhaps three times a year, always in the late afternoon, for the ceremony of confirming a Diocesan Bishop. For all these purposes the Court of Arches, the middle chamber of the crypt, must be protected against noises and smells. It is also important that the various judges and counsel, witnesses and other persons attending one of these courts shall be able to obtain unimpeded access to the court room. I made an inspection of the restaurant, the Court of Arches and the chapel which lies beyond it. I am satisfied that, given the mutual goodwill which I am entitled to expect, the various courts can continue to function in the Court of Arches. Normally, access has been from the vestry on the ground floor of the church down the stairs through the restaurant and so to the Court of Arches. If this operation requires to be done that will mean that the access through the restaurant must be cleared of chairs, tables and other obstructions. But there is no reason why on most occasions the Court of Arches should not be approached from the other side, that is through the chapel. Nor is it essential that the judges and others concerned should robe in the vestry on the ground floor. At the foot of the steps giving access to the chapel there is a small room which could perfectly well be used as a robing room. There will thus be no need for a robed procession to move in the open air. These arrangements should normally be satisfactory. The incumbent also pointed out that, on occasion, the chapel itself could be used either as the court room or as a place through which access from the robing room can be had to the court room. With these areas, the chapel, the robing room and the Court of Arches, some dignified and proper arrangements could be made without troubling the restaurateur. But if any of the judges, and in particular the Vicar General, desires to use the access through the restaurant, I must protect that. What I propose to do therefore is to stipulate that all these areas must be available to any of the three courts and that the judge concerned may give directions as to the required dispositions and facilities including, if he thinks fit, clearing the way through the restaurant to the court room. I do not think that in practice there is likely to be any difficulty in operating these provisions especially now that we know that the chapel and the small room are available.

“But the Court of Arches must be protected against noises and smells. I shall therefore put into the faculty a condition that the soundproofing of the door between the restaurant and the Court of Arches shall be effected and maintained to the satisfaction of the Archdeacon of London and generally I shall put the effecting of all the works under his supervision. I shall also provide that the extractor fans to remove the smells from the restaurant shall be installed and operated to the Archdeacon’s satisfaction.

“The Archdeacon and all of the petitioners are also to have liberty to apply generally. This will enable the case to be brought back to the court expeditiously if anything goes wrong or needs adjustment.

“The petitioners will, of course, pay all the statutory court fees including the Registrar’s correspondence fee to be fixed by me under the current Fees Order and also the Archdeacon’s costs to be taxed by the Registrar.”