

Re St Mary the Virgin, Ashford

Court of Arches: George, Dean, September 2010

Leave to appeal – re-ordering – ecclesiastical exemption – funding

The Dean of Arches dismissed an application for leave to appeal against the grant of a faculty by the Commissary Court of Canterbury for a major re-ordering of a grade I listed church (noted at (2010) 13 Ecc LJ 120), the proposed appeal having no real prospect of success and there being no other compelling reason why the appeal should be heard. The Commissary General had not erred in his approach to the *Bishopgate* questions. In respect of a further ground of appeal that the grant of the faculty represented a ‘threat to the status of the ecclesiastical exemption’, the Dean held, ‘The continuance of the ecclesiastical exemption, so far as the Church of England is concerned, depends on the conscientious fulfilment by all concerned, including Diocesan Advisory Committees and Chancellors, of the difficult task of balancing the pastoral well-being of its churches with the need to protect the best of the heritage, to be conducted within the guidance given by its appeal courts and paying heed to policies and practices applied in the secular system, as well as to the church’s particular needs’. The Commissary General had applied an approach that was entirely consistent with that which the secular authorities apply to listed buildings. In respect of a ground of appeal concerned with whether the proposals would achieve funding, the Dean held that the question of funding was ‘largely irrelevant, save that it is best practice not to grant faculties for schemes with no chance of implementation within a reasonably defined timescale’. [Alexander McGregor]

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Re St Barnabus, Erdington

Birmingham Consistory Court: Cardinal Ch, September 2010

Re-building of fire-damaged church – relevance of planning permission

The grade II listed church had been closed as unsafe after very significant damage was caused in an arson attack. The vicar and churchwardens now petitioned for a faculty for the rebuilding and restoration of the church. The plans re-oriented the building so that the main entrance would be on the High Street rather than a side street as previously. They included substantial additional facilities including an extension to house significant additional space to be used for community activities. With minor conditions and observations, the petition was supported by the DAC, English Heritage and the Church Buildings Council. Planning permission had been granted. The

Victorian Society objected to certain aspects of the plans which would, in the view of the chancellor, if upheld, require a ‘wholesale rethink’ of the proposals. The Victorian Society, which had objected to the proposals during the planning permission application, argued that the grant of planning permission should not be determinative as the considerations thereunder were not the same as for listed building consent, which was not required due to the ecclesiastical exemption. The chancellor nevertheless went on to consider the fact that the Victorian Society had unsuccessfully made the same objections at the planning permission stage. The faculty was granted. [RA]

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Re St Mary Magdalene, Reigate

Southwark Consistory Court: Petchey Ch, September 2010

Reordering – relocation of rood screen – secular system – Bishopsgate questions

The petitioners (the incumbent and churchwardens) sought a faculty for a major re-ordering of the grade II* listed parish church. The proposals included the relocation of the central section of the rood screen and the removal and disposal of pews. English Heritage raised no objection to the proposals. The DAC recommended the works, having consulted the (then) Council for the Care of Churches. A number of letters of objection were received from individuals. The Society for the Protection of Ancient Buildings objected to the relocation of the central section of the rood screen. The Victorian Society, in addition to objecting to that aspect of the proposals, objected to the removal of the nave pews. The local authority also objected on those two grounds. SPAB and the Victorian Society became parties opponent. The petition was determined on consideration of written representations under rule 26(1) of the Faculty Jurisdiction Rules 2000. In a judgment extending to 79 pages the chancellor carried out a thorough survey of government policy and guidance in respect of the historic environment, including in particular Planning Policy Statement 5 (2010) and what it said about the need to recognise both that ‘heritage assets’ were a ‘non-renewable resource’ and that ‘intelligently managed change may sometimes be necessary’. The chancellor also considered the principles that lay behind the ecclesiastical exemption and, in particular, the principle that it would be operated on a basis that was ‘no less strict’ than the secular system of listed building control. He concluded that the principles enunciated by the ecclesiastical courts do not lead to authorisations that would not properly be available in the secular sphere. In particular, the balancing exercise enjoined by the third of the *Bishopsgate* questions involved giving greater weight to the heritage asset the