

Re St John, Workington

Carlisle Consistory Court: Tattersall Ch, 21 September 2012

Anonymous objections

In granting a faculty for the removal of a limited number of pews in the Grade II* listed church, the chancellor ignored letters filed by anonymous objectors on the basis that he did not believe that there was any legitimate reason why those who wrote them concealed their identities and in such circumstances he did not believe that it was appropriate to take them into account. [RA]

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Re St Alkmund, Duffield

Court of Arches: George Dean, Bursell and Collier Chs, 1 October 2012

Alterations to listed buildings – new guidelines – hearings – 39 Articles

In allowing an appeal against the chancellor's refusal of a faculty for the relocation of a chancel screen (reported at (2012) 14 Ecc LJ 461), the Court of Arches revisited the guidelines on alterations to listed buildings adopted in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1 (the *Bishopsgate* questions). The *Bishopsgate* questions had been subject to various criticisms. The order of the questions was illogical and unhelpful. The concept of 'necessity' led to practical difficulties and the equivalent secular regime (which the court considered in detail) did not impose a test of necessity. The questions gave rise to doubt as to the correct test to be applied where proposals would benefit, or be neutral to, the character of a listed building. Finally, they did not expressly differentiate between different grades of listing or different degrees of harm. While chancellors should not be required to apply precisely the same approach to listed buildings as the secular system, there was no justification for applying to ecclesiastical buildings a stricter test than that system applied. The court said that chancellors should be freed from the constraints of the *Bishopsgate* questions. In their place the court set out the following guidelines:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals. Questions 3, 4 and 5 do not arise.

3. If the answer to question (1) is 'yes', how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This is particularly the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

The fact that part of a listed building was a relatively late addition could not of itself be determinative of whether its removal would affect the building's character; nor did it mean that it was necessarily of lesser importance in terms of the building's significance. Where a proposal was readily reversible, that made it easier for petitioners with a clear and convincing case to justify harm. When preparing a statement of significance as required by rule 3(3)(a) of the Faculty Jurisdiction Rules 2000, mere description (including copying out the listing description) is insufficient. There should be some analysis of the character of the church, and all petitioners were encouraged to follow the Church Building Council's guidance on what should be included in statements of significance. Where there was to be an oral hearing, directions should be given identifying the issues that needed to be resolved and for the service of witness statements with statements of truth. Oral evidence must be given under oath or solemn affirmation. Once a chancellor has announced his or her decision, no attempt should be made to persuade him or her to alter it (as had happened in the present case). In relation to an argument that the chancel screen in its current position was inconsistent with the 39 Articles of Religion, the court considered the legal effect of the Declaration of Assent set out in Canon C 15. The Articles were no longer to be seen as definitive arbiters of the doctrine of the Church of England. It was also the case that the lawfulness of chancel screens was incontestable. [Alexander McGregor]