

RECENT CONSISTORY COURT CASES

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Re: St. Andrew, Cheadle Hulme

(Chester Consistory Court; Lomas Ch., 19 October 1993)

The incumbent and churchwardens sought a faculty for the reordering of the interior of the church. The petition was approved by the D. A. C. At an earlier court hearing a conditional faculty was granted which included the condition that the substantial concrete font would not be removed without the petitioners first satisfying the court as to the provision of a font. After commencing the works the petitioners caused the removal and destruction of the concrete font without making any approach to the court. An explanation as to why a court order was ignored was sought. In discussions between members of a committee who were conducting and overseeing the reordering scheme and the D.A.C., those members had been left with the impression that the font could be removed. There seemed to be some confusion generally as to the relationship between the D.A.C. and the court. The D.A.C. was merely to assist the court by giving the court its advice in relation to petitions which fell within its scope; its function was an advisory one only. The grant of faculties was the responsibility of the court alone. The petitioners accepted and apologised for their breach of the conditions set out in the faculty font beneath the church forecourt was granted. An appropriate font with cover, in keeping with its surroundings and the church itself, and positioned as conveniently near to the principal entrance of the church so as to symbolise the entry of a new member into the Church by baptism, was enshrined in canon law, though the theologically acceptable and liturgically desirable growing practice of administering the sacrament of Baptism near the altar was approved. There was no objection to a moveable font but it was a significant piece of furniture and had to be substantial in size, both physically and symbolically. A faculty authorising the introduction of a moveable font was accordingly granted.

Re: Eunice Elizabeth Posnett, deceased

(Chester Consistory Court; Lomas Ch. 19 October 1993)

The petitioners, the three children and executors of their deceased mother, sought a faculty to place a memorial which comprised of two horizontal pieces of sandstone with a carving of a cross and an inscription, over the grave of the deceased and over an adjoining gravespace. The court was unprepared to make a reservation of a gravespace by implication but, by a further petition brought by the son of the deceased, a faculty was granted to reserve that adjoining gravespace for the son and his wife. The present condition and layout of the graveyard and the effect which the proposed memorial would have upon it had to be taken into account but the court found that there was nothing incongruous in the proposed memorial. However the proposed memorial, with flagging and surrounding kerbstones that were similar to adjoining graves of a family to whom the deceased had been related, did not comply with existing diocesan regulations which now did not permit kerbstones around new graves, thereby easing the maintenance of churchyards. The court had to bear in mind present and future considerations and the increasing problem and cost of the maintenance of churchyards. Accordingly the faculty for the memorial was granted but without permitting the erection of the proposed kerbstones.

Re: St. Mary, Eling

(Winchester Consistory Court; Clark Q.C. Ch., 17 November 1993)

The petitioners sought a faculty to carry out various works of reordering to the interior of the church which included replacement flooring, removal of the chancel screen, the establishment of a moveable nave altar that rested upon a dais, a relocation of the font and the pulpit and general redecoration. The petition was supported by a majority of the P.C.C. and the proposed reordering scheme was approved by the D.A.C. However there were several objectors to the petition and those included a number of regular worshippers who opposed in particular the removal of the wooden chancel screen alleging that it would affect the integrity of the chancel and the proposed relocation of the font and the pulpit. It was for the petitioners who proposed any change to prove their case on any evidence that there was, for each proposed change, a good and adequate reason for a change. The test of whether any change adversely affected the character of the church might be too strict, for a faculty could only then be granted where there was a proven necessity for a change made out. Such reasons as improved visibility created by the removal of the chancel screen, an enhanced focus of worship for the present and future worshipping community created by a moveable nave altar, the more prominent position afforded by the proposed relocation of the font nearer to the principal entrance of the church and further aesthetic considerations made out in the case of relocating the pulpit and the general reordering of the chancel, were good and adequate reasons proved by the petitioners on the evidence for the changes proposed. Such changes would not adversely affect the character of the church. A faculty was accordingly granted.

Re: St. Helen's, Bishopgate

(London Consistory Court; Sheila Cameron Ch., 26 November 1993)

The incumbent and churchwardens sought a faculty for the repair and the reordering of the listed church following a bomb explosion in the City of London. The major items of work included the formation of a new gallery in the west end for additional seating and the repositioned organ, the removal and repositioning of the chancel screens and the reredos and the construction of a new east end window, a new west end south transept door and a new roof. Aesthetic and conservation issues were raised in which the wider community had an interest for the proposed works would substantially affect the exterior as well as the interior appearance of the church. The City, English Heritage and various amenity societies were directed to be specially cited. Following citation objections were lodged by four of those bodies. Where a faculty was sought the burden of proof rested with the petitioners who proposed the changes and to show whether any proposed development was necessary for the well-being of the church. Bodies such as the D.A.C. were now obliged to have regard to the role of a church as a local centre of worship and mission as well as to the interests of conservation, but that might not apply to the court whose function was to hear and determine a cause of faculty and not to carry out functions of care and conservation. It was permissible to take account of non-local worship and mission functions, for the church was a focal point, and there was no restriction to persons who worshipped in the church or to an area which might be covered by the mission which flowed from the church. That certain items of work such as a new roof and repairs to the windows were needed in principle was clear but the petitioners argued on grounds of improved visibility, additional seating and ease of access. The whole

use of the church for the purposes of worship had to be taken into account when assessing the needs of the congregation. The major changes proposed, with the exception of the removal of the reredos, were necessary for the pastoral and physical well-being of the worshipping congregation and would not adversely affect the character of the church but would enhance its appearance and improve its spatial quality. A conditional faculty was granted.

Re: Edward William Knight, deceased
(Chester Consistory Court; Lomas Ch., 23 November 1993)

Whilst a court had a discretion to order the exhumation of the cremated remains of the deceased it was a discretion which could only be exercised for special reasons and not as a matter of course. Each case was different and the facts of each case had to be considered by the court separately and carefully. It was not a matter of merely completing certain formalities in order to persuade a court to exercise its discretion in favour of granting the faculty sought. There was nothing provisional in the forms of service for the dead authorised in the Church of England, the whole intention and purpose of which was that the remains of the deceased should be laid at rest once and for all. Having regard to the particular circumstances and to the evidence that the deceased had intended to return to his home county and that his widow had promptly instructed the undertaker to arrange the exhumation of the deceased's remains with a view to reinterment in that county, an acceptable explanation for any delay in making the application having been found, the faculty for the exhumation of the cremated remains of the deceased was accordingly granted, upon the condition that confirmation be made as to the consecrated status of the place of proposed reinterment.

Re: St. Barnabas, Dulwich
(Southwark Consistory Court; Gray Q.C. Ch., 14 December 1993)

Following a fire which almost completely destroyed the church, two faculties were sought by petitions brought by the incumbent and churchwardens under section 17 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 to demolish the walls and tower remains of the shell of the church. It was the intention of the petitioners to subsequently seek a faculty for the building of the new church on the cleared site. A consistory court, hearing petitions for the demolition of a church which was a listed building or in a conservation area, had to exercise its discretion whether to grant the faculties sought with great caution. There had to be detailed consultation with any interested party and full publicity of the petitions had to be made. When dealing with petitions to demolish a church the court had to consider the architectural and historical importance of the building and the costs of maintaining or repairing it or of any possible alternative use to which the site offered. Where a petition brought under section 17 was likely to affect the architectural or historical importance of a church, evidence from the Council of the Care of Churches was to be sought. However, although the Council recommended the retention of the remains of the shell of the church, the court was satisfied by the proposals and the intention of the petitioners to seek a faculty to build a new church on the cleared site, which course offered the best opportunity to continue the work of worship and mission in the locality. The architectural and historic importance of the burnt remains of the church did not in any event justify the expense required in repairing and maintaining them.

Re: St. James' Church, Shirley, Southampton

(Winchester Consistory Court; Clark Q.C. Ch., 24 December 1993)

In response to a discussion paper entitled: "What does your church say?" distributed by the diocesan advisory committee, the parochial church council of St. James' church reflected upon how its worshipping congregation could express faith. It supported the petition, as did a high proportion of the worshipping congregation, brought by the incumbent, churchwarden and parish administrator for the re-ordering of the interior of the grade two listed church to provide the facilities for more informal services. The petition included proposals to remove the existing pews within the church and to replace them with free-standing chairs and to create a baptistry with the installation of a large font on the south side of the chancel arch.

The chancellor, in granting the faculty conditionally upon undertakings given by the incumbent regarding disabled access, relied upon the test that, as well as any good and adequate reason for change being shown, any change sought by the proposals in the petition that adversely affected the character of the church would only be granted where the necessity for such change was proven. In relation to the proposals affecting the font and its replacement the chancellor bore in mind the House of Bishops' Response to questions raised by diocesan chancellors dated June 1992 which established or confirmed that there was no liturgical difficulty about having a font positioned in the centre of a church or, alternatively, close to the altar. The position of a font could be determined by what view the worshipping congregation had with regard to baptism. The chancellor commented that it was unfortunate that the second edition of the standard textbook, Newsom's "Faculty Jurisdiction of the Church of England," published in 1993 did not incorporate reference to the Bishops' Response of June 1992 and that, accordingly, the section on "Fonts" on page 122 of that book needed careful reconsideration in the light of paragraphs 2.6.3, 2.6.5 and 3.2 of the Response.

Re: St. John the Baptist Church, Roughtown

(Manchester Consistory Court; Spafford Ch. March 1993)

A faculty was granted for the re-ordering of a church, built in 1878, by the removal of pews to the diocesan store and their replacement by chairs. The part of the scheme which involved the dismantling of a memorial chapel dedicated in 1978 was not permitted to proceed, on the grounds that its destruction would be irreversible and subscribers, in particular relatives of those commemorated, were entitled to expect that such a memorial would remain for a reasonable period. The Chancellor concluded that such period was still running, and the destruction of the chapel would cause much grief.

Re: Busbridge

(Guildford Consistory Court; Goodman Ch. February 1994)

The rector and churchwardens of a Victorian Church, built in the Early English Gothic style and enriched by a metal hanging rood screen with associated low marble walls and all designed by Lutyens, sought a faculty for re-ordering for the purpose of providing additional seating and flexibility in the use of the chancel. The petition was opposed by the Victorian Society and a local amenity society. The Petitioner's evidence demonstrated the need for more seating space,

as well as space to present the Gospel in the way which they found met the needs and wishes of the congregation. Permission would accordingly be given for the removal of the choir stalls and organ case, and the extension of the chancel into the nave. Although the proposed changes would adversely affect the character of the church, a real necessity for more space for seating and the presentation of worship had been demonstrated. A case had not, however, been established for the removal of the walls, which formed an integral and essential part of Lutyens's design. Placing them elsewhere would serve no aesthetic purpose. If the walls were removed there would be a real risk of damage to them. The hearing of the petition was adjourned to chambers for detailed aspects of the proposals to be considered.

Re: St. Richard of Chichester, Peel Hall

(Manchester Consistory Court; Spafford Ch. November 1993)

The proposed design for new wooden hymnboards incorporated a brass cross. The D.A.C. approved the design apart from the cross, advising against its inclusion on the basis that a multiplicity of crosses cheapens the symbol at the heart of Christian worship. Whilst he supported the policy of the D.A.C. over the multiplicity of crosses, the Chancellor concluded that the crosses on the hymn boards would be barely visible; and that the crosses on the hymn boards would not lead to multiplicity in St. Richard's Church. A faculty was accordingly granted. The church architect was commended for recommending the employment of a local craftsman to construct the hymn boards.

Re: Knowle Churchyard

(Birmingham Consistory Court; Aglionby Ch. February 1994)

The discretion to allow the exhumation of human remains ought to be exercised sparingly and only when special circumstances are shown to exist. The petitioner, who sought leave to remove the ashes of his father from a consecrated churchyard for the purpose of reburying them with his mother's remains, had failed to establish the existence of special circumstances. There had been no mistake in burying the father's ashes in the churchyard. The desire to record both parents in the inscription on the mother's gravestone could be met by devising a suitable form of words to cover the existing situation. The father's ashes had remained undisturbed for eleven years and there was doubt as to whether they could be moved. A faculty was accordingly refused.

Re: Wadworth Parish Church

(Sheffield Consistory Court; McClean Ch. September 1993)

Where extensive carpeting is sought to be introduced in a church, relevant factors include:

- (i) the appropriateness of a carpet (of any sort) for the particular building, having regard to its architectural qualities, its age and (more elusively) its atmosphere;
- (ii) the desirability of using a carpet in substitution for any pre-existing floor covering, having regard also to the nature and condition of the floor itself;

- (iii) the suitability of the particular carpet in terms of quality, colour and pattern (if any) a plain carpet of high quality natural wood being in general preferable.

Matters to be considered under these hearings include questions of safety, ease of cleaning, the effect on acoustics, the use to be made of the relevant spaces and the possibility of damage to the underlying flooring. On the facts of the case before him, the Chancellor in applying these general principles granted a confirmatory faculty in respect of a red carpet much of which had been in the church (a grade I listed building dated back to the 13th century) for a decade and had become part of its accepted state.

Re: Four Elms

(Rochester Consistory Court; Goodman Ch. January 1994)

The quality of digital organs had improved rapidly in recent years and, in small churches, where there were relatively few sung services, and where other factors such as cost came into play, it might well be appropriate to permit the acquisition of an electronic instrument (particularly one of good quality) where it was impracticable or undesirable to restore an ailing pipe organ. From the point of view of sound quality the suitability of the Allen MDS 38 which the petitioners sought to introduce was a matter of taste. There were good arguments for not requiring the petitioners to restore the defective and not particularly distinguished pipe organ at a cost exceeding the purchase price of the electronic organ. The pipe organ was to remain in the church in case future generations wished to restore it. A faculty would therefore be granted. The Court would not be likely to be sympathetic, however, to parishes which had deliberately allowed pipe organs to fall into disrepair in order to justify the acquisition of an electronic instrument.

Re: West Norwood Cemetery

(Southwark Consistory Court; Gray Ch. March 1994)

A cemetery established under Act of Parliament and subsequently acquired by a local authority was, in respect of its consecrated parts, a churchyard within Section 13(5) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, with the result that a restoration order could be made in respect of works carried out without the authority of a faculty. Since, however, the burden was upon the party applying for a restoration order to prove that the acts complained of had been carried out within the preceding six years, and were not merely the result of neglect, an order would be made only in relation to certain monuments shown to have been damaged within that period. The grant of a confirmatory faculty in respect of the clearance works carried out by the local authority was not actively opposed, but the Archdeacon and the interested amenity societies sought to attach conditions to the faculty. *There had, however, to be a nexus between the conditions imposed and the faculty or confirmatory faculty sought.* The conditions would therefore be restricted to the restoration of certain listed tombs lost or damaged in the course of the unauthorised works, and to the making of as full a record as possible of the memorials which had been removed.

Re: St. Paul, Hanging Heaton
(Wakefield Consistory Court; Collier Ch. April 1994)

Where the relatives of a man who had wished to be buried with his infant son had erroneously understood that there was insufficient room in the son's grave, so that the father (who died accidentally in a fire) had to be buried in a churchyard elsewhere, the Court exercised its discretion in overriding the general principle and permitting exhumation of the son and re-burial with the father. The case was an unusual one. The family had always the intention that the son, who had died at a tragically early age, should be buried together with his mother and father. The appropriate arrangements which they had made were frustrated through no fault of theirs. They had the desire, which was part of their history and culture, and did not arise from any superstitious or false belief, to be together in death as in life. *Re Atkins* [1989] 1 All E.R. 14 considered.