

SHARED USE OF CHURCH BUILDINGS or IS NOTHING SACRED?

CHARLES GEORGE QC
*Chancellor of the Diocese of Southwark*¹

INTRODUCTION

It may soon be possible, courtesy Cameron Ch as she then was, not only to lunch (as many already do) but also to dine at the crypt restaurant below St Mary-le-Bow, and to enjoy beer, cider or wine with your meal.² That is a thoroughly secular use of part of a church; and it is something which would not have been permitted until relatively recent times.³ To Cockburn CJ in 1869 there was a self-evident distinction between 'purposes purely secular' and 'those of an ecclesiastical character', and 'nothing short of an Act of Parliament can authorise the conversion of consecrated ground to secular purposes'.⁴ In one of his early judgments, sitting as Deputy-Chancellor, George Newsom QC declined to allow the use of consecrated land for an NCP car park, referring to consecration as 'this special status [which] has been a striking privilege of the Church of England. It is no part of the duty of this court to seek to whittle it away'.⁵ The aim of this Paper is to explore the erosion of the divide between 'secular' and 'ecclesiastical' purposes, and to suggest that it offers a novel role for the Church both in the countryside and in towns and cities. I also touch briefly on some of the problems of rating, planning and listed building law which arise.

Despite the ambiguity of my title, I am not considering the shared use of buildings between Churches under the Sharing of Church Buildings Act 1969; nor am I concerned with what may happen following a declaration of total or partial redundancy. Nor, finally, do I examine the exceptional cases where, in the absence of an alternative, the ceding of consecrated land to an overriding public purpose (for instance a road improvement) may be allowed.⁶

Three main reasons have impelled parishes to propose accommodating alternative uses. The first is a recognition that worship is only part of the role of the church and of a church building, and that church premises can and should be used for ancillary pastoral activities. As the incumbent of St Mary-le-Bow told the chancellor:

'I believe part of the reason for the growth of numbers of worship [sic] is the artificial barriers between church and City have been removed by restaurant, concerts, exhibitions and the general openness and availability of the building'.⁷

The second is a recognition that worship tends to be confined to very short periods of the week, and that vacant space is wasted space. In the simplest terms, why not use

¹ An edited version of a paper delivered as one of the Ecclesiastical Law Society's London Lectures on 12 September 2001.

² *Re St Mary-le-Bow, London* [2001] 1 WLR 1507, 6 Ecc LJ 164, London Cons Ct.

³ Cathedrals, of course, led the way in respect of facilities such as shops and restaurants.

⁴ *R v Twiss* (1869) LR 4 QB 407 at 413, 414.

⁵ *Re St John's, Chelsea* [1962] 2 All ER 850 at 853, [1962] 1 WLR 706 at 709, London Cons Ct.

⁶ *Re St Mary the Virgin, Woodkirk* [1969] 1 WLR 1807, *sub nom Morley Borough Council v Vicar and Churchwardens of St Mary the Virgin, Woodkirk* [1969] 3 All ER 952, Ch Ct of York. The same test was applied where a right of way was sought over a churchyard, although the Chancellor recognised that the situations differed, because only in the former case would the land pass from the care and management of the incumbent and PCC: *Re St Andrew's, North Weald Bassett* [1987] 1 WLR 1503 at 1508, Chelmsford Cons Ct.

⁷ *Re St Mary-le-Bow, London* [2001] 1 WLR 1507 at 1513, 6 Ecc LJ 164, London Cons Ct.

churches as rehearsal rooms, or as concert halls, or for other secular purposes? This was described by Cameron Ch as 'the developing trend towards use of spare space in church buildings for purposes unconnected with worship'.⁸ The third has a more worldly, financial motive. Not only will a church that is being more fully used be less prone to vandalism and break-ins, but also alternative uses will produce revenue for the PCC. Perhaps the most obvious example is the large sums of money now being achieved by the grant of licences to mobile telephone network operators for use of space in church towers and spires. I do not know what the current financial arrangements are between the proprietor of the crypt restaurant and the PCC of St. Mary-le-Bow; but the original judgment of Newsom Ch in 1989 shows that the parish was to receive a 5 per cent royalty on the turnover of the restaurant.⁹

CONSECRATION, SUITABILITY AND ECCLESIASTICAL PURPOSES

Prima facie, secular uses conflict with the legal status of consecration. The effect of consecration is not merely to bring the land and everything on it within the faculty jurisdiction:

[Consecration] as it were freezes the land for ever by setting it aside *in sacros usus*. Thereafter only an Act of Parliament or a Measure, or a direction given under the Pastoral Measure 1983 or the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, can remove the legal effects of consecration and thereby free the land for secular purposes'.¹⁰

As has been pithily said:

'Consecrated land is to the Consistory Court what an infant is to the Secular Court, something where there are overriding interests which can be encroached upon only in exceptional circumstances'.¹¹

Those exceptional circumstances do not normally arise in the type of applications with which this paper is concerned.¹² There are, however, provisions of ecclesiastical law which recognise that secular uses may, in certain circumstances take place in churches. Thus Canon F 15, para 1, reads:

'The churchwardens and their assistants shall not suffer the church or chapel to be profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place...'

The wording implies that *some* meetings for temporal objects may take place in church. Canon F 16, para 1, refers to use 'for a play, concert, or exhibition of films or pictures', but the caveats about being 'consonant with sound doctrine, and mak[ing] for the edifying of the people' suggest that *purely* secular performances were not envisaged. Section 56(3) of the Pastoral Measure 1983, which immediately follows

⁸ *Re St Mary-le-Bow, London* [2001] 1 WLR 1507 at 1511.

⁹ *Re St Mary-le-Bow, London* (1989) 8 Consistory and Commissary Court Cases no 14, London Cons Ct. This invaluable, bound collection is held only in Middle Temple Library, and I refer to it below as 'CCCC'. The post-1995 transcripts have not yet been bound, though they can be consulted in that library.

¹⁰ Briden and Hanson, *Moore's Introduction to English Canon Law* (3rd edn, 1992), p 86.

¹¹ *Re St Peter's, Stockton, Holy Trinity Churchyard* (1986) 7 CCCC no 7, Durham Cons Ct.

¹² By 1984, in respect of use of a consecrated cemetery, Newsom Ch was applying a slightly less stringent test than that of exceptional circumstances ('only if there is some substantial reason for doing so, usually because some public advantage will follow'): *Re Coleford Cemetery* [1984] 1 WLR 1369 at 1371, Bath and Wells Cons Ct.

the prohibition on selling, leasing or otherwise disposing of any church, part of a church or consecrated land save under the Pastoral Measure, provides that:

‘The foregoing provisions of this section shall not—

(a) prevent the grant of a faculty authorising a suitable use of part of a church or the grant of any faculty in respect of any such land as aforesaid’.¹³

This provision is capable of a broad and a narrow interpretation. On the former, it confers jurisdiction to grant a faculty for a secular use of part of a church, provided it is a *suitable* use. On the narrow interpretation, it merely recognises that there will be *some*, not strictly ecclesiastical, uses which can pastorally promote, and to that extent be regarded as ancillary to, sacred or ecclesiastical uses, and which should be allowed if suitable.

If the starting point for the authorisation of an alternative use is that it must (in the terms of Canon F 15) not be ‘inconsistent with the sanctity of the place’ or (to use the adjective in section 56(3)(a) of the 1983 Measure) be ‘suitable’, then both concepts have a subjective element, leaving scope not merely for different views from different chancellors, but also for evolution and change in standards over time. Although the tests applied in the case of disused burial grounds are slightly less restrictive,¹⁴ such a burial ground:

‘can with propriety be used only for purposes wholly compatible with the uses to which a church may with propriety be put... Views on such matters vary from age to age’.¹⁵

Referring back to Cockburn CJ’s distinction between ‘purposes purely secular’ and ‘those of an ecclesiastical character’, Goodman Ch has stated:

‘Generally speaking of course, any use of a consecrated church ... must be for ecclesiastical purposes. These days ‘ecclesiastical’ is often interpreted generously... Use of part of the church itself for wholly secular purposes is of course another matter’.¹⁶

Among examples given by Goodman Ch were kitchens and lavatories, which are now common in churches, to such an extent that the diarist in the Church Times of 17 August 2001 describes church lavatories as ‘an essential instrument of mission’.¹⁷ Similarly many re-orderings include rooms for the holding of Sunday School, together with counselling and meeting rooms, and after-church ‘socialising areas’. In one of my own judgments, I recorded the vicar’s evidence that ‘coffee after the ser-

¹³ A substantial restriction on secular use of churches is the requirement for a licence rather than a lease. Normally such licences are for five to ten years, although in the case of an unconsecrated church curtilage a 99-year licence was granted in 1970: *Re St Peter’s, Bushey Heath* (1970) 1 CCCO no 14, St Albans Cons Ct.

¹⁴ *Re Whixall Old Burial Ground* [2001] 2 All ER 348, [2001] 1 WLR 995, Lichfield Cons Ct.

¹⁵ *Re St Ann’s, Kew* [1977] Fam 12, [1976] 1 All ER 461, Southwark Cons Ct. Cameron Ch has referred to ‘those of my generation who were brought up in an era when there was a different attitude to what was a proper use of a church building’: *Re Emmanuel, Northwood* (1998) 15 June, 5 Ecc LJ 213, 17 CCCO no 19, p 50, London Cons Ct.

¹⁶ *Re St Mark’s, Biggin Hill* (1991) 10 CCCO no 8, Rochester Cons Ct.

¹⁷ This has judicial support: *Re St John the Baptist, Beeston* (1998) 12 March, 17 CCCO no 10, p 2, Southwell Cons Ct, where Shand Ch said that ‘Nobody these days would seriously argue that proper toilet facilities are anything but appropriate in such a place of worship’; *Re St John the Baptist, Great Kissington* (1993) 3 Ecc LJ 121, Gloucester Cons Ct.

vices and relaxed chat have proved over the years to be of inestimable value in making newcomers feel at home and willing to return'.¹⁸ As Cameron Ch recently put it:

'The primary purpose of any church in use is for the purpose of worship. Ancillary rooms used as vestries, parish offices, creches, children's rooms, etc are all used in connection with the primary purpose'.¹⁹

In another decision Goodman Ch refers to religious bookshops as a 'not unusual' use of part of church premises.²⁰ Here there is at least a direct connection with Christian missionary and educational activities, despite the commercial element.

SECULAR USES

Slightly more controversial were the other examples of 'not unusual' uses given by Goodman Ch, day centres for the elderly and the deaf, nursery schools, and probation offices.²¹ Here the direct connection with ecclesiastical purposes ceases.²² In the nineteenth century there are weighty dicta to the effect that 'a charity school is purely secular'²³ and that 'the erection of schools ... would not be for a purpose for which a faculty could be granted'.²⁴ The facilities described by Goodman Ch can surely only be permitted if the test is no longer what is strictly 'an ecclesiastical purpose', but rather what is compatible with both Christian mission and the primary ecclesiastical purposes of the Church. That seems to have been the approach of Sheila Cameron QC, sitting in the unfamiliar capacity of Deputy Chancellor of Southwark, when in 1990 she authorised the creation of three new rooms in the gallery of a Grade 2* church in Brixton for (among other things) an Employment Project and workshops, which she approved on grounds of pastoral necessity, referring to the vitally important pastoral work of the Church.²⁵

Where there is 'accommodation which is isolated from the main body of the Church, and which would otherwise be standing empty for much of the time',²⁶ it has become

¹⁸ *Re St John the Evangelist, Blackheath* (1998) 5 Ecc LJ 217, 17 CCCC no 26, p 11, Southwark Cons Ct. For the importance of refreshments in attracting and welcoming people to services, see *Re St Mary's, Kings Worthy* (1998) 5 Ecc LJ 133, 17 CCCC no 8, Winchester Cons Ct; and *Re St Peter, Pedmore* (1998) 17 CCCC no 29, para 46, Worcester Cons Ct. A coffee bar in the corner of a church has been held to be necessary for mission, quoting Bishop Michael Marshall on the incarnational implications of the fusion of what might superficially be regarded as the 'sacred' and the 'secular': *Re St Mark, Woodthorpe* (1998) 5 Ecc LJ 132, 17 CCCC no 5, p 2, Southwell Cons Ct; but see Boydell Ch's opinion that the serving of coffee might prove no more than 'a passing fashion': *Re St Helen, Abingdon* (1986) 1 Ecc LJ (1, 2) 37, Oxford Cons Ct.

¹⁹ *Re St Mary-le-Bow, London* [2001] 1 WLR 1507 at 1511, 6 Ecc LJ 164, London Cons Ct.

²⁰ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

²¹ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct. He also referred to day centres and nursery schools in *Re St Mark's, Biggin Hill* (1991) 10 CCCC no 8, Rochester Cons Ct.

²² In *Attorney-General, ex rel Bedfordshire County Council v Howard United Reformed Church Trustees, Bedford* [1976] AC 363 at 377, [1975] 2 All ER 337 at 345, HL, construing the then scope of the ecclesiastical exemption from listed building control, Lord Cross of Chelsea said that "'ecclesiastical purposes" is a vague phrase', because it is capable of both a wide and a narrow meaning. The House of Lords left the meaning open, whereas the Court of Appeal ([1975] QB 41, [1974] 3 All ER 273) favoured a narrow interpretation, excluding 'purposes loosely connected with Christian worship' (per Stephenson LJ at 52 and at 278), and excluding church bazaars, jumble sales and coffee parties, and even some meetings which began with a prayer (per Lord Denning MR at 49, 50 and at 277).

²³ *Campbell v Paddington Parishioners and Inhabitants* (1852) 2 Rob EccL 558, London Cons Ct, a decision of Dr Lushington, sitting as Chancellor.

²⁴ *R v Twiss* (1869) LR 4 QB 407 at 413. But a faculty for a church school on consecrated land was granted in *Corke v Rainger and Higgs* [1912] P 69, Ct of Arches.

²⁵ *Re Christ Church, North Brixton* (1990) 9 CCCC no 31, Southwark Cons Ct. The Café Van Gogh now operates in a corner of the church and about 50 per cent of the interior of the church is devoted to second-hand retailing.

²⁶ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

the practice to sanction a variety of secular uses. Faculties have permitted crypts such as St Martin-in-the Fields and St Mary-le-Bow to be used as restaurants.²⁷ Attempts have been made to justify these restaurants as part of the church's worshipping role. In the first St Mary-le-Bow hearing, it was claimed to be 'a pastoral advantage to have meals available to people coming to services at the church and in the chapel below',²⁸ though it must have been apparent that worshippers would be a minuscule percentage of the restaurant's clientele. Similarly border-line as regards pastoral function was the faculty granted in 1981 for the use of the former vestry of a church in the City of Durham for a retail sales area selling goods made by disabled and disadvantaged people or organisations which support or sponsor such people.²⁹

I come now to two types of permitted secular use where there was no worshipping or pastoral nexus whatsoever. In the City of London there are a number of instances of surplus rooms being used as office accommodation, usually by charities. An example would be St Katherine, Cree.³⁰ In a celebrated case concerning the occupation of surplus accommodation in the tower of one City church, Newsom Ch's concern was with the identity of the occupant, the Lesbian and Gay Christian Movement, and the absence of procedures for its proper authorisation, rather than with the principle of secular office use. Indeed he expressed the matter very broadly:

'If and in so far as the building is not required for its primary purpose it can be used for other purposes ... and [if] the activities ... are not inconsistent with the status of the building as a consecrated church or with the Canons, especially Canons F 15 and F 16'.³¹

Absent altogether is any pastoral element here. The approach in the City of London towards lettings of surplus accommodation, undertaken 'to provide revenue for the church', emboldened Goodman Ch to permit a telecommunications aerial in 1991, another purely secular use with no pastoral element.³² This decision was then followed elsewhere in a reported case, setting out the provisions to be expected in a licence for such telecommunications facilities. There Gage Ch referred to a test of 'exceptional circumstances', stating that:

'In general it is my view that a faculty for use of a church for secular purposes only should be granted only in rare and exceptional circumstances ... In cases such as this, each case must be considered on its merits'³³.

²⁷ A day-time café operates in Robert Potter's newly created crypt beneath St Nicholas, Sevenoaks, in the Diocese of Rochester.

²⁸ *Re St Mary-le-Bow, London* (1989) 8 CCCC no 14, London Cons Ct.

²⁹ The faculty is referred to in *Glenwright (Valuation Officer) and Durham City Council v St Nicholas Parochial Church Council* [1988] RA 1 at 5, Lands Trib. The range of goods sold in 1987 is listed at 6.

³⁰ I am grateful to the Registrar of the Diocese of London for this example and that of St James, Norlands, referred to below. The first such licence of which I am aware is the unopposed faculty granted by Ashworth Ch in 1954 to use the basement of a London church for the commercial storage of papers, criticised in *Re St John's, Chelsea* [1962] 2 All ER 850 at 857, [1962] 1 WLR 706 at 715, London Cons Ct. In *Re St John's, Chelsea*, at 857 and at 714, the Deputy Chancellor held that the jurisdiction to authorise secular uses was narrowly confined, but twenty years later the approach of Newsom Ch was less strict.

³¹ *Re St Botolph Without Aldgate* (1988) 8 CCCC no 6, London Cons Ct.

³² *Re St Mark's, Biggin Hill* (1991) 10 CCCC no 8, Rochester Cons Ct. The precedent was set by Boydell Ch, who permitted a mast on a church tower for the benefit of aircraft: *Re St James', Bishampton* [1961] 2 All ER 1, [1961] 1 WLR 257, Worcester Cons Ct.

³³ *Re All Saints', Harborough Magna* [1992] 4 All ER 948 at 950, [1992] 1 WLR 1235 at 1237, Coventry Cons Ct. See *Re St Mary the Virgin, Woodkirk* [1969] 1 WLR 1807, *sub nom Morley Borough Council v Vicar and Churchwardens of St Mary the Virgin, Woodkirk* [1969] 3 All ER 952, Ch Ct of York.

What of medical facilities? In 1869 Cockburn CJ had no doubt that 'the erection of... an infirmary would not be a purpose for which a faculty could be granted'.³⁴ In 1985 Goodman Ch was faced with what he described as a 'novel' petition, to licence the use of a church room for a doctor's surgery.³⁵ He granted the faculty:

'Making the accommodation available for this kind of use would be a proper response to social and human need... It ... would be consistent with other forms of Christian outreach which are being offered in other Churches where there is accommodation which is isolated from the main body of the Church, and which would otherwise be standing empty for much of the time. To adopt a phrase used by Moore Ch in *Re St Ann's, Kew* ... it would be a use to which such a part of a Church "may with propriety be put".

The categories of use to which the Church may be put are not closed... So long as the principle regarding the proper use of suitable parts of the building are borne in mind and the rights and feelings of the Parishioners are considered, I am content to see this kind of activity permitted and indeed encouraged'.

In ignorance of this precedent, some years ago I myself extended a licence, originally authorised (I think) by Garth Moore Ch, whereby the north aisle in St James, Bermondsey (listed Grade 2*), which has been partitioned off from the main body of the church and has its own external entrance, is used as a doctor's surgery. This arrangement has worked well for a number of years, and provides a valuable facility in an Inner City area, as well as an annual income of over £12,000 for the church.³⁶ But it is a purely secular use, and would certainly never have been permitted by Dr Lushington or Cockburn CJ.

The more secular examples I have so far given have involved use of discrete parts of the church, crypts, rooms, and side-aisles. These differ from the cases of true shared use of the main worship area. Two examples spring to mind. Whilst most churches are used from time to time for concerts (All Saints, Kingston-upon-Thames, a Grade 1 church in the Diocese of Southwark, is for example the principal concert hall in that London Borough), the case of St James, Norlands in Notting Hill Gate is unusual. They have professional theatrical lighting, and operatic and theatrical events are regularly performed, involving the erection of a stage in the chancel. Even more striking is the licensed restaurant which operates in the main aisle of All Saints, Hereford, from Monday to Friday only, closing at 5.30pm, and occupying approximately half the space in the church. This restaurant has been described as providing 'a useful community facility in the centre of Hereford during the day time when drinking tends to be limited'.³⁷

In some of the cases sanctioning a more generous approach to what can be permitted, there has been reference to the medieval church. Thus in one case it was said that:

'What is today considered decorous in a church is more in accord with the views of our medieval ancestors than those of our Victorian forebears'.³⁸

Goodman Ch described the proposed doctor's surgery as:

³⁴ *R v Twiss* (1869) LR 4 QB 407 at 413.

³⁵ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

³⁶ On 9 September 2001 I granted a further five-year extension of the licence, terminable at the end of each year by either party giving not less than six months' notice in writing.

³⁷ *Re St Mary-le-Bow, London* [2001] 1 WLR 1507 at 1514, 6 Ecc LJ 164, London Cons Ct.

³⁸ *Re St Ann's, Kew* [1977] Fam 12, [1976] 1 All ER 461, Southwark Cons Ct.

'a use to which part of the Church might well have been put in pre-Reformation times'.³⁹

In *Faith in the Countryside*,⁴⁰ a similar point was made:

'The church could be used for a number of new secular activities... objections may arise ... from those who have a narrow view of what constitutes holiness [but] they may ... fail to realise that the medieval church was indeed used for the wide range of activities ... there is nothing in human life in which God is not already involved'.

My own very limited historical research has failed to discover any medieval precedents for secular uses in churches, save that visitors to shrines were sometimes housed and fed, and no doubt charged as well, and there was a trade in relics. Taken literally, the statement that 'there is nothing in human life in which God is not already involved' would seem to render acceptable the use of churches as massage parlours or casinos, which would offend most people's concepts of 'suitability' (the test in section 56(3)(a) of the Pastoral Measure).

WHAT IS PERMISSIBLE?

My conclusion is that the nineteenth century outlawing of pure secular uses on consecrated land is now merely part of legal history.⁴¹ We have reached the position where:

- (1) the use need not be ecclesiastical in purpose, provided the primary use of the church remains that of worship;
- (2) the use need not be ancillary to worship;
- (3) the use need not be pastoral in motivation;
- (4) the use can be purely commercial;
- (5) the prime motivation for allowing the use can be to raise revenue for the church.

The only impermissible uses are those which:

- (1) prevent the primary use of the church being for the purpose of worship. I am told by the Vicar of All Saints, Hereford, that he celebrates mass at mid-day three times a week in the lady chapel, whilst meals are served 40 feet away in the adjacent restaurant;
- (2) involve activities which are unsuitable in a church, either because of some conflict either with the teaching of the church, or because they would be unlikely to be regarded as acceptable by right-thinking members of the Church of England. This would preclude use as a Mosque, or as a bookshop run by the Secular Society, and also various activities which involve noise or violence or disorderly conduct.

Even where non-ecclesiastical uses are permitted, the land will continue to be consecrated land, subject to the faculty jurisdiction.⁴²

³⁹ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

⁴⁰ *Report of the Archbishops' Council on Rural Areas* (1990), cited in *Re Whixall Old Burial Ground* [2001] 2 All ER 348, [2001] 1 WLR 995, Lichfield Cons Ct.

⁴¹ Shand Ch has said that 'the distinction between "secular" and "sacred" is often impossible to maintain practically or theologically': *Re St Paul, Carlton-in-the-Willows* (1997) April, 16 CCCC no 7, p 3, Southwell Cons Ct, considering a proposed re-ordering to include community facilities.

⁴² *Re St John's, Chelsea* [1962] 2 All ER 850 at 853, [1962] 1 WLR 706 at 709, London Cons Ct.

FUTURE TRENDS

The Prince of Wales' campaign for the pub as the hub of rural villages appears to provide a model for the role church buildings could play in community life. Of course there are differences. A church probably could not itself perform as a public-house. In the case of St Mary-le-Bow, Cameron Ch specifically imposed a condition to preclude the operation of a bar for the sale of beer, cider and wine without food, emphasised that there was no intention to create a wine bar, and referred to the fact that:

'the consumption of alcohol is known to have adverse effects on many people and to lead to rowdiness and uncontrolled behaviour which would be inappropriate in a consecrated building'.⁴³

On the other hand, there seems no reason why churches should not accommodate post-offices and banking facilities, allow limited retail sales (including food and pharmaceutical goods), house libraries and doctors' surgeries. I understand that in Bedfordshire there are several country churches whose vestry is opened at set times during the week to act as a village shop for 'top up' groceries. Many urban churches already operate coffee-shops which are open throughout the day, and there seems no reason why these should not operate as cyber cafés, providing computer and e-mail facilities. None of this strikes me as inconsistent with those post-1962 consistory court decisions which I have previously cited. In addition there is scope for churches to operate not merely as places where formal meetings can be held (subject of course to Canon F 15 para 1), but also as drop-in centres, where people can meet, relax and exchange views. This is an attractive feature of many Mosques and Hindu temples, where it is not seen to conflict with worship, which is almost always carried on simultaneously in the same building.⁴⁴ It is necessary to try to ring-fence space for prayer, but the present incidence of locked churches, so criticised by Simon Jenkins, already precludes entry for private prayer to many churches.⁴⁵ The Vicar of All Saints, Hereford, tells me that his church now has 2500 visitors a week, 80 per cent of whom come to use facilities connected with the restaurant.⁴⁶

The range of possible additional activities which I have mentioned far exceeds those envisaged by the government in the recent rural White Paper.⁴⁷ Under the heading 'Joint use of a wide range of premises', paragraph 3.2.4 of the White Paper refers to 'the role of the churches—often the last remaining public buildings in many rural communities', and to the £7.5 m initiative 'Rural Churches in Community Service' which aims to complete 100 projects providing new facilities in churches for activi-

⁴³ *Re St Mary-le-Bow, London* [2001] 1 WLR 1507 at 1514, 1516, 6 Ecc LJ 164, London Cons Ct.

⁴⁴ Examples from the Indian sub-continent are the Hindu temple at Madurai (an astonishing mixture of the sacred and the secular) and the Mosque at Ajmer which incorporates educational, hospital and soup-kitchen facilities. Both are very considerable complexes. An extreme (and atypical) instance would be the Mosques at Lahore, where, according to Adnan Ali, a gay Muslim, 'you would go just to cruise and meet people *because they were such social places*' (Guardian, 30 August 2001, emphasis added).

⁴⁵ Simon Jenkins, *England's Thousand Best Churches*, pp xxxii–xxxiii ('A parish church is a church open to all. A church shut except for services is a private meeting house of a sect'). The phrase 'ring-fence space for prayer' comes from an editorial on attempts made by English cathedrals to promote tourism (Church Times, 24 August 2001).

⁴⁶ *In Re St Paul, Carlton-in-the-Willows* (1997) 16 CCCC no 7, Southwell Cons Ct, Bishop Michael Marshall's *Free to Worship* (revised edn, 1996) pp 177–181 was quoted: 'by incorporating secular uses the church building could play a significant role in the community, bridging in some way the gap between the sacred and the secular ... convert[ing] a problem building into a glorious opportunity for service and growth'.

⁴⁷ *Our Countryside: The Future—A Fair Deal for Rural England* (2000), Cm 4909.

ties such as Mother and Toddler groups; Playgroups; After school and holiday clubs; Youth drop-ins; Drop-ins for older people; Luncheon clubs; Day-care centres (for frail old people); Employment and training advice; Training; School use for curriculum studies, music, performance, PE; library services; and Alcoholics Anonymous groups. The community uses mentioned in the White Paper are merely the uses which are already commonplace in many urban churches. For example, the church of St James, Aston, doubles as a community centre, has two youth workers and has an advice centre that helps 15,000 callers a year with immigration, finance and housing.⁴⁸

I have already mentioned the prohibition on the grant of leases, now contained in section 56(2) of the Pastoral Measure 1983. Some would-be occupants will be deterred by the alternative of a licence, usually for a short period. This can present problems in relation to the obtaining of grants, and the borrowing of money. To real property lawyers, the essence of a licence is that it precludes exclusive occupation by the licensee. But in the case of ecclesiastical licences, there is often in practice exclusive occupation, for example that of the restaurateur in the crypt of St Mary-le-Bow (though there is special provision in the licence in respect of that part of the restaurant which spills over into the area known as the Court of the Arches), or that of the office occupants of parts of City churches.

PROBLEM AREAS

This leads on to the final part of this Paper where I want to touch on certain problems of rating and planning law which can arise from the shared use of churches.

(i) RATING

I start with rating. A hereditament is exempt from rating to the extent that it consists of a place of public religious worship which belongs to the Church of England (and some other denominations) or is a building used in connection with a place of worship for the purposes of the organisation responsible for the conduct of public religious worship in that place.⁴⁹ A hereditament is also exempt to the extent that it is occupied by an organisation responsible for the conduct of public religious worship in such a place of public religious worship and is used for the carrying out of administrative or other activities relating to the organisation of the conduct of public religious worship in such a place or is used as an office or for office purposes, or for purposes ancillary to its use as an office or for office purposes.⁵⁰ The exemption *only* applies to office uses carried on by the organisation responsible for conduct of religious worship, even though the office use need not relate to the organization of public worship in the church. This exemption thus allows the church to engage in pastoral outreach from offices in the church, but it does not provide exemption for an independent office use of a part of the church.

⁴⁸ Church Times, 24 August 2001, reporting an arson attack on this inner city church and community centre. The vicar has kindly supplied me with a sketch plan, showing that the building has a sanctuary separated off by sliding screens from the main hall, the latter of which is used both for worship and for a variety of other activities including use by youth clubs; there are also numerous ancillary rooms. In the Diocese of Southwark, St Saviour, Peckham, remains wholly within the faculty jurisdiction, although the greater part of the church building was converted in the early 1980s into the Coplestone Centre, offering advice and community facilities.

⁴⁹ Local Government Finance Act 1988, s 51, Sch 5, para 11(1).

⁵⁰ *Ibid*, Sch 5, para 11(2) (substituted by the Local Government Finance Act 1992, s 104, Sch 10, Pt 1, para 3). 'Office purposes' is defined in the 1988 Act, Sch 5, para 11(3) (as so substituted).

Generally the focus for rateability is on the hereditament. Thus where part of the church is separately occupied and used for secular purposes, it may, depending upon the circumstances, constitute a separate hereditament altogether, as was the misfortune of a former vestry in Durham which was used for retail sales.⁵¹ It therefore lost its exemption from rating, notwithstanding that the shop was run by a charitable company, the majority of whose members had to be serving members of the PCC.⁵² More complex is the case where there is no physical division into two hereditaments, but there is a shared use of the church building for exempt and non-exempt uses. The statutory exemption is now conferred on a hereditament only 'to the extent that it consists of' a place of public religious worship. The editors of Ryde⁵³ cautiously state that:

'It would appear that 'extent' is to be understood both in a physical and in a temporal sense. Thus if part of a [sic] church premises were used for purposes falling outside the exemption rateability would arise in respect of that part without affecting the exemption of the rest. Similarly the use of a church from time to time for purposes other than public religious worship would appear to give rise to rateability to the extent that such use gave value to the hereditament' (emphases added).'

Of course the fact that premises are consecrated, whilst irrelevant to the issue of rateability, may have a material effect in assessing the value to be attached to the hereditament.⁵⁴ I am told that All Saints, Hereford, has received a back-dated rating demand in respect of its restaurant, which the church is contesting at the present time, and I have put St. James, Bermondsey, on notice that they too are at risk of rateability in respect of their doctor's surgery.

(ii) PLANNING

I turn to planning. If additional uses require building operations to the exterior of the church, obviously planning permission is needed, just as it is when the church itself is externally altered. What if no external works are required?⁵⁵ It is commonly supposed that the introduction of additional uses can be done without planning permission. For example in the case of the doctor's surgery permitted by Goodman Ch, where the doctor had applied for (but not yet obtained) planning permission, the chancellor stated:

'I do not believe that consent is necessary to authorise the use of the interior of the church building in this way, that being a matter solely for the Court... The use of the building is still that of a Church'.⁵⁶

If the use is truly ancillary to use as a church, in the sense of being part and parcel of the use of the church as a place of worship, then that approach is justified in secular planning law. Thus the provision of church offices, church toilets, and church meeting rooms within churches will not constitute a material change of use of the build-

⁵¹ *Glenwright (Valuation Officer) and Durham City Council v St Nicholas Parochial Church Council* [1988] RA 1 at 10, Lands Trib.

⁵² *Glenwright (Valuation Officer) and Durham City Council v St Nicholas Parochial Church Council* [1988] RA 1 at 5, 6, Lands Trib. The company was held not to be the agent or *alter ego* of the PCC: p 10.

⁵³ *Ryde on Rating* D[617]–D[627]. See also D[653]–D[700], where the same tentative view ('appear to create rateability') is expressed.

⁵⁴ *Morley (Valuation Officer) v SPCK* [1959–60] 6 Ryde's Rating Cases 391 at 397.

⁵⁵ Works which affect only the interior of a building do not require planning permission: Town and Country Planning Act 1990, s 55(2)(a)(i).

⁵⁶ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

ing, in the same way that a hotel can convert a room into an ancillary bar or a nightclub, without the entire building ceasing to be a hotel.⁵⁷ If the use of all, or part, of the church is for the provision of medical or health services, or as a creche, day nursery or day centre, or for the provision of education, or the display of works of art (otherwise than for sale or hire), or as a museum, or as a public library or reading room, or as a public hall or exhibition hall, then no development requiring a planning permission is deemed to take place by reason of the Use Classes Order.⁵⁸ As it happens, because of the terms of the current Use Classes Order, both the Guildford and Bermondsey surgeries need no express planning permission; and similarly all, or almost all, of the new community facilities referred to in the rural White Paper would be covered by that Order.

But there are two situations where planning permission is required. The first is where part of a building is to be used exclusively for a use distinct from the church use and not covered by the Use Classes Order. In that case a new planning unit will normally be created, and a separate planning consent will be needed for the new use of that planning unit. The mere fact that the new occupant occupies under a licence rather than a lease will not have the automatic consequence of preserving the original, larger planning unit. I understand that the crypt restaurant at St Mary-le-Bow operates pursuant to a specific planning permission. The Lands Tribunal report relating to the Durham former vestry relates that the shop was occupied under a licence, and that (correctly in my view) planning permission had been obtained for a retail sales area, subject to condition that it should operate only for the benefit of the PCC.⁵⁹ The second situation where planning permission is (or may be) required is where the additional use involves a shared use of all or part of the church as at All Saints, Hereford. In such cases there will be a change from single use as a church to a mixed use as church and restaurant, which, as a matter of fact and degree, could constitute a material change of use requiring planning permission. The fact that 'the building is still that of a Church'⁶⁰ cannot of itself preclude the possibility that planning permission is needed. In the case of All Saints, Hereford, the Vicar tells me that Henty Ch required the parish to obtain planning permission for the restaurant use, which it did. My own practice is to draw the attention of petitioners to the possibility that planning permission may be needed, though I do not normally require that permission be obtained in advance of the Faculty. I also usually require notification of the local planning authority, which at any rate gives them the opportunity to clarify their likely stance.

(iii) LISTED BUILDINGS

Lastly, listed building consent. It is commonly supposed that because the faculty jurisdiction operates in lieu of listed building control, therefore internal (or indeed external) alterations to a listed church which accommodates an additional use, whether or not occasioned by the requirements of the additional use, will not need listed building consent. Alas, it is not quite so simple. It used to be the case that 'use for ecclesiastical purposes' was all that was required for exemption from secular listed building control. Thus in the early 1970s, Lord Denning MR said, in the case of an ecclesiastical building which 'was being used to some extent for ecclesiastical purposes, and to a greater extent for other purposes' that:

⁵⁷ *Emma Hotels v Secretary of State for the Environment* (1980) 41 P & CR 255, CA.

⁵⁸ Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3, Sch D, Class D1.

⁵⁹ *Glenwright (Valuation Officer) and Durham City Council v St Nicholas Parochial Church Council* [1988] RA 1 at 5, Lands Trib.

⁶⁰ *Re St Nicholas's, Guildford* (1985) 6 CCCC no 25, Guildford Cons Ct.

's 56(1) [of the Town and Country Planning Act 1971] does not require it to be used 'solely' or 'mainly' for ecclesiastical purposes. It is sufficient if it is used partly for ecclesiastical purposes, so long as that user is significant and not minimal'.⁶¹

No longer so. For, as Samuel Wiggs points out in his valuable article:⁶²

'The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994... , which currently gives effect to the ecclesiastical exemption from the listed building laws, defines a church building as a building whose *primary* use is as a place of worship' (emphasis added).

The number of hours for which a church is used for secular, as opposed to ecclesiastical, purposes is clearly highly relevant to the question of its primary use. If the main part of a church is used as a restaurant throughout the day during the week, then it must at any rate be arguable that it loses the benefit of the ecclesiastical exemption, notwithstanding that, as a consecrated building, it remains within the faculty jurisdiction.

CONCLUSION

I have sought to identify both some of the potential, and some of the pitfalls, involved in the introduction of secular uses to churches. Initiative is needed from clergy, churchwardens and Parochial Church Councils (and their architects and Diocesan Advisory Committees), seeking to explore and exploit secular uses. Excessive initiatives will be readily controllable through the faculty jurisdiction, thus ensuring that the church building's primary role remains as a place of worship, and that the consequences of consecration are respected.

⁶¹ *Attorney-General, ex rel Bedfordshire County Council v Howard United Reformed Church Trustees, Bedford* [1975] QB 41 at 50, [1974] 3 All ER 273 at 277, CA. The decision was reversed on other grounds: [1976] AC 363, [1975] 2 All ER 337, HL.

⁶² 'The Community Use of Churches' (2000) 5 Ecc LJ 348 at 349.