

In the Consistory Court of the Diocese of Leeds

In the matter of St Thomas, the Apostle, Killinghall

Judgment

1. This is a petition, brought by the incumbent and churchwarden of St Thomas the Apostle, Killinghall seeking a faculty:
 - i. confirmatory in respect of work undertaken to various trees in the churchyard, namely crown lifting or pruning to three beech trees, two lime, and one each of Lawson Cypress, Irish yew, and Holly.
 - ii. prospective for the disposal by sale of two paintings.

The first matter is uncontroversial and will be approved. On the second, the Diocesan Advisory Committee and the Church Buildings Council have the misfortune to find themselves in disagreement. The DAC commends the sale, whereas the CBC does not.

Procedural history

2. There was a typographical error in the DAC Notification of Advice which appeared to indicate that the proposed disposal was not recommended. However, it is clear from the context that the proposal was in fact recommended, and this has been confirmed to the Court by the DAC secretary by reference to the minutes of the relevant meeting.
3. When the matter first came for directions, I directed that the advice of the Church Buildings Council be sought under the mandatory provisions of rule 9.6(1)(a) of the Faculty Jurisdiction Rules 2015 (as amended).

9.6(1) This rule applies where proposals contained in a petition for a faculty or in an application for an injunction or a restoration order involve— (a) the [...] conservation, alteration or disposal of an article of special historic, architectural, archaeological or artistic interest.

4. There is always a subjective element as to when the Court should (or indeed must) direct consultation with Historic England, the local planning authority and the amenity societies or seek the advice of the CBC. It may be with the benefit of hindsight that I was overly cautious in directing that advice be sought from the CBC in this instance (especially with regard to the monetary value of the two paintings), but my judgment at the time was that it was mandated, and I so ordered. Where consultation and advice is concerned the Court should take the wisest course, which is to act *ex abundanti cautela*.

Church Buildings Council

5. The CBC responded in an email dated 3 November 2023 from Tracy Manning, Church Buildings Officer (Conservation), under the Council's delegated advice policy.

The application relates to the proposed sale of two paintings, *Reclining Magdalene*, 19C, after Pompeo Batoni (donated by a local family before 1985), and *Holy Family with St John the Baptist*, 19C, after Andrea Schiavone (donated by Canon Elliston, possibly in the 1940s). In 2016 the Magdalene painting was intended to be sold to fund the conservation of the St John painting, but this never happened, and they have been stored in the church ever since.

Both paintings have a connection to the church and contain religious subject matter, although it can be argued that the St John painting has a stronger connection due to its established provenance. The paintings are both now in poor condition, partly due to their storage conditions since 2016.

The Council has a strong presumption against the sale of church treasures, except in rare circumstances, such as exceptional financial need, or when the objects themselves are at risk. Neither case is evidenced here. Its approach in its treasures guidance also encourages careful consideration before disposal is allowed for objects that have a strong connection with the church, including through their provenance and connection with the church as a place of worship and mission. At Killinghall, the paintings reflect the continued use of the church and dedication of parishioners over many decades.

The paintings are likely to benefit greatly from conservation, and the parish has received two quotes from accredited conservators for their treatment. The Council would encourage the conservation of the pictures and their retention in the church; and at the very least, their storage in suitable conditions. Although they may not be current taste, there may come a time in the future when the parish may wish to conserve and display the paintings.

The Council would discourage the sale of items on the grounds that they appear surplus to requirements at the current time.

6. I afforded both the petitioners and the DAC an opportunity to comment upon the observations of the CBC.

The petitioners' response

7. The petitioners considered the stance of the CBC to be unrealistic. In a written submission to the Court dated 27 November 2023, Dr Sue Macdonald (a churchwarden) states that the church does not have the money to do anything but continue to store the paintings as they have been since they were removed from the walls of the church in 2016. They can only be stored in the church itself as the only other room is the vestry which lacks the capacity and is equally damp.

8. Dr Macdonald continues:

The PCC regret that the storage in the church has resulted in further deterioration to the paintings. The walls of the church are damp, and they would not be in any better condition had they been hanging. Existing members of the PCC are not those who had anything to do with the removal of the paintings. The work to deal with the damp is progressing under the guidance of Stuart Holland. It is slow and expensive and as a church we do not have any spare capital, investments, or other assets to use. We are facing huge financial challenges just keeping the building open and in as good a condition as possible. We respectfully request that we be permitted to sell the paintings and use any money received for the essential works required. This is better for the paintings as well because left in the church they will simply rot away.

The Diocesan Advisory Committee Response

9. The DAC responded, through its secretary, in an email dated 27 November 2023, as follows.

The Committee noted the CBC's comments and assessment of the paintings as church treasures. It weighed these against the PCC's research into their origins and summary of their status within the recently reordered church. Notwithstanding the fact that the paintings reflect the continued use of the church and dedication of parishioners over many decades (as noted by the CBC), the Committee did not see the paintings as being exceptional in evidencing this and, on balance, deemed the significance of the paintings to be limited. Further, the PCC does not have the available funds for restoration and has no particular inclination to seek grant funding as the display of the paintings does not particularly align with its mission, meaning that the paintings are liable to further deterioration if retained in the church.

Although the Committee would usually support the underlying position of the CBC and presumption against sale of church contents, in this instance the Committee's view was that the paintings would be better served by being sold to someone with the means and motivation to conserve and display them. It therefore upheld its previous recommendation, notwithstanding the objections of the CBC.

The relevant law

10. The CBC, entirely properly, point to the strong presumption against the disposal of church treasures. The term 'church treasures' was defined by the Court of Arches as meaning 'articles of particular (or special) historic, architectural, archaeological or artistic interest falling within the faculty jurisdiction': see *Re St John the Baptist, Penshurst* (9 March 2015, unreported) at para 24, adopting the wording of what is now to be found in rule 9.6 of Faculty Jurisdiction Rules.

11. It is said that petitions involving the disposal of a church treasure 'should seldom be granted without a hearing in open court': see *Re St Peter, Shipton Bellinger* [2016] Fam 193, para 23, following *Re St Lawrence, Oakley with Wootton St Lawrence* [2015] Fam 27, para 19, and *Re St Gregory, Tredington* [1972] Fam 236, [1971] 3 All ER 269, Ct of Arches, although the oft-cited *Tredington* decision pre-dates the introduction of disposal on written representations. Some special reason is required for the disposal

of church treasures, sufficient to outweigh the strong presumption against sale. See by way of example *Re Coombes Parish Church* [2016] ECC Chi 5, where a faculty was granted for the corpus from a medieval Limoges crucifix to be placed on permanent loan in the cathedral treasury.

12. Care must be taken, however, to differentiate between the disposal of church treasures, properly so described, and the disposal of church property generally: see *Re St Mary Magdalene, South Bersted* (3 September 2014, unreported), Chichester Cons Ct, and *Re St James the Great, Flockton* [2016] ECC Lee 4.

Are these paintings church treasures?

13. Kate Higgins, Director of Thompsons Auctioneers (Harrogate) Ltd has valued the paintings at £120-£150 each. This financial value militates against them being treasures as such, although monetary worth can never alone be determinative.
14. Ms Manning of the CBC categorises both paintings as treasures, apparently on the basis (i) of a connection with the church and (ii) the religious subject matter. Her assessment or assumption that they should be so categorised then led her to apply the CBC guidance on the disposal of church treasures. In fairness to her, her assumption may well have been based on, or fuelled by, my referral under rule 9.6, from which it could be inferred that I considered the paintings to be of special historic, architectural, archaeological, or artistic interest. She may also have been influenced by the typographical error in the DAC Notification of Advice. The better, though bolder, course might have been to decline to give advice, on the basis that the gateway criterion was satisfied. But it is easy to be wise after the event and I make no criticism of Ms Manning for assisting the court in good faith. I asked for advice, and I received it, carefully expressed by reference to relevant principles.
15. However, on the basis of the totality of the information now available, I consider that my rule 9.6 referral was probably unjustified and inappropriate. Having reviewed all the information before the Court, I do not consider that either picture is properly categorised as ‘an article of special historic, architectural, archaeological or artistic interest’ nor should they be classed as church treasures.

Assessing the conflicting evidence

16. Both the DAC and the CBC have advised. The Court lacks any inherent expertise (though it has considerable experience) in matters of historic, architectural, archaeological, or artistic concerns. It relies on the collective expertise of, amongst others, these two statutory bodies. It is rare for the advice of the DAC and CBC not to coincide, and when it does the Court must consider the dissonance with great care. In this instance, I have concluded that I prefer the advice of the DAC to that of the CBC. I consider that the DAC’s local knowledge and pastoral concern give it an advantage over the more distant desktop assessment carried out by the CBC under its delegated advice policy.

Outcome

17. This matter has been given a more than usually thorough examination. It has been considered by the CBC, and the DAC has revisited its initial assessment. These paintings have a very modest value, and their real connection with the church is tenuous. There are no local objections to the sale. They have been stored for several years and are unlikely ever to be put on display in the future. They are deteriorating where they are currently kept and will continue to deteriorate even if re-hung on the walls of the church. There seems to be no reason to retain them and every reason to dispose of them to a collector or restorer.

18. All factors militate in favour of the grant of a faculty for the disposal by sale of the two paintings and I so order.

The Worshipful Mark Hill KC
Chancellor

13 December 2023