

In the Consistory Court of the Diocese of Chester

And in the matter of a petition for faculty from the church of

Little Budworth: St Peter

Judgment

Introduction

1. This is a petition, dated the 6thJanuary 2025, by the Churchwardens of the church of Little Budworth, St Peter, seeking authority to sell, by auction at Bonhams, a painting entitled '*The Good Shepherd*' (c.1859) by William Dyce FRSE, RSA, RA (1806-1864), a Scottish born painter associated with the Pre-Raphaelite Brotherhood.
2. The painting was introduced by faculty granted in early 1925. It had been given to the church by the Stock family (Brian H. Stock of West Cliff, Lyme Regis, then a parishioner) in 1924, some time after the death of James Henry Stock (1855-1907), Member of Parliament for Liverpool Walton 1892-1906, and in his memory.
3. It was last physically present in the church, I believe, some 50 or more years ago. Since, certainly, 1987, the painting has been subject to a long-term loan agreement, which has now ended, with the Manchester City Galleries. A reproduction of the painting has hung in the church since some time after removal of the original.
4. The petition is formally unopposed. The Parochial Church Council (PCC) unanimously supported a sale at a meeting of the 4thNovember 2024; the Diocesan Advisory Committee (DAC) recommended I grant the faculty sought at its meeting on the 23rdMay 2025. Aware that the Church Buildings Council (CBC) had reservations about sale, I directed they be given special notice. The Council did not wish to become a party opponent.
5. The Council's position was helpfully summarised thus, in a letter from Tracy Manning, Senior Conservation Officer, of the 17th October 2025: "...the Council advises that various options should be considered, that take into account the significance of the painting, its current condition and whether it might be retained within the church or kept on loan elsewhere. The Conservation Grants Programme can offer significant funding towards conservation reports and conservation work. In short, the Council did not object to the sale of *The Good Shepherd*, but stated that it would not support it, in accordance with its guidance, which should be given due consideration. This guidance makes it clear that sales should be 'sparingly exercised' and that a strong justification needs to be made in order for the Chancellor to make their decision. The Council did not feel a strong case had been made in this instance. However, it would not wish to become party opponent to the proceedings'.
6. No objection was received pursuant to public notice of the petition between 4thJuly and 3rdAugust 2025.
7. However, given that authority and guidance make clear that any disposal of what has come to be called a 'church treasure' is a matter of legal and practical significance and

that there is a strong presumption against sale, I have considered it right to set out something of the background and my reasoning. Authority suggests that in general such matters (and, in particular, where proceedings are opposed) necessitate a hearing in open court. I have not judged that to be necessary in this particular case. I have had ready access to a good deal of written material and to useful photographs. I am satisfied it is reasonable and proportionate, in the circumstances, to address this important decision ‘on paper’ alone.

The Church

8. St Peter’s church is a post-medieval Grade II* church in the Little Budworth Conservation area. It forms part of a united benefice with St Mary, Whitedgate.
9. It has an electoral roll of 39 and a relatively stable, post-pandemic, Sunday attendance (at the single Sunday service) of 12-18, mainly older people. The current incumbent is due to retire in 2026. 25 people are considered ‘regular givers’, generating some £20,000 per year (2024 figures). The total assets of the church at the end of 2024 stood at £130,984, a reduction of £10,286 on the preceding year. Total income for 2024 was £38,604 and expenditure £48,889. It is anticipated that this level of loss will continue unless income from regular giving and fund-raising activities can be increased. The Church Treasurer has candidly commented: ‘For a number of years now, we have been using our existing capital to cover losses. Despite our best efforts to mitigate losses, it is anticipated that this trend will continue’. The petitioners (the Churchwardens) have said, bluntly, ‘with running costs and expenses, we shall be using our reserves just to stay open’.
10. Like many rural churches, the church is said to be difficult to heat. It is poorly insulated and troubled by damp in colder months. The walls are of sandstone. There are single glazed, metal framed, windows. The roof void requires insulation and the existing and inefficient oil-fired heating system requires replacement by something more cost effective and environmentally friendly.
11. The petitioners state: ‘If our church is to remain open, we need to make the building more sustainable’. They have reasoned, in support of the petition, that: ‘using scarce financial resources to preserve a work of art would undermine our key [missional] objectives and add a burden of cost which would only hasten the closure of the church, at which point the portrait would again become homeless. Adapting the church to house the artwork would be a very short-term solution’.
12. Further, they have said: ‘We are currently paying our parish share, covering the costs of ministry and church maintenance. By doing so we are currently running at an annual deficit of c.£10,000. Our congregation is small and elderly. It is foreseeable that within the very near future our numbers will decrease and our income also decline. The current situation is unsustainable. If we were to invest the sum needed to adapt the church for the purposes of storing a painting, then this will hasten the closure of the church and the withdrawal of parish ministry. The PCC believes that the CBC ruling (sic) takes insufficient account of our primary purpose as outlined in the *Five Marks of Mission*.’
13. The petitioners also referred me to a (rather different) ‘five marks of rural churches indicating their fragile situation’, which have been identified in papers published in *Rural Theology* by the Rural Officer for this diocese.

14. I summarise:

- Dwindling financial resources. Many parishes are covering their costs, particularly Parish Share and maintenance, using reserves. Income is declining and there is a point at which reserves will be exhausted;
- The difficulty in replacing key lay leaders such as Churchwardens, PCC members and Safeguarding Officers. It has, as governance and compliance duties have increased, become increasingly difficult to recruit and retain lay leadership in rural parishes;
- A lack of younger people, children and leaders able and willing to lead and teach them;
- The increased burden of administration and maintenance falling upon clergy who are often stretched between several parishes and frequently exhausted in a ministry focused merely on 'keeping things going' rather than growth and strategic development.
- Small congregations mainly consisting of people over 75 years of age. It is foreseeable that within the next decade many rural churches will cease to be viable.

15. The petitioners added: 'We recognise all of the above within the current situation at St Peter's'.

The Painting and its condition

16. William Dyce was born in Aberdeen and died in London. He played a part in the early popularity of the Pre-Raphaelite Brotherhood and had a taste for biblical and religious subjects. In 1844 he was appointed professor of fine art at King's College, London, and in 1848 became a full member of the Royal Academy of Arts (London). At least one painting, a landscape, (Pegwell Bay, Kent) is in the Tate Gallery in London.
17. He is a nationally, if not internationally, significant Scottish painter of the 19th century, who has worked in easel and mural painting, including, in the latter case, in the Houses of Parliament (the Baptism of Ethelbert, King of Kent, in the Lords' Chamber).
18. The painting itself shows a full-length Christ, with a lamb in one arm and a crook in his hand, guiding sheep through a narrow opening into an enclosed field. A commentator suggested 'the landscape of rolling high country is reminiscent of Ayrshire or Galloway where Dyce painted landscapes in the 1830s.....the scene is overtly, even aggressively, contemporary'. [See Appendix].
19. The framed dimensions are 108.8cm high; 95.8cm wide and 8.5cm deep. The work is not oil on canvas, rather oil on paper, mounted (with animal glue) on a canvas stretcher - factors which the CBC readily conceded would complicate its conservative treatment. Conservation issues were characterised by the Council as 'complex but not insurmountable'.
20. The painting is in an oak and gilded frame, last conserved, I believe, in 1991.
21. A report by MCG Conservators of January 2011 (building on earlier investigations of 1987 and 2006), revisited (in an 'exit' report) by Claire Grundy of Manchester City Galleries in December 2024, confirmed damage to the canvas and frame, much of it old.

Deterioration and mould growth were considered due to the painting being stored in '100% humidity *and* a very dry storeroom (whereabouts unknown)'.

22. 'Suggested actions' were expressed thus: 'Monitor very regularly, photograph out of frame every 2 years, reduce exhibition time, ensure the work remains within 45-55% RH at all times, consider not displaying, consider return. Treatment options would be limited. These issues can only really be fully corrected if the item is removed from the strainer and fully conserved with expertise from both paper and painting specialities. This conservation project would be complex and very costly in terms of man-hours'.

The Painting and its movements

23. Dates, I regret to say, have not been presented as precisely as I might have wished. I have struggled to identify when precisely the original was first removed from the church wall.

24. It appeared that, certainly by 1977, the painting was visibly deteriorating, due largely, it was believed, to atmospheric conditions in the church. In 1978 it was sent to the Walker Art Gallery, Liverpool, where 'minimal restoration' was carried out. The painting remained in Liverpool, on loan, until its transfer to Manchester City Art Gallery in 1987, where it remained (again, on loan) until 2024, when the parish was advised the painting was no longer wanted. The prospect of its physical return understandably concerned the churchwardens and PCC, with the result that arrangements were made for its collection by Bonhams in December 2024, where I believe it remains pending a decision as to its future.

25. It was, I believe, the Manchester City Art Gallery which provided the church with the print of the painting which currently hangs in the church and has done for a considerable time.

26. The Bonhams 'as seen' valuation or asking price for the painting is £100,000-150,000. As the CBC 'Brief Guide to Disposals and Loans' (May 2024) ('the Guidance') prudently says, however, 'parishes need to be aware that a pre-sale estimate is no guarantee of actual price achieved at auction and is often set at a high level to encourage a sale. Prices achieved at auction are driven by fashion....'

The Painting and other galleries

27. The parish has had no success in its exploration of alternative options for the display of the painting.

28. The Walker Gallery has had no interest in its display, having already transferred the painting to Manchester. The Manchester City Gallery has chosen to relinquish it and is not interested in its reacceptance.

29. The Aberdeen Art Gallery (Dyce's birthplace) considered the artist well represented in its collection. The gallery had no plans in the foreseeable future for forthcoming exhibitions or displays which could include *The Good Shepherd*. They no longer, in any event, generally considered long term loans, and were unlikely ever to want to buy this painting.

30. The Victoria and Albert Museum, similarly, explained they were operating under directive to reduce incoming loans and were not interested in buying the painting.

31. Several other galleries, sounded out informally, made abundantly clear that lack of funds and budgetary constraints prevented them being able to help.

The Parish's dilemma

32. This is not one of those cases where the parish prays in aid a particular financial crisis or existential 'emergency' as the justification for a sale. The issues are rather wider in scope.
33. The painting has not itself been displayed, as it has been put, for 'over fifty years' and is adequately represented, *in situ*, by the print. The artwork itself deteriorated whilst previously on display and the parish considers there would, in their particular financial and congregational circumstances, be no defensible justification for its reintroduction.
34. They have concluded they simply do not have the funds to appraise, and then implement, the complex conservation and restoration work plainly required. They are convinced that necessary works to effect the required environmental changes and a 'security upgrade' are, practically speaking, unaffordable and, in any event, should not be prioritised over the undoubted need for maintenance and improvement more generally to the fabric of their significant building, the earliest parts of which date back to 1490-1526 in respect of the tower, and 1798-1800 of the remainder.
35. In response to my enquiries as to their priorities, the Churchwardens have made clear the desire to insulate the roof void, replace the boiler and heating system, improve external paths and renew internal and external signage. More modest ambitions include the provision of large print service books and some augmentation of running costs in the face of their continuing deficit.
36. Some, necessarily fairly imprecise, costings have been ventured for my consideration: Insulation of the roof void £11,700; a security system £4000 (with annual running costs of £750); upgrading of locks £1500; additional Insurance premiums £1000; increased annual heating requirement £2000; provision of a sealed/protective frame £2000-3000. They suggest even a professional assessment of the painting is likely to cost £1000, and the inevitable conservation and restoration works to follow, an unpredictable and unmanageably large sum.
37. They consider, despite their best endeavours, that they have not succeeded, and in the current museum and gallery financial climate are unlikely to succeed, in identifying a suitable alternative gallery location for further loan – both previous recipients having now, decisively, brought arrangements to an end.
38. Given the fragility of parish finances, the very modest congregational profile and the indisputable existing fabric needs, the petitioners argue that it is simply not possible for them to provide and sustain the facilities required to reinstate the painting into the church without seriously impacting their viability – in short: 'we cannot afford for a painting that has not been displayed for 50 years to be returned to St Peter's'.

The Diocesan Advisory Committee

39. As I have already said, the DAC has recommended I grant the faculty sought. I have, throughout my time as diocesan Chancellor, been consistently assisted by the particular blend of local knowledge, professional expertise, church experience, practical realism and robust judgement which successive Chairs, Secretaries and members, have brought to their task. The Committee's views merit very considerable respect.
40. The Committee found itself sympathetic to the parish's reasoning. The DAC secretary helpfully summarised the reasons thus:

- The painting is not original to the church building;
- There is a reproduction on display at the church (which will continue to be on display) so sale of the original will not cause any visible change in the church;
- The original has not been at the church for over 50 years.
- The parish does not want the liability of having to keep the original in the church;
- The environment in the church is not suitable for the original and the church is not financially resourced to upgrade its environment and security to make it more favourable for keeping the original there;
- The parish is not financially resourced to carry out restoration to the painting;
- The parish has not been able to find another museum to take the painting on loan.

The applicable law

41. A great deal of jurisprudence has been generated around disposal of what are generally referred to as 'church treasures'. The modern law is helpfully identified in the Court of Arches decision in **Re St Lawrence Oakley with Wootton St Lawrence (14th April 2014) 2015 Fam 27** and in the important CBC Guidance I have mentioned. Many reported cases pre- and post- Wootton illustrate the application and general approach required. All turn ultimately upon their own particular facts.

42. For present purposes I have identified the following matters of relevance.

- (i) Church treasures should only be removed in the most exceptional circumstances. They are not 'ordinary assets'. They belong to the parishioners and are in the care for the time being of the current generation, who have a duty to have regard to their care for the future. They form part of the ongoing 'story' of the church and of those who have worshipped, cared for and sought to benefit it. They are held in common not only with our predecessors but also our successors. They are not to be idolised, but are expressions of creativity and faith which still have a story to tell and a faith to express.
- (ii) When considering the possible disposal of such a treasure, it is necessary to adopt a sequential approach, considering, first, whether disposal by loan is appropriate and can be achieved ('disposal by loan'); thereafter, if that is not possible, to consider a disposal by 'limited' sale to a museum, art gallery or other institution ('disposal by limited sale'); finally, if the second option is not possible, to consider sale, regardless of who is purchaser, to whoever will pay the highest price ('disposal by outright sale'). The interests of 'public visibility' will normally prevail where the consistory court is considering a proposal for the sale into private hands (and possibly abroad) of an article of local (or possibly national) interest or distinction.
- (iii) When it comes to consideration of sale, the starting point is that there is a strong presumption against sale. In order for petitioners to succeed in overcoming that strong presumption they must demonstrate that there are factors of such weight, either individually or cumulatively, that they demonstrate that the grounds are sufficiently compelling to outweigh the strong presumption against sale.

Jurisdiction to allow sales is to be ‘sparingly exercised’. ‘Sales will rarely be permitted because of the strength of the presumption against sale’.

- (iv) ‘Qualitative weight, including the cumulative weight of individual factors, some or all of which may not be specially rare, is all that has to be identified; and the requisite weight is that which is sufficient to outweigh the strong presumption against disposal by sale’ (Wootton, paragraph 51).
- (v) ‘Financial need’ falling short of ‘financial emergency’ will seldom on its own outweigh the strong presumption against sale; but it can and must be weighed with any other factors favouring such sale. It follows that a critical or emergency situation will carry more weight than more normal (and near universal) pressures on parish finances, but it is neither possible nor desirable to develop criteria for an emergency situation that would put a case into a distinct category (paragraph 52).
- (vi) ‘Separation’ – where an item has been housed for a considerable amount of time in some place other than the church – will normally attract little weight as a reason for disposal by sale, the more so where an item has a significant past connection with a church or parish and its history. The matter needs to be looked at in the round in the context of a strong presumption against disposal by sale. There may be circumstances in which ‘separation’ may not be entirely incapable of supporting the case for sale, but there will be additional caution if there appears to be any hint of petitions for loans being manufactured as stepping-stones towards disposal by sale.
- (vii) Insurance and security are always matters of concern, but it is important to remember that there is no legal requirement to insure for full market value and that a determined thief may always succeed, despite whatever reasonable measures are put in place by a parish. As the Guidance, perhaps not entirely reassuringly, says, ‘Any loss would therefore be of a treasured possession, not one measured in financial terms’. Generally speaking, ‘parishes should not seek to dispose of valuable articles merely because they could not afford full insurance cover’.

Discussion and Conclusion

43. I have concluded, essentially for the reasons identified by the DAC, that this is one of those comparatively rare cases where I can properly determine that the ‘cumulative weight of individual factors’ is indeed sufficient to outweigh the strong presumption against disposal by sale.
44. The regrettable reality is that fifty or more years ago it was the fact that the painting had begun to suffer harm by its presence in the (occasionally damp) church and that relocation had become a practical necessity. Two lengthy periods in leading galleries followed, the first ending in about 1987, the second in 2024. Neither of those galleries has expressed any wish even to retain, let alone buy, the painting. Other galleries which have been approached more recently have responded negatively to suggested options, a number plainly reluctant to ‘take on’ new loans at all, or to expend resources on paintings they feel may not sit well in their public collections.

45. I suspect this may not be an entirely new development. The CBC guidance makes reference to 'a perception that some museums are increasingly reluctant to act as repositories for treasures on loan from churches'. I do not doubt the Council has, as it has claimed, 'a good working relationship with the main national museums'. No practical suggestion, however, has been forthcoming here as to institutions which the petitioners ought to have approached. I am persuaded that they have made reasonable enquiries in both England and Scotland, with, unfortunately, negative result.

46. There is no doubt that this painting now requires complex, time consuming and, no doubt, costly work of restoration and repair. I have not been provided with precise figures, but the condition description available left me persuaded restoration was likely to be very costly. Again, the Guidance makes reference to the availability of conservation grant programmes and projects to support parishes facing such dilemmas. The petitioners in this case have not explored such options. They have rather determined on principle that it would not be right or realistic to divert even a part of their limited funds to restoring a painting from which they have been, now, 'separated' for so long.

47. The painting was, it is true, the gift of a parishioner, given in memory of a, now long gone, relative. It was, no doubt, intended to beautify the church as well as commemorate an individual. It was not original to the church building, created especially for the church, nor did it sit in any pre-designed or dedicated space within the fabric or architecture of the building.

48. A reproduction, of reasonable quality, is on display and will remain so, thus securing at least part of the original donor's intention. No continuing local connection to the family appears to have been discerned during the notice process.

49. I have been provided with very approximate estimates of what the parish consider may be required to enable re-introduction of the original painting to the church. Again, these are significant sums which, in the current financial situation of the parish, have been determined to be effectively unaffordable – absent some readily available capital. I have concluded that it is highly unlikely the petitioners will choose to restore or reinstate the painting in the church. Even basic long-term storage in sympathetic conditions may be challenging and costly to arrange, and can hardly be said to honour the artist or his work.

50. The congregation itself is small, troubled by issues typical of ageing, rural, church communities, and the core of 'givers' is finite. As I have explained, this is not a case argued by the petitioners on the grounds of 'financial emergency' (with all the difficulty of defining properly such a crisis). Rather, the petitioners have stressed the pressing wider needs presented by merely 'keeping going' in a significant and historic Grade II* building. Set against their 'wish list', if I may so term it, restoration and reintroduction of this particular painting perhaps understandably must take second place, even where it is, as I conclude, an item of value and interest. There are, I have concluded, pressing buildings and ministry needs which should be prioritised here.

51. This is not a case where any evidence suggests the pattern of previous loans has been 'working up' to a sale request, merely to supplement funds. On the contrary, the petitioners have found themselves, not once but twice, involuntarily faced with decisions about how to manage relinquishment of the picture by experienced gallery curators who have no longer wanted to keep it.

52. I have concluded that 'disposal by loan' and 'disposal by limited sale' have been properly and reasonably explored, but without success and that the point of request for 'disposal by outright sale' has now, in some ways unfortunately, been reached. I have considered, but rejected, the option of adjourning a decision and directing further exploration of additional institutions.

53. I have decided, therefore, that I should grant (subject to conditions) the faculty sought, for sale by auction or private treaty (as the petitioners may determine upon advice) by Bonhams, at the best price reasonably obtainable. Sale is to occur within 12 months, or such further period as may be permitted upon application. The copy of the painting presently in the church shall remain on display, with a suitable explanatory notice as to its nature and provenance. The setting of a reserve price, if any, for the sale shall be a reserved matter upon which the petitioners shall secure the written advice of the auctioneers for consideration by the Chancellor prior to sale. The proceeds of sale, after paying the costs thereof, shall be applied by the petitioners to the general funds of the parish.

54. There is permission to apply in connection with any aspect of the sale or management of sale proceeds.

17th December 2025

David Turner

His Honour David Turner KC

Chancellor of the Diocese of Chester

Appendix: *The Good Shepherd* by William Dyce

