

Neutral Citation Number: [2024] ECC Win 3

In the Consistory Court of the Diocese of Winchester

In the parish of Marchwood

In the church of St John

In the matter of: Removal of linoleum paintings from the eastern wall (retrospective) and storage within the church

1. By this petition, the petitioners seek a faculty for the “permanent removal and storage on site of ‘temporary’ wall paintings behind the Lord’s Table on the Eastern Wall of St John’s church which have covered the painted Ten Commandments, Creed and Lord’s Prayer”. Following discussion at the hearing held on the 18th of April 2024, I amended the description of what was sought to “removal of paintings from the eastern wall (retrospective) and storage within the church”.
2. The petitioners are the Reverend Simon Hones, the incumbent now and at the time the paintings were removed, and Mrs Ann Brogan, the parish secretary (who has become involved since the paintings were initially removed). The proposals are opposed by three parties opponent, Mrs Sonia Harper, Mr Andrew Owens, and Mr Reg Martin, who took the lead in presenting the case for the parties opponent.
3. The church building in question is the church of St John, Marchwood. The church was built in 1843 and has been listed at grade II since 1987. Its significance as a listed building seems to me to reside particularly in its architectural quality, and the quality of its internal fixtures and fittings (said in the list entry to be “all C19 originals”).
4. The paintings the subject of this petition also make a contribution to significance. The consensus is that they were painted by the wife of the then incumbent, Mr Charles Lambert Coghlan. Which wife they were painted by is in dispute. It is established by photographic evidence, in the form of a postcard helpfully provided by Mrs Harper, that the pictures have been in position since before 1914 at least. The best hypothesis appears to me to be that they were painted by the first wife, Isabella Sarah Coghlan, who died in 1896. She also appears to have made a painting depicting the outside of the church building. That would place them firmly in the 19th century, but either way they are of some considerable age.
5. Some historical significance derives from their association with Mrs Coghlan, whichever one it may be, particularly as it is unusual to find the work of a female artist from this period in a church building. Furthermore, the method of painting (oil on linoleum) is also unusual and of some interest. The paintings themselves are of good, although not exceptional, artistic quality and expression.
6. There was some debate at the hearing as to whether the paintings are properly regarded as ‘temporary’ or not. I find the evidence for that claim to be circumstantial at best (e.g. the

fact that the paintings were done on linoleum and not varnished), and unconvincing. I tend to agree with the Parties Opponent that it does not make sense to describe as temporary paintings which have been in place for over a hundred years, and which have been a feature of the church for the majority of its existence. In any event, there is no dispute that a faculty is now required for their removal.

7. The quinquennial inspector report of 2018 noted in respect of the paintings that their condition was deteriorating and that “further research would be needed to determine the significance of these and whether conservation should be carried out”.
8. The paintings were taken down in August 2019 after it was noticed that they were buckling and part of the decoration behind was visible. Mr Hones takes full responsibility for the failure to follow procedures, and the failure to seek advice from the DAC or Archdeacon. He says that he was acting under the mistaken belief that it was permissible to conduct a “temporary experiment”, without any form of authorisation, before deciding whether to apply for a faculty. I have no reason to question the genuineness of that belief, mistaken although it undoubtedly was.
9. Mr Hones also accepted that it was not appropriate to have taken the paintings down without seeking advice from someone with expertise on the conservation of historic paintings.
10. Since that time, I understand the paintings have simply been stacked on the floor. Mrs Harper explained that she sought professional advice from the Hampshire Cultural Trust, which advice was provided on 23 August 2019. That advice was to the effect that the paintings should not be stored in this way. Mr Peter Martindale, a well-respected conservator latterly consulted by the Petitioners, correctly reports that the paintings were stored “with little care for their nature and condition”. Mr Hones explained that the outcome of the faculty proceedings was awaited before any decisions were taken about storage.
11. The congregation and PCC have since been consulted and preferred the option of permanent removal and storage of the paintings, hence this application. The main reason for this is aesthetic, in that the PCC and congregation apparently prefer the appearance of the paintwork underneath the paintings to the paintings themselves, which the Petitioners describe as “dark and dull”. These alleged benefits are hotly contested by the Parties Opponent.
12. The Parties Opponent drew my attention to the secular regime of listed building control. Those provisions do not apply to works within a Church of England church, because the church benefits from the ecclesiastical exemption from listed building control. The corollary for that freedom is that the church has its own equivalent system of approval, namely the faculty jurisdiction administered in the diocese of Winchester by this court. The church thereby benefits from a system which is more responsive and sympathetic to its needs than that applying to secular listed buildings.

13. That system (and the justification for exemption from listed building control) depends on those who are primarily responsible for the care of listed churches respecting its requirements. It is an extremely unfortunate feature of this case that the paintings were removed without authorisation. As well as undermining the operation of the faculty system, it seems to me that this also led to very poor treatment of the paintings themselves, which the Petitioners' expert, Peter Martindale, considers has caused damage to them. It is only by good luck that they have not been more severely affected.
14. I am critical of the role played by Mr Honess in this respect. As a very experienced incumbent, he should have known better, and should have taken advice both on the operation of the faculty system and on the correct treatment of historic paintings before taking action. That advice was not hard to obtain. Quite properly, he has accepted responsibility for those failings. It seems to me that he was also under pressure from members of the congregation who had for whatever reason taken a disliking to the paintings, and I accept that he was motivated by a desire to serve those to whom he is called to minister. I also accept his explanation that since 2019 the lack of action to conserve the paintings has largely been caused by factors outside his control, namely covid and the fact that the outcome of these proceedings was awaited.
15. Incidentally, a consequence of the unauthorised removal of the paintings has been that these proceedings have been far more protracted and controversial than would otherwise have been the case. Hopefully now that these matters have been fully aired and considered, everyone can move on.
16. As far as the consideration of this petition is concerned, it seems to me that I must approach it from the same starting point as if the paintings were still in place. That is, I should not allow the unlawful removal of the paintings to influence me towards now permitting their permanent removal. However, these proceedings are not punitive in nature and so by the same token I should not refuse the petition simply because the paintings were initially removed without authorisation.
17. In that context I turn to consider the merits of the proposals against the framework set by the Court of Arches in terms which I do not now set out in full but which indicate that there is a 'strong presumption' against changes to a listed building which harm its significance, and that 'clear and convincing' justification for such changes is required *In Re St Alkmund, Duffield* [2013] Fam 158 and *Re St John the Baptist, Peshurst* [2015] PTSR D40. Paragraphs 21 and 22 of the *Peshurst* judgment set out the guidance of the Court of Arches, as follows:

21. For those chancellors who would be assisted by a new framework of guidelines, the court suggested an approach of asking:

“(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

(2) If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals.....Questions 3, 4 and 5 do not arise.

(3) If the answer to question (1) is “yes”, how serious would the harm be?

(4) How clear and convincing is the justification for carrying out the proposals?
(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building...., will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed”.

22. We make four observations about these questions: (a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. ... (b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. ... (c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see Duffield paras 85-86). ... (d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.”

18. I have already explained my view of the special interest of the church, and the contribution made by the paintings to that. It seems to me that the removal of the paintings has clearly caused harm to the significance of the church, although not harm that I would characterise as “serious”.
19. The asserted justification for removal of the paintings appears to me to be threefold.
20. The first relates to what Mr Hones described as the ‘will of the congregation’. I have regard to that. However, the simple desire of an owner to change a listed building does not in itself amount to a clear and convincing justification of the sort I have to find.
21. The second justification, partly linked to the first, is aesthetic, in that the Petitioners and those behind them claim that the church looks better without the paintings. That is disputed, as I have said, and in any event, I do not think a justification of that sort can justify the removal of historic paintings. The whole premise of a building being listed is that it cannot be altered according to changing tastes about what looks attractive. Furthermore, the complaints about the appearance of the paintings might be remedied to some extent by simply cleaning them as suggested by the Petitioners’ conservator.
22. That leaves the third justification, which applies only in respect of the outer four paintings. Removal of those paintings would expose to view an earlier phase of decoration in the form of the polychromy. Leaving aside any purely aesthetic judgments, it does seem to me that that decoration fits in more harmoniously with the remainder of the east end. It appears to replicate decoration present from a very early stage of the church’s existence.

23. This third strand is a justification worthy of weight, particularly given that the four outer paintings can be stored in the church in a way which continues to allow them to be appreciated. In that way, both contributions to the significance of the listed building can be to some extent preserved.
24. I will therefore grant the faculty sought, but only in part. I will permit the removal of the four outer paintings, on condition that they are restored, preserved and stored in the body of the church in a manner to be determined. I will also impose the further conditions that the three central paintings are restored and reinstated in a manner to be determined, and that the polychromy in the northernmost alcove is restored.

Matthew Cain Ormondroyd
Chancellor of the Diocese of Winchester

18th April 2024