

[2006] 1 WLR

In re St Mary, Longstock (Const Ct)

A

Winchester Consistory Court

***In re St Mary, Longstock**

2005 Oct 5

Mark Hill Dep Ch

B

Ecclesiastical law — Faculty — Window — Installation of memorial window — Whether “memorial” — Whether test of exceptionality applicable — Whether adversely affecting character of church — Whether presumption against change rebutted — Whether faculty to be granted

C

The vicar and churchwardens of a Grade I listed church sought a faculty for the installation of a stained glass window in memory of the wife of a canon who had served in the parish in his retirement. The canon and his wife had contributed to the pastoral well being and living out of the Christian gospel within the parish. The faculty was not opposed and had the support of the Council for the Care of Churches.

On the petition of the vicar and churchwardens—

D

Held, granting the faculty, that since a stained glass window adorned or beautified a church and comprised part of its fabric, it was not a memorial in the strict sense, so that the test of exceptionality relating to the character or service of the person to be commemorated was not appropriate, but that the petition was to be judged on the merits of the proposed window itself; that where the petition related to a listed church there was a strong presumption against change; that the first question was whether the new window would adversely affect the character of the church as a building of special architectural or historic interest; that if it did not affect the character of the church the presumption against change might be more easily rebutted, whereas if it would so affect the church the petitioner needed to show a necessity for change; that necessity was a broad concept embracing more than merely unavoidable repair work and included works necessary for the pastoral well being of the parish; that there were strong pastoral reasons why the window should be erected and the petitioners had rebutted the presumption against change; that the proposed window would not adversely affect the appearance of the church nor its historic, architectural or artistic setting or integrity; and that, accordingly, a faculty would be granted subject to conditions (post, paras 3–5, 7, 9–10, 16).

E

In re St Gregory, Offchurch [2000] 1 WLR 2471 applied.

F

The following cases are referred to in the judgment:

Abbey Church of St Peter and St Paul, Dorchester on Thames, In re the (2002) 21(2) Consistory and Commissary Court Cases, Case 45

All Saints Church, Crondall (2002) 21(1) Consistory and Commissary Court Cases, Case 20

All Saints’, Melbourn, In re [1990] 1 WLR 833, [1992] 2 All ER 786, Arches Ct

Dupuis v Parishioners of Ogbourne St George [1941] P 119, Arches Ct

G

Holy Cross, Pershore, In re [2002] Fam 1; [2001] 3 WLR 1521

St Gregory, Offchurch, In re [2000] 1 WLR 2471; [2000] 4 All ER 378

St Helen’s, Bishopsgate, In re (1993) 12 Consistory and Commissary Court Cases, Case 23

St John the Evangelist, Blackheath, In re (1998) 5 Ecc LJ 217

St Luke the Evangelist, Maidstone, In re [1995] Fam 1; [1994] 3 WLR 1165; [1995] 1 All ER 321, Arches Ct

H

St Margaret’s, Eartham, In re [1981] 1 WLR 1129, Arches Ct

St Mary the Virgin, Sherborne, In re [1996] Fam 63; [1996] 3 WLR 434; [1996] 3 All ER 769, Arches Ct

St Mary’s, Banbury, In re [1986] Fam 24; [1985] 3 WLR 885; [1985] 2 All ER 611, Arches Ct

St Peter, Oundle, In re (1996) 15 Consistory and Commissary Court Cases, Case 29

St Peter's, Walworth, In re (2002) 21(2) Consistory and Commissary Court Cases, A
Case 37

St Thomas, Stourbridge, In re (2001) 20 Consistory and Commissary Court Cases,
Case 39

Wadsley Parish Church, In re (2001) 20 Consistory and Commissary Court Cases,
Case 11

PETITION

By a petition lodged on 18 August 2005 the petitioners, Canon Graham Trasler, Mr Nicholas Tatton-Brown and Mr Christopher Reynell, the vicar and churchwardens respectively of St Mary, Longstock, petitioned for a faculty for the installation of a stained glass window in memory of Jane Bown. B

The case was decided on written representations.

The facts are stated in the judgment. C

5 October. **MARK HILL Dep Ch** handed down the following judgment (by post).

1 This petition is unopposed and largely uncontroversial. However it raises a number of points of general application both within this diocese and beyond and merits a slightly fuller judgment than might otherwise be the case. The petitioners are the vicar and churchwardens of St Mary's Church, Longstock. They seek a faculty for the installation of a stained glass window in memory of Jane Bown, who died in 2003 and is buried in Longstock. Her widower, the Reverend Canon John Bown, retired from stipendiary ministry in 1979 and moved to Stockbridge. In common with many priests, his retirement was marked by active pastoral service, not least as licensed non-stipendiary priest-in-charge of Longstock and Leckford, a post which he held for nearly eight years. His contribution (about which he is commendably modest) to the worshipping community and the church building was considerable and in this role he received the constant support of his wife. D E

2 There is a consistent line of authority in English ecclesiastical jurisprudence to the effect that the grant of faculties for the erection of memorials should be "sparingly exercised": see *Dupuis v Parishioners of Ogbourne St George* [1941] P 119. The ratio decidendi of a leading decision of the Court of Arches indicates that a case of exceptionality must first be made out in relation to the character or service of the person to be commemorated: see *In re St Margaret's, Eartham* [1981] 1 WLR 1129. F

3 However memorials, properly so styled, comprise plaques (be they of brass or stone) together with, for example, the more elaborate funerary monuments beloved of the Victorians. Objects which adorn or beautify the church and comprise part of its fabric are not memorials in this strict sense, albeit they may be erected in memory of a particular individual: see *In re St Peter, Oundle* (1996) 15 Consistory and Commissary Court Cases, Case 29 concerning stone likenesses of an incumbent and former bishop as label stops on nave arches. G

4 I take the view, in this instance, that where a petition is for the installation of a stained glass window, the test of exceptionality is inappropriate. It is therefore unnecessary for me to undertake the invidious task of ruling upon whether or not a case of exceptionality is made out in relation to the character or service of the late Jane Bown and I decline to do H

A so. Rather, the petition is to be judged on the merits of the proposed window itself.

5 Gage Ch addressed in his judgment in the Coventry Consistory Court in *In re St Gregory, Offchurch* [2000] 1 WLR 2471, the application of the presumption against change to listed buildings where the installation of a commemorative window is proposed. This element of his judgment has been the subject of a degree of critical comment: see, by way of example, the perceptive analysis of the Reverend Will Adam, in his article, “Changing Approaches to the *Bishopsgate* Questions” (2003) 7 Ecc LJ 215. It is suggested by Mr Adam that by reversing the order in which the *Bishopsgate* questions are asked and answered, Gage Ch failed to adopt the strict approach of the Court of Arches in *In re St Mary the Virgin, Sherborne* [1996] Fam 63. This is an approach which consistory courts of both the Northern and Southern Province are said to have been “loyally applying” for some years: see *In re Wadsley Parish Church* (2001) 20 Consistory and Commissary Court Cases, Case 11, per McClean Ch. For my part, I concur with the approach of Gage Ch and am fortified in this opinion by the judgments of George QC Ch in *In re St Peter’s, Walworth* (2002) 21(2) Consistory and Commissary Court Cases, Case 37 and Mynors Ch in *In re St Thomas, Stourbridge* (2001) 20 Consistory and Commissary Court Cases, Case 39.

6 The *Bishopsgate* questions in *In re St Helen’s Bishopsgate* (1993) 12 Consistory and Commissary Court Cases, Case 23, in their traditional formulation are as follows. (i) Have the petitioners proved a necessity for some of all of the proposed works, either because they are necessary for the pastoral well being of St Helen’s, or for some other compelling reason? (ii) Will some or all of the works adversely affect the character of the church as a building of special architectural and historic interest? (iii) If the answer to (ii) is yes, then is the necessity proved by the petitioners such that in the exercise of the court’s discretion a faculty should be granted for some or all of the works?

7 “Necessity” is a broad concept. It embraces more than merely unavoidable repair work and includes works “necessary for the pastoral well-being . . . or for some other compelling reason”, to borrow from the judgment of Cameron Ch in *In re St Helen’s, Bishopsgate* a factor also to be found in *In re All Saints’, Melbourn* [1990] 1 WLR 833. George Ch in *In re St John the Evangelist, Blackheath* (1998) 5 Ecc LJ 217, indicated that “necessary” and “necessity” are to be interpreted as “something less than essential, but more than merely desirable or convenient; in other words something that is requisite or reasonably necessary”.

8 Whilst accepting that pastoral considerations are inevitably concerned in any evaluation of the *Bishopsgate* questions, I am not disposed to graft on a fourth question as advocated by Mynors Ch in *In re Holy Cross, Pershore* [2002] Fam 1. Instead, I find myself in agreement with McClean Ch, who stated in his judgment in *In re Wadsley Parish Church* 20 Consistory and Commissary Court Cases, Case 11, para 24:

“ . . . I fear that I am not attracted by the notion of a ‘fourth *Bishopsgate* question’. I believe that the *Bishopsgate* questions provide a framework which enables all relevant matters to be considered. What factors are relevant, and the weight each factor should be given, must

depend on the particular constellation of facts: whether for example, the parish is divided or is faced only with opposition from without. I do not think it would be helpful to develop a *Bishopsgate* catechism and so impose an unduly prescriptive framework on the balancing process chancellors must perform.”

9 The issue to be faced here is precisely the same as that confronted in *In re St Gregory, Offchurch* [2000] 1 WLR 2471. How can the replacement of a sound window (whether of clear or stained glass) with a commemorative window be properly styled “necessary”? Gage Ch concluded, at p 2475, that these were different from the cases of “radical changes in the church, such as alterations by way of extension or alterations by way of reordering” as had been under discussion in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, *In re St Mary’s Banbury* [1986] Fam 24 and *In re All Saints’, Melbourn* [1990] 1 WLR 833. He formulated five guidelines, which he intended to follow in subsequent millennium window cases. These were as follows [2000] 1 WLR 2471, 2475:

“First, as the church is a listed building the strong presumption against change which would adversely affect its character as a building of architectural or historic interest will be adhered to whether or not this is a petition for a millennium window or some more radical alteration to the church. Secondly, in cases involving a petition for a millennium window the first question that the court will ask itself is whether the new window adversely affects the character of the building as a building of special architectural or historic interest. Thirdly, if the answer to the second question is ‘No’, then the court will still need to give effect to the presumption against change to a listed building but that presumption may be more readily rebutted. Fourthly, if the answer is ‘Yes’ to the second question, the petitioners will need to show a necessity for change. Fifthly, when the court is considering whether a necessity for change has been proved different considerations will apply where a window is involved than in cases involving reordering or more radical alterations. It is impossible to set out the circumstances in which the court will find a necessity proved. Each case will vary. Each should be dealt with on its own individual facts.”

An approach, informed on the above principles, has been adopted by Goodman Dep Ch in *In re All Saints Church, Crondall* (2002) 21(1) Consistory and Commissary Court Cases, Case 20 and by Bursell Ch in *In re the Abbey Church of St Peter and St Paul, Dorchester on Thames* (2002) 21(2) Consistory and Commissary Court Cases, Case 45.

10 In *In re St Peter’s, Walworth* 21(2) Consistory and Commissary Court Cases, Case 37, George Ch stated that in all cases involving alterations to listed churches the questions to be asked are as follows: (i) Do the proposed alterations adversely affect the character of the church as a building of special architectural or historic interest? (ii) If they do, what is the necessity for carrying them out? (iii) Does that necessity outweigh the adverse effect? He stated, at para 42:

“... I too consider that the questions are better asked and answered in the revised order, and that this can be done without in any way questioning that ‘the presumption is heavily against change’...”

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A Against this, however, in *In re St Mary the Virgin, Sherborne* [1996] Fam 63, the Court of Arches rejected the argument that the second question (about adverse change to the character of the building) should be asked first. The court expressly stated, at pp 77–78:

B “by the questions and their order we wish to stress the fact that with listed buildings the presumption is . . . heavily against change. To change the order of the questions would, we believe, cause confusion and might seem to some to indicate a relaxation of the requirements before change will be authorised. No such relaxation is intended or desired by this court.”

C 11 There is a danger of descending into too sophisticated an analysis of the *Bishopsgate* questions. They derive from a first instance decision of the highly experienced Cameron Ch; were readily adopted by the Court of Arches in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1; and have been consistently applied subsequently by the appellate court and consistory courts of both provinces. They have brought about a welcome consistency of approach. But, as the earlier quotation from McClean Ch makes plain, they are not a catechism nor a mantra. I do not think it would be helpful for me to reformulate the questions. Nothing is gained by different chancellors articulating subtly nuanced variations of principles of general application. It would be particularly inappropriate for me to do so in this diocese of which I am merely deputy chancellor. However, for the purpose of disposing of this petition, I take as my starting point the fundamental premise upon which the ecclesiastical exemption is based, namely that in the case of listed buildings, there is a powerful presumption against change. The burden of proof lies on the proponent of change, and the burden is not easily discharged. However, where the interests of justice so demand, a consistory court ought not to be compromised in its analysis by too rigid an adherence to the strict order in which the guideline questions are set out.

E 12 In this instance, the church of St Mary, Longstock is a Grade I listed building constructed in 1880. In the opinion of the Council for the Care of Churches:

F “The glazing in the church consists of stained glass in the east window and some others, but nothing is of outstanding quality. The remainder, including the window in question, is a mixture of clear and tinted diamond and square quarries.”

G The proposal is to substitute the existing plain glass in the west window, which consists of two lights, with stained glass. The Council for the Care of Churches considers that this proposal is “worthy of support” and nothing in the papers before me militates against such a conclusion. However, the letter from the Council for the Care of Churches, dated 26 September 2005, voices two discrete reservations. I am grateful to Mr Jonathan Goodchild for the time and trouble he has devoted to this petition and the clarity with which he has expressed the views of the Council for the Care of Churches.

H I am already familiar with the quality of his representations from my experience in the diocese of Chichester and am again indebted to him in this case.

13 The two reservations are expressed with moderation but are particularly pertinent because of the prominence of this window in the west

end of the church. The design drawing, which emanates from Salisbury Cathedral Stained Glass, is said to be “not of high quality: the style is sentimental and the colouring (particularly in the borders, which do not relate to any other stained glass borders in the church) is garish”. In my experience, drawings often fail to do justice to the finished work, largely because they are so much smaller in scale and not fabricated of the same materials. Precise figurative details of St Mary and St John the Baptist are lacking in the small drawing but I think the epithet “garish” is a little harsh. I am confident that a reputable manufacturer such as the one to be instructed here, can make suitable refinements to the colouring particularly in the borders to address this reservation. I would expect a representative of Salisbury Cathedral Stained Glass to visit the church prior to manufacture of the window to ensure a better colour match with other glass in the church. I endorse Mr Goodchild’s favourable comments as to the amount of clear glass incorporated into the design, a welcome feature in an otherwise somewhat dark church.

14 The second reservation concerns the personal subject matter of the stained glass. Mr Goodchild writes:

“Although some personal subject matter in a stained glass design is valid, here it is quite dominant, taking up about a third of the drawing in the two lights, as well as the quatrefoil tracery.”

It is not clear whether Mr Goodchild was referring to the original drawing or to an amended version in which certain alterations had been made, including a reduction in the size of the emblems. The personal matters depict the emblems of the Queen Alexandra’s Imperial Military Nursing Service, with which Mrs Bown was associated, and the Order of St John suggestive of a connection with Canon Bown. I consider it appropriate for these emblems to be present. Our country churches are enriched by personal adornments introduced over centuries. These are dignified and well designed; and, in the later amendment, not as dominant as Mr Goodchild suggests. I note that the diocesan advisory committee, when first consulted, recommended a number of changes including a reduction in the size of the emblems. All of these recommendations were accepted by the petitioners and are reflected in the revised version. Equally the design was amended to include the positioning of saddle bars at the request of the diocesan advisory committee’s stained glass adviser, Mr Rodney Hubbock, whose careful observations I have found particularly helpful. It is apparent that Mr Goodchild may not have had the opportunity of viewing these revisions. I also understand from the registrar that the diocesan advisory committee consider the amended design represents the best visual proportions that can be achieved. I accept this assessment. I do not regard inclusion of the Bown coat of arms as objectionable.

15 I have considered the two alternatives postulated by Mr Goodchild; namely to commission an alternative design of high artistic quality and long-term spiritual significance, or to rework the existing design for a less prominent position in the church. I am not persuaded that either of these is appropriate. It is right to defer to the views of the donor and of the parish. This should not be assessed simply as a work of art. It is to be erected for a particular purpose, to the glory of God, but in memory of an individual well known and much loved in the worshipping community which continues to

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A make use of the church and which supports this particular design in this particular location. Their support, though not determinative, is important. We are not concerned with a cathedral or a large historic church which attracts a significant number of visitors. It is an ordinary parish church in an ordinary Hampshire village. The design, to my mind, as amended to take into account the particular objections, is perfectly acceptable.

B 16 I am mindful of the presumption against change. However, I consider that there are strong pastoral reasons why a window should be erected in memory of Mrs Bown and I note that as a matter of principle, the Council for the Care of Churches has no objection to the introduction of stained glass to the window in the west end of the church. These factors might properly be described as a necessity, in the broader definition given to this term by George Ch. It is reasonably necessary and requisite, as a matter of pastoral well-being and for the living out of the Christian gospel, that the parish of St Mary, Longstock records the life and witness of Mrs Bown. Even if not strictly necessary in the more limited sense of the word, applying the balancing exercise commended by Gage Ch, I have concluded that a good case is made out. I do not consider that the proposed window will adversely affect the appearance of this church nor its historic, architectural or artistic setting or integrity. It may be that a better quality design could be conceived. However, the best is sometimes the enemy of the good. The arguments in favour of this window outweigh any mild adverse effect of the type postulated by the Council for the Care of Churches. I am therefore prepared to grant a faculty on the following conditions: (i) that the colours for the window (and particularly the borders) are to be selected so as to relate with other stained glass in the church; (ii) that details of the proposed lettering are to be submitted to me for approval before fabrication commences; (iii) that the installation is to be supervised by the parish's inspecting architect, Miss Louise Bainbridge; (iv) that the work is completed within 12 months of the grant of this faculty or such extended period as the court may order. The costs of this petition, to include a correspondence fee for the registry, are to be borne by the petitioners, although I anticipate they will be reimbursed by whoever is funding the installation. The introduction of any lettering into the space on the right hand light will need to be the subject matter of an application to vary the terms of the faculty, and I shall reserve that matter to myself.

Faculty granted.

Reported by JESSICA GILES, Solicitor

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