

**ECCLESIASTICAL LAW SOCIETY**  
The Ecclesiastical Law Collection at the Middle Temple Library

CONSISTORY COURT CASES 2007

<u>DATE</u>	<u>PLACE</u>	<u>DIOCESE</u>	<u>CHANCELLOR</u>
9 January	St John the Baptist Aston Cantlow	Coventry	Gage

Removal of medieval timber ladder leading to ringing chamber and replace with a metal spiral staircase, reusing the existing ladder between ringing chamber and silence chamber. This will involve some alteration to the floor of the ringing chamber and also excavation to provide a concrete base for the staircase which in turn will require archaeological investigation. The CCC argue that this scheme will compromise the ancient beams and have proposed an alternative scheme by way of a balcony with two vertical supports and the use of two vertical ladders. This, however, means attaching vertical supports to one of the ancient beams and therefore provides no practical alternative. Faculty granted

10 January	St Mary, Sledmere	York	Collier
------------	-------------------	------	---------

Private petition for exhumation of the bodies of Sir Mark Sykes and his wife from sealed lead coffins in the churchyard at Sledmere. Sir Mark died in 1919 of Spanish flu and his wife was buried in the same grave when she died in 1930. The petitioner Professor John Oxford a world renowned influenza virologist is leading a team in researching the genetic structure of the virus to gain an understanding of the spread of the virus which could have a profound impact on the approaches to the clinical treatment of avian influenza. His belief is that bodies which have been encased in lead coffins will be better preserved from which to obtain lung samples. Permission has been granted by Sir Mark's surviving family, six grandchildren. Chancellor satisfied that this petition if presented as part of a piece of bona fide medical/scientific research and this coupled with other considerations makes it an exceptional case. Faculty granted.

11 January	St Mary and St Nicholas Leatherhead	Guildford	Jordan
------------	--	-----------	--------

Restoration and reinstallation of an 18<sup>th</sup> century organ. Over the years the organ has been partly repaired and moved and consequently damaged in a fire. Proposals to reconstruct the organ has been costed at £200,000 with Heritage Lottery Funding of 90% of cost. The church is working



10 May      St Margaret, Angmering                      Chichester                      Hill

Demolition of existing office and construction of a meeting room, WC, kitchenette and office; construction of a new main entrance and reordering to include removal of pews, pulpit and choir stalls and repositioning of lectern and font. Opposed by Victorian Society, Ancient Monuments Society and Society for Protection of Ancient Buildings as well as 11 objections from individuals. Agree that works will have an adverse effect on the character of the church but the necessity proved for the internal reordering is such that it justifies this. The existing extension is post war and of little architectural merit, planning permission has been granted for new extension and necessity proved. New main entrance involving breaking through of an aperture in west wall of the Gratwicke Chapel is most contentious issue but again necessity proved although concern over amount of glass in the facades of both extensions. Faculty to be granted on condition that extent of glass be reduced which will require revised plans.

10 May      St Martin of Tour                                      Guildford                      Jordan  
                  Epsom

Re-ordering west end of church and associated works including removal of pews, removal of panel in south aisle, access ramp to west door, use of coffee station and servery and installation of toilets. Objections on the grounds of lack of consultation; changes to the original plans; lack of adequate costings. Faculty granted for all but the ramp.

15 May      St Mary, East Leake                                      Southwell                      Box

Reordering of Grade I Listed Building dating from 11<sup>th</sup> Century in order to make the church more flexible for different forms of worship, to maximise the use of the building and to better comply with H & S legislation and the DDA. In 2004 a faculty was granted for removal of four front pews. This petition includes installation of tea bar (either internally or externally), disabled toilet, new flooring in Nave, under floor heating, provision of ramp and hand rails, new drainage and new electrics. DAC, SPAB and English Heritage consulted and largely agreed to proposals within the church but not to an extension for the tea bar. Three formal objections from parishioners to the loss of seating capacity (but not the actual replacement of pews), relocation of font, loss of children's area, floor levels and the preference for the tea bar and toilet to be in an extension, not inside the church. Bishopsgate principles applied. Faculty granted.

21 May          All Hallows, Kirkburton          Wakefield          Downes

Order of exhumation of cremated ashes of father to be re-interred in same graveyard as the mother. Documents to prove it was always the intention to be so but proved impossible because of the churchyard layout. Circumstances dictate that the application just crosses the border of special circumstances therefore faculty granted.

13 June          Anonymous          Birmingham          Carslake

Petition for the exhumation of sister's ashes to be reinterred nearer her natural family. She was the victim of murder 23 years ago and her body cremated and buried in a cemetery far from the family home to ensure privacy from an intrusive media. The family realise their mistake and cannot come to terms with where she now lies. Chancellor accepts that there are exceptional circumstances and petition is granted. Details to remain undisclosed to prohibit further intrusive media.

19 June          St Margaret of Antioch          Chichester          Hill  
West Hothly

Modest re-ordering to interior of Grade I listed church to include removal of choir stalls. Four letters of objection. Documentation submitted shows there is no regular choir and that the pews dating from 1920's were unlikely to have been designed for this church. Incumbent has consulted widely and has majority support including DAC. Faculty granted with choir stalls to be stored.

30 June          St Mary, Worplesdon          Guildford          Jordan

Re-ordering of the chancel to include temporary removal of some choir stalls, extension of the dais to provide space for a nave altar and reorientation of the pulpit staircase in order to introduce some space and flexibility while respecting the present appearance of the church. Nine objections to the cost and to changes that would adversely affect the style of the church. Suggestions that those who want change should worship in the more modern church in the same parish but this would be divisive. Cost has been considered and the church in funds. Faculty granted

2 July          St Mary's Church, Goring by Sea          Chichester          Hill

Petition to exhume cremated remains of son from one part of the garden of remembrance to another. Son was murdered at the age of 21 and a plot chosen with tablet installed which the mother could see from the path until another tablet was installed directly in front of her son's.

Exceptional circumstances arising from the profound grief of a mother at the violent death of her son and her misapprehension as to the exact nature of his final resting place. Petition granted

7 July            Alfred George Hope            Newcastle            McClean  
Deceased

Petition to exhume cremated remains from one cemetery for re-interment in another to lie with those of his wife. No exceptional circumstances, legal principles binding. Petition dismissed

16 July            St Mary, Chiddingfold            Guildford            Jordan

Construction of a church room in a natural contour of the churchyard, therefore partially subterranean, with the roof turfed, thereby presenting a continuous sward of grass. Planning permission was denied for the building of any structure attached to the church. Need for more accommodation for Sunday school attendees. Planning consent has been obtained but awaiting decision of the Government Office. Objections from two residents who live in the lane bordering the churchyard to the removal of a yew tree which is subject to a preservation order, drainage & flooding (of which there is a problem in that area) and compatibility with neighbouring properties. Chancellor satisfied that objections to the petition have not made out a case that merits its refusal. Faculty granted.

25 July            St Peter & St Paul            Chelmsford            Pulman  
Little Horkesley

Extension to west elevation to provide toilets and tea making facilities. Ten Parties Opponent on the grounds of wrong place, damages overall look of the church, too close to graves, inadequate consultation and a free standing building would be preferable. Proposal supported by the DAC, PCC and Planning department. There had been continuous informal consultation by way of repeated insertions in the Parish Magazine and an electoral roll vote was 77 in favour and 4 against. Opposers offered alternative solution of an outside toilet along the northern boundary and cupboards built at the back of the north aisle to accommodate a sink and refreshment facilities. Bishopsgate questions referred to. Faculty issued.

31 July          St Peter & St Paul, Chingford          Chelmsford          Cameron  
Kay and  
Tattersall

An appeal against the dismissed petition for installation of telecommunications base station in upper part of tower of church. Petition dismissed on grounds that the church would become party to any pornography it might be used for. It has been shown that church authorities at every level recognise that, although capable of misuse, the installation of mobile phone equipment was something that could, subject to appropriate safeguards, be approved in principal. Faculty granted.

10 August      Re: David Flower, deceased          Manchester          Tattersall

Exhumation of cremated remains from churchyard of St Elisabeth Reddish Stockport for reburial in unconsecrated grave in Highfield Cemetery, Bredbury Stockport. Mr Flower's wife was severely depressed at the time of his funeral and arrangements were made by her children who chose St Elisabeth as being close by. She is upset that no headstone is allowed, that the graves are walked over and fouled by dogs and that flowers are often stolen. She herself has bought a plot in Highfield Cemetery where her sister is buried and where they do allow headstones. In re Blagdon Cemetery and in re Christ Church Alsager cited. Chancellor does not agree that there is an exception to the presumption of the permanence of Christian burial. Faculty denied.

14 August      All Saints, Stand          Manchester          Tattersall

Rev Canon Robert Warner, a former rector of All Saints, seeks a faculty to inter, at a future date, his ashes and those of his wife beneath a tile in the sanctuary of the church. Supported by PCC and unopposed by the DAC on condition that the wording on the plaque be approved by them. Burials in churches have not been permitted since the Public Health Act 1848 and interment of cremated remains is now very uncommon. To grant permission will set a precedent for others to seek similar faculties. While Rev Warner may meet the test of exceptionality, on the information given, his wife would not and furthermore, the faculty sought is prior to the death of the Petitioner. Faculty denied.

17 August     In re William Philip Allen,                     Manchester                     Tattersall  
                  Deceased, Michael Larkin,  
                  Deceased and Michael O'Brien,  
                  Deceased

The above three were executed in 1867 and interred within the precincts of New Bailey Prison. In 1868 when New Bailey closed, their remains were re-interred in Strangeways, now known as HM Prison Manchester and then during rebuilding of the prison in 1991 again re-interred in Blackley Cemetery along with cremated remains of 60 other prisoners, only 45 of which are named, neither of these 45 being the three Deceased. Application by John Desmond on behalf of the Bandon Historical Society to open grave to see whether the caskets are marked as if so, a further application is contemplated to exhume remains for re-interment in Glasnevin Cemetery, Dublin, based on statements before their deaths expressing a wish to be buried in Ireland. None of the caskets within the grave carries an identifying marker so to locate the Deceased's caskets will inevitably involve the disturbance of some or all of the other caskets. No evidence produced to justify the Petitioner's contention that the Deceased's remains are those in caskets with cremation references rather than names. Petitioner then amended his application for exhumation of all 15 un-named remains for re-interment in Dublin. Both applications refused.

25 August     St Mary the Virgin, Weston                     Oxford                     Bursell  
                  Turville

After the death of their 18 year old special needs daughter, the parents wish for a "child's headstone" which would be replaced with an adult one when one of them dies. The design and inscription falls outside the scope of the Churchyard Regulations and so a decision has been referred to the Chancellor. Faculty denied.

10 September Christ Church, Oakworth                     Bradford                     Walford

Replacement of existing altar and lectern with new, the altar to be a memorial to a member of the congregation who left a legacy to the church. One objection on grounds that it is unnecessary and wasteful. Compelling practical reasons for new altar, no costs involved, Faculty granted.

20 September             Holy Cross, Newcastle                     Newcastle                     McClean

A faculty was granted in 2006 for installation of a set of Stations of the Cross to which there was one objection from Mr Brain. Stations were purchased and installed but Mr Brain removed and smashed one and made it clear he would do more damage unless they were removed. Mr

Brain still attends church under supervision and the churchwarden has now applied for a restoration order and an injunction. Due to a legal issue a restoration order has been refused but a permanent injunction granted.

25 September            Re: Marie Harris, deceased    Exeter                            McFarlane  
                                 Sidmouth cemetery

Application for the remains to be exhumed and re-interred in the churchyard of St Mary's, Thame. Her widower wishes to move to Thame to be nearer his two sons and was under the misapprehension (on advice given by the undertakers) that he could move his wife's ashes with him on application of a licence from the Home Office. One son disagrees with moving his mother while the other, who has sadly lost his own wife, is in favour of it. Petition is justified on the grounds of mistake and the faculty granted.

25 September            Exeter High Cemetery            Exeter                            McFarlane

Petition for cremated remains of late husband to be exhumed from consecrated grounds and re-interred in Exeter and Devon Crematorium in unconsecrated ground, supported by her two sons, the reason being that she does not wish her remains to lie with her in-laws but with her husband alone. Re Blagdon Cemetery cited. Faculty denied.

12 October                All Saints Stand                    Manchester                    Tattersall

Petitioner seeks leave to appeal to the Chancery Court of York against judgment made on petition of 27 June 2007. Permission denied on the grounds that legal principles applied were correct; new matters raised have not led Chancellor to reach a different decision; Chancellor is unaware of any reported cases where faculties were granted; Chancellor's decision is related to whether it was appropriate to grant faculty in respect of this church.

13 October                St Michael and All Angels    Carlisle                            Tattersall                            Beetham

Petition from churchwardens to redecorate the church, vestry and porch using an oil based distemper to the rendered walls. Objection by a former church warden who said it would be sacrilege and inappropriate to the church. Another objection from a member of the congregation who said no such painting had ever taken place in the church. The Petitioners said the walls had been painted before damp led to cement rendering, that there had been an open meeting encouraging parishioners to visit other churches with painted walls and that by and large they were satisfied with the proposed works after such visits, and finally that chasing in new wiring will leave the walls disfigured. Faculty granted.

22 October                      St Paul's, Shepley                      Wakefield                      Downes

First petition in March 2006 for extensive reordering turned out to be too expensive and this petition is now presented on a different basis. Original extension was to have pitched roof which obscured a window and was unlikely to obtain planning permission. Flat roofed extension was not supported by the Victorian Society on the grounds that it was ugly and detracted from the appearance of the church. They were also unhappy with removal of the gallery as it was part of the original fabric of the church. The parish have proof that it was added later against the wishes of the architect and also pointed out that it was dangerous, unusable, obscures a window and needs to be removed to carry out the necessary provision of disabled access. It has also been sanctioned by a previous faculty. Faculty granted on condition that the carved panelling of the gallery be used elsewhere in the church or at least stored in the church.

25 October                      Icklesham Churchyard                      Chichester                      Hill

Petition for the retention of a memorial which does not comply with Churchyard Regulations although permission for its erection was given by the assistant curate. The hearing was to look into whether, in the event of a ruling against retention of memorial in its current form, there was a way in which memorial could be modified. Petitioner states that his mother-in-law chose the memorial from a brochure at the funeral parlour and obtained permission at a meeting with the assistant curate, Mr Cox who has since denied such a meeting took place. Although the deceased's wife signed the application form that stated she had read the Churchyard Regulations, she did not know such Regulations existed and had she done so, would have abided by them and chosen a suitable memorial. She has removed artificial flowers, cherubs and angels upon request and keeps the grave in excellent condition. Mr Nice of the funeral directors also put his signature to the same statement although he too had not read the Regulations with any thoroughness to which he has accepted full responsibility. Although the family was badly advised at the time, and the removal of the memorial would cause great distress, the memorial itself is aesthetically intrusive and dominates the churchyard and as such the application must be dismissed. It was suggested removing kerbstones and chippings leaving just the headstone but family would rather memorial be removed altogether than remain in a modified form. Removal to be at cost of funeral directors and reimbursement of whole cost of memorial to the family.

30 October                      St Dunstan, Mayfield                      Chichester                      Hill

Reordering of west end of church and treatment of death watch beetle, the latter work to proceed as no objections. Sixty letters of objection to reordering, three of which became party to the proceedings. Clear Statement of Need presented for replacing a cluttered and inflexible space with an arrangement that would provide additional worship space, an area for children, school activities, gatherings, exhibitions and informal meetings. Also a Design Statement to improve view of the window dedicated to St Dunstan and repairs to aisle. Reordering to include removal of pews, levelling of floor, construction of a purpose built library and replacement of the masonry infill in the tower arch with acoustic glazing,

among other things. SPAB and CCC opposed to the levelling of the floor covering 17<sup>th</sup> century tiles, advocating that it should remain as it is in situ. Bishopsgate questions raised. Faculty granted subject to conditions.

3 November                      St Bartholomew, Cresswell    Newcastle                      McClean

Headstone erected without consent or fee payable, the size and colour of which is against the diocesan churchyard regulations. Other headstones in the vicinity of similar colour, though not as large. Chancellor sought advice of DAC who suggested that the stone was not so objectionable that it should be removed. So as not to set a precedent, a copy of this judgment should be kept with churchyard plan making it clear that headstone is unapproved and falls into the category of “tolerated illegality”.

12 November                      St Peters, Draycott                      Bath & Wells                      Briden

Sale of font designed by William Burges to a named private collector and its replacement by a modern replica, the proceeds of which to be used for refurbishment of the church. Supported by PCC but opposed by Victorian Society among others. Chancellor satisfied that there is a genuine financial emergency in the parish which would justify disposal of capital assets (Tredington) but in the first instance every endeavour should be made to find a place for the font in a suitable public museum or collection and a period of six months will be given over to this endeavour. If acquisition for the public cannot be achieved then font should go to public auction.

14 November                      St Patrick Nuthall                      Southwell & Nottingham                      Box

Removal of a Lewis pipe organ and installation of digital organ. Pipe organ, installed in 1871, was found to have damage to the swell and great soundboards caused by the heating in the church. Damage was estimated at over £8,000 which led to the consideration of replacement by a digital organ, supported by the DAC and PCC. Statement of Need suggests that the pipe organ is no longer suitable for the range of music used for Sunday Worship; the modern wedding repertoire; teaching new organists; playing by the amateur and recitals. Proposal to send it to a German organ builder for restoration and safekeeping. Eighteen letters of objection on the grounds that the organ is an historic instrument and part of the heritage of the church and should be restored with the money now agreed to be paid by the insurers. Faculty granted.