

## Neutral Citation [2019] ECC Bla 1

### In the Consistory Court of the Diocese of Blackburn

#### In the Matter of Over Kellett, St Cuthbert, and

**In the Matter of a Petition dated 12<sup>th</sup> November 2018 presented by Rev Paul Boulter, Vicar, Dr John Halsey, PCC Secretary, and Linda Thomas, churchwarden.**

#### Judgment

- 1) This is a petition dated 4th December 2018 seeking permission to remove and dispose of *'redundant'* furniture from a Grade II\* church in the north of the diocese. Dr Halsey is dealing with the application on behalf of the petitioners, and I am grateful to him for his response of 12<sup>th</sup> January to my request for information dated 10<sup>th</sup> January, which he sent along with a short history of St Cuthbert's prepared by Carol Allen BA MA PhD MCIfA, a former member of the congregation. Dr Halsey has worshipped at this church for some 36 years, so information he gives me about the more recent history of the church is based on many years' knowledge and experience. He was churchwarden in the periods 1983-89, and recently between 2015-18.
- 2) The church is a very old foundation, possibly dating back to Saxon times. There was a stone church building of a simple design on the site as early as 1215. Around 1300 a tower was added at the west end. In the 1500's most of the older building was demolished and the church re-built. In 1817 it was fitted out with box pews. The listing description, rather oddly, says there are box pews in the nave and north aisle *'with similar pews in the south aisle of pitch pine'*. I read this at first as a not very clear indication to there being differences between the pews in the south aisle and those elsewhere in the church, (albeit 'similar'), but Dr Halsey makes clear they are all of a similar design and style, and age.
- 3) Carol Allen's brief history indicates there have been various changes and additions to the overall design over the years, but it is not necessary to go into these in detail.
- 4) The items I am concerned with are a *litany desk*, the *pulpit*, which appears to me to be of pine, and *three chairs*, a single wooden-framed armchair with a padded leather seat, and a matching pair of wooden chairs, with backs in the shape of typical church windows. I have been provided with photographs of the items. They are not currently used and the view is advanced that they will not be needed in the future, and their removal and disposal will provide much needed space in this extensively 'pewed' building.
- 5) Dr Halsey tells me that the chairs have been unused, and stored near the organ, during his time at the church. I asked whether they were used in the sanctuary (having regard to the distinctive shape of the backs of the matching pair), but apparently that has not been the case, and no information is forthcoming as to their age or source or any particular

purpose for which they were used. The armchair was for a time located in the sanctuary, but not used, and thereafter was also stored near the organ. None of the chairs are of any great age, or special quality or merit, judging from the photos.

- 6) It is proposed that the chairs be placed in, and presumably used as such, in Caton vicarage. *In other words, they are not being sold or otherwise permanently disposed of.* When Mr Boulter came to St Cuthbert's, he was apparently also appointed as vicar of St Paul's Caton with Littledale. He resides at Caton vicarage. This was not made clear in the petition, so the reference to Caton vicarage was something of a puzzle. Caton is some 5 miles north-east of Lancaster within the Lune valley, so some miles from Over Kellett.
- 7) The litany desk is a small item, apparently made of pine, unremarkable in appearance, save for a small clover leaf cut into the upright(s). No details of its provenance are known. It appears to me to be Victorian in date.
- 8) The pulpit is the 'container' part, where the preacher stands. I am told that there is no under lying structure to raise it higher. It is plain, and also made of pine. It originally stood on the south side of the main block of box pews in the nave, next to a pillar, but in very recent times it was moved to the end of the narrow block of pews in the south aisle, near the organ. The circumstances of this are given to me as follows. The previous incumbent had retired on 10<sup>th</sup> July 2016. The following Sunday, worship was conducted by Rev Nancy Goodrich, the Area Dean and Vicar of Holy Trinity, Bolton-le-Sands. She requested that the pulpit be re-located so that the presiding minister could be seen more readily. Apparently, the minister had previously led the service from the south east corner of the sanctuary, which was a location partly obscured by the pulpit from some members of the congregation. The plan of the church given to me, with the original and later positions of the pulpit marked, confirms this, although I rather doubt that those whose view was obscured, could not have found a place within the nave from which they could see rather more. In other words, they chose to sit where they did and were not forced to have an impaired view by the rest of the seating being occupied by a large congregation. Following the Area Dean's suggestion, with which the lay leaders (including Dr Halsey as one of the wardens) concurred, space was made where the pulpit had been located for the presiding minister to be seated – a more central and visible location. The sermon or address was then given from the lectern. These practices were followed throughout the interregnum. Mr Boulter has continued, and intends to continue, in the same way.
- 9) I am told that visiting clergy in that interregnum period, including the Bishop of Blackburn, the Rt Rev Julian Henderson, raised no adverse criticism about these arrangements, although the Ven Michael Everitt, the Archdeacon of Lancaster, who was at the church on 11<sup>th</sup> December 2017, noted the pulpit had been moved.
- 10) *Needs:* The relocation of the pulpit has made the central area more visible, and freed up space, which has been of benefit especially when the local school comes into church for major festivals or the All Age monthly Service is held. The pulpit impedes access to the organ. The other items

are not needed liturgically, and are simply taking up space. It is proposed that the small desk and pulpit be advertised in the diocesan magazine, *The See*, and if there are no takers, that they be broken up.

- 11) On 17<sup>th</sup> October 2018 the PCC unanimously approved the proposals, and they were supported by the Diocesan Advisory Committee at their meeting on 14<sup>th</sup> December. No other bodies have been consulted. The **Public Notices are being exhibited between 4<sup>th</sup> January and 3<sup>rd</sup> February 2019, so my judgment below assumes no objections will be forthcoming, and the faculty should not issue until it is clear no objection has been intimated.**
- 12) This apparently straightforward set of proposals, does raise a number of issues that I must address. Do the owners of the items approve the proposals? The churchwardens are the legal owners of the '*plate, ornaments and other movable goods of the church*' (Canon E1 para 5), although responsibility for their maintenance rests with the PCC. The latter are not their owner. Certainly the chairs and desk fall into that description. I cannot easily consider the pulpit as being '*a movable*'. It would more usually be considered a fixture and thus part of the fabric of the building. The fact it has been moved (and so we know it *can* be moved) does not make it '*a movable*'. Linda Thomas is one of the petitioners, and a warden (possibly the only one), so that is clear evidence of the warden(s)' knowledge of and consent to the proposals, so far as they relate to '*movables*'. Insofar as the pulpit is not a movable, I am satisfied that the PCC and incumbent are entitled to bring this petition forward. Overall all the necessary parties are before the Court.
- 13) Next, the removal or disposal of items properly categorised as '*treasures*', could '*seldom, if ever*' be justified without a hearing in open court (*Re St Lawrence Oakley with Wootton St Lawrence* [2015] Fam 27 para 19). This is a judgment of the Court of Arches, the Court of Appeal in ecclesiastical cases, and therefore binding on all chancellors.
- 14) However not every item that is removed from a church is necessarily '*a treasure*', but only '*articles of special historic, architectural, archaeological or artistic interest*'. In my view none of these items are such. There is no need therefore to have a hearing about them. If it be said that so little is known about them, that an expert should be instructed to examine and report on them before any decision is reached as to their possible status as '*treasures*', then in my view the expense of so doing simply does not justify an extended enquiry. It cannot realistically be suggested any of them might be valuable or of great historic interest. Faculty applications need to be conducted having regard to the nature and features of the works or proposals brought forward. One of those features has to be likely expense of taking particular steps or making enquiries.
- 15) Rule 9.6(1)(c) of the Faculty Jurisdiction Rules 2015 requires that removal of items as described in the italicised words in the previous paragraph, should lead to a reference to the Church Buildings Council for its advice on the value of the items (in a wide sense). The conclusion I have reached that none of these items are '*treasures*', leads to the further conclusion a reference to the CCC is not required.

- 16) No further consultation with any body, such as an amenity society, is required.
- 17) In my Note to Dr Halsey, I raised the issue that the movement of the pulpit to its new position had not been justified as a matter of law, and suggested that there should have been an application to the Archdeacon for a temporary re-ordering, which can last up to 15 months. My comment was based on Canon F13(3) which states: *It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments or furniture of the church, to obtain the faculty or licence of the Ordinary, before proceeding to execute the same.* The 'Ordinary' for the purposes of obtaining a faculty is the Chancellor. As this was a matter that could on a temporary basis be approved by the Archdeacon under the FJR, that would have been an appropriate and cheaper way of proceeding.
- 18) I realise that at the time the pulpit was moved, the parish was facing an interregnum, and so had no minister, though doubtless the Area Dean or some other cleric was charged with 'looking after' it, and that the proposal arose from the Area Dean's visit just after the previous vicar had departed. But the fact is that no formal process of approval was gone through at any stage, until the present faculty petition was presented. *I am far from suggesting that the initial movement was unlawful, as a temporary expedient*, but there must have come a time when it could not just be viewed (or was viewed) as some temporary convenient re-arrangement of the furniture, but was in essence the start of the process of ousting the pulpit as part of the furnishings of the church. That is what the Canon is designed to prevent. It seeks to ensure a proper process is undertaken. As it is no reference was made to the congregation or parishioners (or DAC) as to their views on the movement of the pulpit, or whether they wanted the change to be made permanent, not even when Mr Boulter was in post and in a position to form a view on the matter.
- 19) The suggestion that the Area Dean's approval, or that the Bishop or Archdeacon did not raise any objection is no answer. The Canon is clear. It was for the minister and churchwardens to deal with the matter, either by seeking a licence for 'temporary re-ordering' from the Archdeacon, to try out the new arrangement, or by coming to me for a faculty for temporary or permanent re-ordering. That was the proper way forward. I do not accept Dr Halsey's view there was no breach of Canon law, albeit I accept it was not a serious one, and is being rectified by these present proceedings. I ought to add that at the time I raised this with Dr Halsey, I had no explanation before me as to the circumstances in which, or reasons why, the pulpit had been moved.
- 20) Finally, this application must be judged by the criteria set out in the Court of Arches' decision in *In re Duffield, St Alkmund* [2013] Fam 58 at para 87, as subsequently clarified in later decisions. I do not propose to set them out in full within this over long judgment, but I have the 'Duffield questions' in front of me at the moment. Individually or collectively, these proposals will cause minimal harm (in the case of the pulpit) and no harm in respect of the other items, to the significance of the church as a building of special architectural or historic interest. The justification put forward is

in my view sufficient, and looks to the needs of the worshipping congregation, and the needs of the schoolchildren in particular, in that it makes the church more usable by freeing up space and improving sightlines. The new arrangements for preaching from a lectern are perfectly satisfactory. Even bearing in mind the stress in *Duffield* and previous authorities on the great importance of not causing any harm to the significance of Grade I or II\* buildings, I am satisfied the minimal harm caused by taking out a pulpit (which may have been in place for around 200 years), is justified by the arguments advanced.

- 21) Finally, I stress that the approval I now give in respect of the chairs, is simply for their *re-location*, to a place where they will be kept safely and securely, in the home of the incumbent. If approval is required for their storage elsewhere, or permanent disposal, a further petition is required. Any attempt to dispose of them informally is not possible as a matter of law. Without a faculty for their disposal, 'ownership' cannot be transferred. They remain the responsibility of the churchwarden(s), and the circumstances of their transfer need to be recorded in the book or inventory they are required to keep under Canon E1(5).
- 22) A faculty shall issue in accordance with this judgment once the Public Notice procedure is completed without objection, any advertisement of items to last for not less than three consecutive issues of *The See*, and any final disposal to be effected within 3 months thereafter.

John W. Bullimore  
Chancellor  
21<sup>st</sup> January 2019