

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

3916

ELLESMERE: BLESSED VIRGIN MARY

JUDGMENT

- 1) The church of the Blessed Virgin Mary has a Grade I listing. The church dates from the Thirteenth Century but was substantially reordered in the Nineteenth Century. From 1829 to 1886 (or perhaps 1889) the east window consisted of medieval tracery containing a window depicting St. Paul and the Evangelists. The glass was made by David Evans of the firm of Betton & Evans and was installed in 1829. The tracery and the window were affected by subsidence and in the 1880's they were removed and replaced by a window depicting the Ascension. The new window was paid for by Lord Brownlow and commemorated his Agent.
- 2) On its removal the glass was stored in wooden crates and those were placed in the yard of the Brownlow estate. The tracery was laid down in the vicarage garden. The glass was recovered by the church in about 1975 and it was then lent by way of permanent loan to the Stained Glass Museum at Ely Cathedral. At that time much of the glass was missing and the remaining glass was in a fragile condition with broken fragments and with the lead matrix having collapsed. In 2005 (the vicarage by then having been sold off) the new owners of the former vicarage returned the tracery to the church. The tracery was laid out on gravel near the east window.
- 3) The Petitioners are the Vicar and churchwardens petitioning with the support of the Parochial Church Council. They originally sought a faculty authorising the sale of the tracery and the conversion of the permanent loan of the glass into a gift. However, having consulted with the Society for the Protection of Ancient Buildings the Petitioners no longer seek permission to dispose of the tracery and so I am only concerned with the position relating to the stained glass.
- 4) The glass is currently stored at the Stained Glass Museum. The proposal is for the current permanent loan to be converted into a gift. The helpful note of Jasmine Allen, the Museum's curator, explains the position as follows. The firm of Betton & Evans was a leading stained glass firm operating in the 1820's and 1830's. One panel of glass was restored in 1979 and forms a major part of the

Museum's display being its only example of a Betton & Evans window. The remainder of the glass is in store and its condition is so poor that full reinstatement or restoration is unlikely to be possible. However, part of the glass was sent in 2008 to the University of York glass conservation studio where it was stabilised by a student there as part of work on the MA course in Stained Glass Heritage and Conservation. The Museum is seeking to phase out indefinite loans because these can lead to difficulties in responsibility for objects. If the loan of the glass in question here were to be converted into a gift the Museum would treat the glass as part of its permanent collection. If that were done the Museum would investigate enabling other students on the York MA course to work on other panels of the glass. Sarah Brown of York University and director of the Glaziers Trust explains that what is envisaged is work by MA students on stabilising the remaining glass while also exploring and recording the techniques used by Betton & Evans.

#### **The Procedural History.**

- 5) The public notice resulted in correspondence from Mr. and Mrs. R. Jagoe. They did not wish to become parties opposing the Petition but have set out representations which I will consider below. I concluded that the matter was suitable for determination on the basis of written representations and the Petitioners have consented to such a course.
- 6) The papers first came before me in March 2014. At that time I was aware that the Court of Arches was considering the principles applicable to the disposal of treasures belonging to churches. I deferred consideration of the matter until the decision of that Court in *Wootton St Lawrence* became public and then invited representations in the light of that decision.

#### **The Representations.**

- 7) Mr. and Mrs. Jagoe have been active members of the congregation at the church of the Blessed Virgin Mary with Mrs. Jagoe having been the churchwarden when the tracery was restored to the church in 2005. It is clear that a major part of the Jagoes' concerns related to the proposal to dispose of the tracery. They made the point that this dated from the Fourteenth or Fifteenth Century and was

potentially of both historic and financial value. They contemplated the possibility of the tracery being restored and displayed in the church at some point. I have already said that the Petitioners no longer seek to dispose of the tracery. Mr. & Mrs. Jagoe are pleased with that decision. However, they also oppose the disposal of the glass. This is because it was designed to be housed in the tracery and if the tracery were to be restored and displayed then, Mr. and Mrs. Jagoe say, it would be appropriate for some at least of the glass to form part of the display.

- 8) I have received advice from the Diocesan Advisory Committee and from the Church Buildings Council. The former recommended approval of the disposal of the glass because the work proposed at York would help to ensure the proper conservation of the glass. The Church Buildings Council has emphasised that the separation between the glass and the church building is not itself a reason for ending the church's ownership of the glass. It has also stated that a decision by a museum to change its loan's policy should not force churchwardens to give up the ownership of items which have been lent to such a museum on permanent loan. Both those points are clearly correct. However, the Council goes on to say that it accepts that the presumption against disposal has been rebutted in the present case. The points which the Council regarded as being of particular relevance were that the gift would ensure the "*long-term conservation, protection, and display of the glass*"; that there was no financial gain to the church; and that the gift would be likely to increase the public visibility of the glass.

#### **The Applicable Principles.**

- 9) Guidance as to the approach to be taken to the disposal of church treasures has recently been provided by the Court of Arches in the currently unreported decision in *Wootton St Lawrence*. In short there is a strong presumption against a disposal by sale. The same approach is to be taken to other forms of disposal. Indeed the fact that no equivalent benefit is being obtained by a church means that the Court will be wary about authorising a disposal by way of gift. The Court has to look at the matter in the round and decide whether there exist grounds justifying the disposal which are sufficiently weighty to overcome that strong presumption. The Court of Arches emphasised that the mere fact that the item is

physically separate from the church in question will not normally suffice to justify a disposal. Nonetheless, the presumption can be overcome where the item in question is now redundant. Moreover, account is to be taken of whether the proposed disposal will enhance or reduce the public visibility of the object in question.

**Analysis.**

10) I have concluded that the presumption against disposal has been overcome in this case and that the faculty sought should be granted.

11) The first and most powerful factor is that the glass is and has long since been redundant in respect of its original purpose. The glass was intended to form the East window of the church. Even if the glass were to be capable of being restored to form a window it would not again become the East window of this church. The glass can no longer be the East window of the church and in those circumstances should be it disposed of or retained? If the glass is to be retained then the most likely outcome is that it will remain sitting in crates unrestored and unseen. Mr. and Mrs. Jagoe do not contend that the glass should again form the East window of the church but they urge its retention in the hope that it can form part of a display of the tracery in a restored condition. That hope is speculative at best and cannot justify the retention of the glass if disposal is otherwise appropriate. The material before me indicates that restoration of the glass for reinstallation in the tracery is unlikely to be practicable. In addition there is nothing to indicate that the restoration of the tracery is likely to occur in the foreseeable future. Moreover, the validity of such a restoration would not depend on the inclusion of this glass in any display of the restored tracery. The tracery dates from the Fourteenth or Fifteenth Century and a restoration would have value and interest even if it was without the glass which had been in place for the last 50 - 60 years of the tracery's presence as the East window.

12) I have already said that separation of the precious object from the church building does not normally suffice as a ground justifying disposal. However, in this case the separation is closely linked to the redundancy of the glass. This glass has been separated from the church building for over 120 years because it

has been replaced as the East window of the church. Even if restoration were achieved the glass would only return to the church by way of a historic display.

- 13) The proposed use to which the glass will be put is wholly appropriate. There will be some prospect of enhanced public visibility of the glass though the extent to which this will be achieved cannot be known and can only carry limited weight. In addition the proposal is that the glass should be studied and worked on in the context of studies committed to building up knowledge in relation to stained glass. This work will increase knowledge of the skills and techniques used in making such glass. It is in the interests of the Church and the wider public that the body of learning and skills in relation to stained glass should be increased and the proposed use will further that objective.
- 14) The disposal is to be by way of gift rather than sale. That again is appropriate in circumstances such as those here where the object in its current condition can only have a minimal value and where the proposed use is a beneficial one.

STEPHEN EYRE  
CHANCELLOR  
5<sup>th</sup> July 2014

