

**Neutral Citation Number: [2023] Ely 4**

**In the Consistory Court of the Diocese of Ely**

**In the Matter of a Faculty Petition**

**The Church of St. Mary & All Saints Willingham**

## **JUDGMENT**

### **PRELIMINARY MATTERS**

1. This is an application for a faculty to dispose of by sale:

A 16<sup>th</sup> century Communion Cup and Paten by a known Cambridge Silversmith, Thomas Buttell. That has led to values being given to the items of £18,500 and £8,500 respectively. They are engraved “For the town of Wyllingham” but with no indication of a donor.

A 17<sup>th</sup> century silver footed Paten engraved “Winelingham: Parish” valued at £5,500 but with no indication of a donor.

2. The values submitted were based on a valuation issued on 9<sup>th</sup> September 2021. The Valuations were carried out by Steven Jordan, a Silver Valuation Specialist

3. The 16<sup>th</sup> century items are not used by the parish for Health and Safety and for security reasons; the 17<sup>th</sup> century item is not used for security reasons alone.

4. The safe which housed the items was on public view and is not fastened to the floor. There has been at least one attempt to steal the safe in living memory. It has been the tradition to have the church open for visitors during the week. The parish cannot afford to insure them for their true value.

5. The petitioners recognise that these items cannot be used in any part of church life nor are there appropriate facilities for their display. Neither the church community nor the village at large receive any benefit from them any longer.

#### **THE FINANCIAL NEED**

6. The Parish has struggled to pay its parish share and the current reserves are severely depleted. To date it has always managed to pay the full share but this has been an increasing struggle and was only achieved in the current financial year with the assistance of a generous neighbouring Parish.
  
7. The Revd Dr Simon Gill wrote to the DAC to explain the church's strategy which is that they need to grow the church for a greater number of parishioners to share the financial burden. Because this will take time, the proposed sale of the silver is "...a short term fix for a long term problem...", but gives the church a year or two for the strategy to bear fruit. The initial signs of growth include that there are now over 50 names on the electoral roll. They appeal to the church members at least once a year outlining the financial situation and needs, surrounded by prayer with a response day. This will be expanded. Grants are being applied for where appropriate. One has just been received to replace chairs in the attached church hall which were falling apart.
  
8. In the longer term they look to set up a Friends' Group to support the finances and look to provide better ways to interact with the community by providing a Memory Café for village use and a club for grandparents and grandchildren.
  
9. I have studied the Quinquennial Inspection Report (May 2021). The itemised figures for repairs required to be undertaken within five years come to in the region of £80,000 and are likely to be far higher than that. The chancel roof is failing and complete replacement is said to be required within five to ten years. There will be other work to be done in the future to maintain the building.

#### **THE OBJECTIONS AND RESPONSE**

10. The DAC opinion is that that the short-term financial gain from selling these items does not justify the disposal of historical assets which have been in use in this church since the 16th century.

11. The Church Buildings Council (“CBC”) objects (without becoming a Party Opponent) to the sale. The CBC submits that the significance of the plate to the people of Willingham is made explicit by the engraving around the bowl of the cup. They consider that silverware and church plate marked with a dedication or inscription represents an historical link to a specific parish or parish church are unique treasures and that every effort should be made to keep them within their context in that place. They should only be removed in the most exceptional circumstances.
12. The CBC appreciates the financial pressures felt by this parish. However, it is the clear policy of the CBC that financial need, falling short of an emergency, should be weighed with other factors to justify sale, but does not on its own outweigh the strong presumption against sale. The CBC refers to its own guidance on their website. Church treasures are not ordinary assets to be disposed of to provide what has been described in this case as ‘a short term fix to a long term problem’.
13. They point to the fact that the silverware belongs to the parish as a whole and is not solely the property of the PCC.
14. The CBC asked what other options have been explored for appropriate ways of keeping the silverware in the public domain, either in the church building or elsewhere. If the parish wanted to explore secure display in the building this could be considered for grant aid by the Council and may provide a new point of engagement between the building and the community. If secure display in the church is not realistic, they ask whether there is an appropriate place nearby and, again, they helpfully point to the resources on their website. The CBC would be happy to work with the DAC and the parish to explore realistic options for keeping the silver in the church, or otherwise in the public domain.
15. James Watts, the acting churchwarden, responded on behalf of the petitioners explaining that the three items had been stored for many years in the Church Safe. He has repeated in more detail the points made by Rev Dr Gill which I have already summarised. He explained how the church has become one of

four (soon to be five) parishes within the Benefice with two priests allocated to the Benefice.

16. The Chalice has not been in use for many years because of its fragility, the loss of a lid and its shape. It was in a post-Covid review that they learnt of the value of the three items. Relying on the resonance of Matthew 6 : 19–21, the community believe that the value of the items should be realised and put to church use in circumstances where numbers had fallen significantly, income has fallen and the Reserves have diminished.
17. The items for security reasons are now in a Safe Deposit Box of a local Bank at a cost of £750 per annum. If sold they become an asset which would be beneficial to the village and villagers where, in fact they have been seeing signs of increased engagement with the village and in their Church life generally. He has outlined the new initiatives which have been taken by the church to increase its place within the community, and to grow the congregation.
18. The issue is that, at present, they are unable to pay their parish share. The PCC was aware of the general presumption against sale when they made the application for a faculty. They considered the position both serious and hopeful enough to outweigh the general presumption against sale. Since then the position has worsened for them because the Team Rector has been on sick leave for some months and is now working only two half days a week, and the Team Vicar has resigned and it has been reported that appointment of a successor to the Team Vicar may not be possible due to the non-payment of parish share. The PCC considers that this constitutes a financial emergency which should support their application.
19. They have considered offering the Chalice to the Diocese and to use its value as a “credit” against the parish share but no response has been forthcoming to this suggestion.

## DISCUSSION

20. The CBC are supported in the views they have expressed by the decision of the Court of Arches in *In Re St Lawrence Oakley with Wootton St Lawrence* (14<sup>th</sup> April 2014). The court was considering the decision of the Consistory Court to approve the sale of an early and rare 16<sup>th</sup> century Armet (helmet). The need was to support the finances of the church and, after the theft of other items of armour, the Armet was stored in a bank vault in 1969 and was transferred in 1975 to the Armouries in the Tower of London. The Armet was valued at £80,000 in 2010 and was sold at public auction for £45,000 which was slightly under the auction estimate. The Chancellor had allowed the sale on the basis that the petitioners had proved

“...good financial reasons for seeking the sale. Those reasons are probably not far short of a financial emergency in themselves, but...it is unnecessary for the court to reach that conclusion.” (§23)

21. As the court identified:

“Various matters, including financial exigency, security issues, and perceived mission imperatives, have over the past half century led to an increasing number of petitions seeking to dispose by sale of church treasures... There have been numerous consistory court judgments. Yet this remains a controversial area of the law. Despite re-iteration by this Court that the jurisdiction to grant faculties for the sale of treasures is to be “sparingly exercised”, the consistory court judgments, whilst repeating these words, show a growing readiness to sanction sales, including sales not to museums but on the open market.” (§3)

22. The Court decided that there were three categories of disposal: where the item is placed on long term loan; where the item is to be sold to a museum, art gallery or diocesan treasury, and where the item is to be sold regardless of who the purchaser is. The first two categories safeguard the security and, to some extent, the visibility of the article, whereas ownership and any form of control is lost on sale. The court said:

With one exception which we examine below, decisions have generally recognised that the interests of public visibility should normally prevail, when the court is considering proposed disposal by sale of articles of local or national distinction. (§37)

23. The court listed various decisions supporting their conclusion and two cases, *Tredington* (2008) and *St Martin-in-the-Fields* (21<sup>st</sup> January 1988), both of which involved redundant silver in circumstances of financial emergency, where outright sale was permitted. In *Tredington* it was on the grounds that there was an emergency in the finances of the parochial church council; in *St Martin-in-the-Fields* the Court of Arches overturned the Chancellor's decision not to grant a faculty on the grounds that

"St Martin's is a special case, because of the special character of its ministry. In other cases where parishes have redundant silver, it may well be that the possibility of raising money by an appeal to the public will be a relevant factor in considering whether there is a good and sufficient ground for granting a faculty to sell the silver." (§41)

24. The Court in *St Lawrence Oakley* concluded:

"...qualitative weight, including the cumulative weight of individual factors, some or all of which may not be specially rare, is all that has to be identified; and the requisite weight is that which is sufficient to outweigh the strong presumption against disposal by sale. Sales will rarely be permitted, but that is because of the strength of the presumption against sale...chancellors need merely decide whether the grounds for sale are sufficiently compelling to outweigh the strong presumption against sale." (§51)

25. The Court also considered the issue whether "separation", that is where the article(s) had been removed from the church, by way of example for safekeeping, might affect the decision whether to allow sale:

"In our view, in the case of historic articles with a significant past connection with a church or parish, this factor will commonly outweigh any possible argument based on "separation". For the future we consider that little weight should normally attach to "separation" as a reason for disposal by sale, and we doubt that "separation" would ever, on its own, have sufficient strength to justify sale of a Church treasure." (§59)

"...looking at the matter in the round in the context of a strong presumption against disposal by sale, then there may be some circumstances in which "separation" may not be entirely incapable of supporting the case for sale." (§60)

26. I have been greatly assisted by Philip Petchey's article "Hidden Treasure: the Church of England's stewardship of its silver plate" in which he looks at the cases which preceded *St Lawrence Wootton*, casting some doubt on the

correctness of some of those decisions, and he provides an inciteful summary of the Court's conclusions:

"103. It is appropriate to consider the practical consequences of *In re St Lawrence, Wootton*. It may be argued that the establishment (or re-establishment) of a strong presumption against a sale is not altogether helpful, because it is difficult to know what weight properly attaches to such a presumption. The best way of appreciating the weight is that it is intended...that sales will rarely be permitted. On this basis, the strength of the presumption is perhaps clear enough. Thus the need to overcome a strong presumption against sale is likely to operate as a strong disincentive to a parish seeking to sell any silver it may possess. Moreover, although financial emergency is only one example of a set of facts which might justify a sale, if there is a strong presumption against sale, generally one may think that it will only be a financial emergency that will be capable of overcoming the strong presumption. Also acting as a strong disincentive is the encouragement of limited sales; a church will be encouraged to defer attempting to sell its silver until a very rainy day in order to avoid selling at a discount...

"104. ...There will be cases where the silver is not so fine or important as to be of interest to a museum. These items will be at risk of sale in a financial emergency, although given that they will not be especially valuable, one may doubt their relevance to any emergency that might arise.

"105. Although the judgment in *In re St Lawrence, Wootton* does not put emergency in a special category, it evidently will be emergency that best justifies a sale. One can understand this: the family silver should not be sold unless it is absolutely essential. It may however be doubted whether this sort of emergency will ever truly exist. When Newsom Ch. was developing the law, evidently there was genuine concern that, absent the sorts of sale that were being authorised, historic churches would fall down. But in today's different climate, involving, among other things, grants by the Heritage Lottery Fund, do we really ever think this? Or if we do, is not the response to say that the church in question should be closed and left to heritage bodies to look after? More specifically, does anyone really think that St Catherine's, Sacombe, St Mary's, Gilston and St Gregory's, Tredington would have fallen down if the sales of their silver had not been authorised? On the other hand if the silver is sold to further the church's mission, although a cynic might doubt, it is using the church's assets to do something potentially valuable which otherwise would not be done."

27. Whilst the ability of a church to obtain lottery funding may not be as easy now as it might have been when he wrote this article, the principles he suggests remain relevant.

## DECISION

28. I must follow the guidance provided in *St Lawrence Wootton*. The three items are historic items with a significant connection to the church and village where they have been kept for up to 500 years. The donor through the inscription on the 16<sup>th</sup> century chalice made that clear as did the donor of the 17<sup>th</sup> Century paten.
29. The decision I have to make is whether the grounds for sale are sufficiently compelling to outweigh the strong presumption against sale. The ground which is put forward by the petitioners is one of financial emergency. I judge that, whilst I must consider all surrounding circumstances in reaching a decision, nothing less than financial emergency would displace the strong presumption in favour of retention.
30. An – at present – temporary inability to pay the parish share and the prospect of the cost of carrying out repairs required and anticipated in light of the Quinquennial Inspection Report do not amount to financial emergency. There are other ways of resolving the financial situation which the church finds itself in without resorting to the sale of these items. They include further discussions with the diocese as to the size of the parish share, the need to move forward with the appointment of a team vicar, and the steps that have been taken, and can continue to be taken whether priest or laity led to grow the church and to find further charitable funds which can be used to pay for work to be done on the church. This has already produced one source of funds.
31. In short I am not satisfied that other avenues for improving the financial situation of the parish have been exhausted; the parish should rejoice in what they have achieved in increasing its electoral roll and its prominence within the village and work on that to provide a resolution to their financial position.
32. I am concerned that the items, which are small, should be costing £750 a year to store at a bank and they may be well advised to challenge the bank as to the cost. Insofar as it can provide any accurate guide, the internet suggests

that the annual average cost of a small safety deposit box is £200, for a medium size, £325 and for a large box £475. Those figures are so far removed from the amount being paid by the parish that the cost should be questioned. It may be that the diocese has space in a vault where the items could be stored at no cost or the church safe could be removed to somewhere out of public sight and secured to the floor which would provide reasonable protection to these valuable items. The CBC are willing to assist the DAC and the parish to provide a secure display cases without a risk to their contents and which could provide a useful focal point for the village.

33. It follows that I will not issue a faculty to provide, as the petitioners describe it, a short term fix by their disposal.

**POSTSCRIPT**

34. The petitioners should bear in mind that, although I do not consider that, at the moment, there is a sufficiently compelling financial emergency to outweigh the strong presumption against sale, circumstances can change. This will not prevent a further application being made if the petitioners exhaust all reasonable avenues to improve their finances and if the growth of the church reverses.
35. Before making such an application, they may wish to obtain an auction valuation in addition to a valuation from a Silversmith. It is clear that the auction valuation obtained in *St Lawrence Wootton* was substantially below the valuation they had obtained for the Armet but which was close to the sale price.

His Honour Judge Leonard KC  
Chancellor of the Diocese of Ely  
26<sup>th</sup> July 2023