

Neutral Citation Number: [2021] ECC NOR 1

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

In the matter of Thetford, St Cuthbert

-and-

In the matter of a petition from Peter Thomson, member of the Parochial Church Council, John Richens, the Treasurer of Thetford Parochial Church Council and Rodney Back, Churchwarden

-and-

In the matter of the proposed sale of silver plate said to be redundant -

Judgment of the Chancellor

JUDGMENT

Petition to sell redundant late-Georgian silver/determination to be on the papers/In re St Lawrence Oakley with Wootton St Lawrence applied/status of church treasure received by a church upon closure of another considered/weight to be given to support or objection by the descendants of original donors/significance of 'separation'/objections by Church Buildings Council taken into account/lack of identified financial emergency/failure to establish a good and sufficient reason for an outright sale without limitation

1. There being no Parties Opponent, I shall determine this petition on the papers, having given the petitioners an opportunity to make representations to the contrary. I do so because I do not believe the particular circumstances of this case demand a full oral hearing. The Church Buildings Council (CBC) does not wish to become a Party Opponent but does object to the proposed sale and asks me to take its views into account in reaching my decision. I shall do so.
2. This petition, dated February 20, 2020, involves the issue of selling redundant late-Georgian silver plate in order to use the money for a particular project for where alternative funds are apparently not readily available.
3. There are reasonable arguments for saying that a church is not a museum and that its primary purpose is as a place of worship and a focal point for mission. This view is buttressed for some by the tenets of the Christian faith itself.

4. An alternative argument, equally reasonable, is that these special items are part of our history and often come to the church as gifts or bequests which were given in love by people who had a particular association with the church and were received by that church on the express or implied understanding that it would hold and preserve the items(s) in perpetuity ('force majeure' excepting).
5. It is pointed out that these artefacts, as well as having a value in themselves, are also part of our national and local history and our heritage and that of the church. It is said that the sale of such items may sometimes represent an easier way of raising money when the money could be raised in fact by other means.
6. The Arches Court of Canterbury considered the general principles of the sale of church treasures in *In re St Lawrence, Oakley with Wootton St Lawrence*, 14 Apr 2014 [2015] Fam 27; [2014] 3 WLR 984; [2014] WLR (D) 176, Arches Ct – hereinafter "*Wootton*". The particular treasure in this case was of unusually high value and significance. Much of the discussion in the case is about that specific treasure. The Court (Charles George QC, Dean; McClean Ch; and Briden Ch) however also examined the underlying principles surrounding any such proposed sales.
7. In the petition I am considering, the disposal is proposed to be by open sale for the highest price obtainable.
8. *Wootton* mandates a sequential approach: first, the possibility of loan to an appropriate institution should be considered; second, disposal by limited sale, again to a suitable institution or the like; and, if neither of the other two routes are suitable or available then, third, disposal by outright sale without limitations.
9. The opportunity for visibility or, at any rate, a better potential for visibility of the object should normally prevail where the item is of local or national distinction. On the evidence before me, the silver in this case, although in itself of historical significance to the local area, does not fall into that higher category.
10. The Court of Arches has permitted the sale of redundant silver on occasion in cases of genuine financial emergency: *Re St Gregory's Tredington* [1972] Fam 16 and *Re St Martin-in-the-Fields* [unreported, October 31 1972] are examples. There are a number of judgments at first instance from Consistory Courts which have applied the criteria with varying degrees of success for hopeful petitioners.
11. The dictum of the Worcester Consistory Court in *Re. St James, Welland* [2013] PTSR 91 that "The Church was not founded to perform the role of guardian of art treasures for their own sake; nor is there any rule of law requiring that it should fulfil such a role" clearly should be read with some caution. The test to be followed is that set out in *Wootton*.
12. The courts have long accepted that financial emergency may be one reason for permitting outright sale (approached sequentially) but the over-arching principle is nevertheless that there must be a good and sufficient reason for the sale with the burden of so proving lying on the petitioners. This encompasses the principle that there must be a very convincing argument for such a sale and the good arising from a sale must clearly outweigh the harm it would do. Financial considerations by themselves would

need to be of an order that would displace the presumption against outright sale. On the other hand, the less valuable or significant the article is, the easier it may be to discharge the burden of proof. The best point the petitioners make is that this silver does not belong to a high order of significance, as well as being redundant.

13. In this petition, the plate has been on long-term loan to Norwich Museum. This raises the question of its separation from St Cuthbert's. Has any meaningful connection between the church and the plate been lost? The question is further complicated by the fact that there never was much of a meaningful connection in the first place as this plate came to the church as a result of the closure of two other churches. Whereas the plate would normally have a liturgical function, it has never had such in this church. This is qualitatively different from separation by way of loan or even redundancy because of, for instance, an altered liturgy or replacement. On the other hand, it may raise a different obligation: the fact that these items which this church accepted have been held presumably at least on some kind of implied trust (moral if not legal) that the objects would be looked after and preserved. These different factors are examples of the variety of features that the court is required to take into account in applying the *Wootton* test. Petitions for the disposal of these types of object, particularly by outright and unlimited sale are inevitably going to be very fact-specific.
14. **The Facts.** The petitioners are Peter Thomson, member of the PCC, John Richens, the Treasurer of Thetford PCC and Rodney Back, a churchwarden. I am told that they have been involved in the investigation of the silverware presently housed at Norwich Castle Museum and at the Cathedral Treasury. They obtained sale estimates of value from Chiswick Auctions. The PCC decided that they should therefore deal with the faculty application. I accept them as the petitioners.
15. The petition asks for a faculty to sell silver plate and to use the funds to contribute to the cost of the installation of LED lighting in the side aisles. The cost of the proposed sale is said to be £1140 which will presumably be paid from the proceeds of sale. The Church Buildings Council (CBC) has been consulted and given its opinion. The PCC gave unanimous consent to the proposal on March 9, 2020. I have seen photographs of the items. One item — an alms dish — bears an inscription showing it to be a gift of the then Lord Petre to St. Peter's Church, Thetford in 1791. I take this to be Robert Edward Petre, the 10th Baron Petre, who lived from 1763 to 1809. He married Mary Bridget Howard, sister of the 12th Duke of Norfolk.
16. The items in question are a George III sterling silver communion set comprising two pattens, two communion cups and a flagon together valued at £1500-£2500 (London, 1791 by Andrew Fogelberg and Stephen Gilbert); a George III sterling silver flagon valued at £600-£800 (London 1778 by Charles Wright); the inscribed alms dish, being George III sterling silver and valued at £500-£800 (London 1785 by Edward Fernell) and a George II sterling silver communion cup and cover valued at £400-£600 (London 1755, maker unknown).
17. Thus, if the higher estimates were achieved, a total of £4700 less commission would be realised. £3000, less commission, would represent the lower end. Of course, items can exceed their estimates. They can also fall short of the lower estimate and be sold for that lower sum unless protected by a firm and fixed reserve.

18. The Diocesan Advisory Committee (DAC) recommends the proposal to me without reservation.
19. I gave two sets of directions. In the second, I required the petitioners to contact the nearest living descendants of the donors to ask them if they wished to object to the sale. The reason for this is that although their view (either for or against) cannot itself be determinative of my decision, it is nevertheless clearly relevant to it and they have sufficient interest to object should they wish.
20. The present Lord Petre does not have any objection to a proposed sale. I will therefore consider the communion plate donated by his ancestor as free of any objection by him. The situation with the items donated by James Mingay in 1786 is different. Email contact has been made by Robert Mingay. His replies to the petitioners' emails have been sporadic (this is not a criticism, just a fact) and in one email he asked if he could purchase the silver. He did not know its valuation.
21. The CBC responded as follows:
 - a. it proceeded on the factual basis (as do I) that this eighteenth century plate was passed to St Cuthbert's in the early 1970s when the nearby churches of St Peter's and St Mary the Less were closed. The plate was deposited in the City of Norwich Museum in 1974. Some of the items are still stored there and some are now stored in Norwich Cathedral's treasury. They are being safely stored and the parish has not been asked to remove them to the church.
 - b. The CBC understands (as do I) that the parish is looking to sell the items to raise funds to complete a new energy efficient LED lighting system in the church.
 - c. The CBC notes that the petitioners do not consider the items relevant to the local community.
 - d. The CBC states its policy is that church treasures belong in churches and should only be sold in the most exceptional circumstances. It considers that these items were given to the parish to protect and care for, not only for the present generation, but for future ones. The CBC also points out that the items are a tangible connection between Thetford, St Cuthbert, Thetford, St Peter and Thetford, St Mary the Less.
 - e. The CBC is of the view that the petitioners have not demonstrated exceptional circumstances to justify the sale: there is no evidence of any financial emergency and at least one of the quotations is based on selling the plate for scrap. The CBC fears that, due to current market conditions, that may very well be its fate.
 - f. The CBC also noted that even if the sale reached its more optimistic estimates it still would not cover the costs of the lighting scheme.
22. The memorandum of the PCC says: "PH proposed that we apply for a faculty and move the communion plate from St Peter's and from St Mary the Less, which is not required at St Cuthbert's and which is stored at The Castle Museum or in the Cathedral Treasury. PV seconded the proposal and it was approved *nem. con.* The money raised will be used to pay for the installation of further energy-efficient lights in the St Cuthbert's building; if there is any surplus, this will be used for the next phase of the redevelopment project."
23. The submission to the CBC by the petitioners makes these points:
 - a. "The proposal that we sell this silver has been discussed at the PCC over a number of years as [it] is not needed at St Cuthbert's and the Norwich Castle

Museum is simply storing it and has no plans to put it on show. According to Dr Vanke, she will have no objection to us removing it from the museum. At the PCC meeting held on 27th January 2020 the proposal was passed unanimously that we seek to obtain a faculty to enable us to sell the redundant plate and the proceeds from the sale to be put towards completing the installation of LED lighting in the north and south aisle areas of the nave.”

- b. LTP Integration & Products have quoted a sum of £8,340 plus VAT to install LED lighting in the side aisles thus completing the LED lighting in the church.

24. **Discussion.** There are several aspects to this application that need considering. The overarching question is whether the need for this money to pay for part of the cost of finish the lighting works is a good and sufficient reason for selling this silver. Is there a very convincing reason for the sale and does it outweigh the harm it will do? The petitioners have already loaned the items to the institutions stated (the first of the possible methods of dealing with an unwanted church treasure), they have not as far as I know considered a limited sale and they want an outright sale which may end up with the items being melted down for scrap metal. I have to determine the following questions:

- a. What is the value of the silver in question, not only in monetary terms but also in its aesthetic value and its significance?
- b. Is it a church treasure?
- c. Is the silver ever likely to be used in St Cuthbert’s?
- d. Does this have any bearing on its likely future whether (a) I grant the faculty or (b) refuse it?
- e. What is its connection with St Cuthbert’s and does any lack of direct connection give rise to a ‘separation’ argument within the confines of *Wootton*?
- f. What steps have been taken to limit the harm caused by any transfer or sale of the treasure in question?
- g. What are the views of the nearest living descendants of the original donors (if discoverable) and, in particular, do they (or any of them) object to or have reservations about the proposed sale?
- h. What weight should I give to their views?
- i. What is (are) the reason (reasons) for the sale?
- j. Does it or do they provide a very convincing reason for the sale and, taking all of the relevant facts together, does the harm the sale would cause (if it would cause harm) clearly outweigh the good it would cause?

25. I refer back to the fact that reasonable people may hold different opinions as to the role of churches in holding church treasures. The court’s role is to apply *the law to the facts*. In other words, I do not have an unfettered choice simply following my own preferences, whatever they may be.

26. **Is the silver ever likely to be used in St Cuthbert’s?**

No.

27. **The value of the silver in question.**

- a. Its monetary value is not nominal or minimal; but neither is its value great.
- b. Fashions exist in the world of antiques as in any other and, presently, church silver of this kind is not especially sought after. However, its makers are recognised silversmiths of the later eighteenth century and a little beyond.

- c. The true value of the items lies more in their historical significance as church plate in the form of late-Georgian silver given to the two Thetford churches in question (not St. Cuthbert's), which are churches that have themselves now closed and in their intrinsic artistic value as examples of late-Georgian silverware

28. Is it church treasure?

- a. The expression "church treasure" is not defined tightly. Treasure is something of value, often (but not necessarily) containing one or more precious metals and of worth both objectively for its financial worth and intrinsically because of its artistic value including the nature and context of the artefact being considered, including whether it is of special historic interest.
- b. I judge that this silver is a church treasure, albeit relatively modest in comparison with some treasures. It was made by known silversmiths of an important period for silver not simply for functional purposes but as beautiful things for use in a building dedicated to God.

29. Does this have any bearing on its likely future whether (a) I grant the faculty or (b) refuse it?

- a. The relatively low monetary value of the silver has a possible bearing. It makes it more likely the silver will be melted down should it be purchased in a general sale. It may also make it more difficult to sell in a limited sale.
- b. If I grant the faculty, I will almost certainly be authorising the total separation of this Georgian silver from any church in Thetford, as well as Thetford itself, and I may be permitting its destruction in anything but its base metallic form.
- c. If I refuse the faculty, although the silver will survive, it will probably for the foreseeable future be in storage or, at the least, not on display.

30. What is its connection with St Cuthbert's and does any lack of direct connection give rise to a 'separation' argument within the confines of *Wootton*?

- a. Its connection with St Cuthbert's is that it was handed to this church when the other two churches closed.
- b. Although I understand there were no conditions attached, it was handed over to and accepted by St Cuthbert's in my judgment on the implicit understanding it would be treated by St Cuthbert's as that church would have treated an item of similar value and significance belonging to itself.
- c. I accept that there is a difference between a separation created voluntarily by a church from a treasure of its own and one created by reason of receiving an item that had no original connection with the church and it is and remains a point in favour of the petitioners. However, as with separation in other circumstances, it is not necessarily a decisive feature.

31. What steps have been taken to limit the harm caused by any transfer or sale of the treasure in question?

- a. The answer appears on the evidence to be 'none'.
- b. The silver is already on loan or in the Cathedral treasury.
- c. A limited sale has not been investigated but, in any event, I accept that it is unlikely to be an option.

32. **What are the views of the nearest living descendants of the original donors (if discoverable) and, in particular, do they (or any of them) object to or have reservations about the proposed sale?**
- a. Lord Petre does not object to the sale of his ancestor's alms plate.
 - b. Robert Mingay, who has not replied or perhaps been able to reply to all the emails sent, says he would like to purchase the part of the silver his ancestor donated and enquired about its valuation. Whilst he has not formally objected, it is clear that he has reservations (to put it at its lowest) about an open sale.
33. **What weight should I give to their views?**
- a. First, both have an interest in the faculty and would be entitled to object or become a Party Opponent. The weight I would give to the *opposition* of either to the sale would depend on the cogency of the objection(s). Lord Petre does not object. Mr Mingay's position is unclear at the moment.
 - b. Second, if either or both do not object to an open sale, I would take that fact into account as one of the factors I have to consider.
34. **What is (are) the reason (reasons) for the sale? Does it or do they provide a very convincing reason for the sale and, taking all of the relevant facts together, does the harm the sale would cause (if it would) clearly outweigh the good it would cause?**
- a. In the case of this petition, I will take these two questions together. These questions, in my judgment, at this juncture pose a problem for the petitioners. Just as the question of redundancy was the high point of the petitioner's case, this aspect is its low point in my judgment.
 - b. As the petitioners said to the CBC, the PCC had been looking to sell the silver for some time as it was redundant. The petitioners want to sell the silver because it is not used and not going to be used and they want to use the proceeds to complete their LED lighting project.
 - c. I want to make it crystal clear that I am not in any way criticising the petitioners. As I said at the very beginning, their viewpoint is logical, understandable and would doubtless be held by a number of parishes faced with the same issue. They have redundant church treasure, in the form of this Georgian silver, which they would like to sell to use for some practical project in their church.
 - d. However, as can be seen from the case law and in particular the case of *Wootton*, this is not an approach that conforms with the way in which the court must approach the petition. The court has to decide, for good reason, set out eloquently in the CBC guidance, whether (in the particular circumstances in the case, the treasure in question, the options open to the church and the need of the church) there is a compelling reason to sell the treasure in an open sale, measuring the potential good that will come from the sale and the potential harm it will cause.
 - e. Here, I have already set out the details of the church treasure in question and the use to which the petitioners wish to put it. The petitioners have not set out any particular financial emergency they are facing, nor have they said why they could not raise the money they need by other methods. The silver is being safely stored and there is no pressing need to remove it from storage. Although Lord Petre has no objection to an open sale of the plate donated by his ancestor, Robert Mingay clearly is anxious about it. Whilst I understand the 'separation' argument, and although it is a stronger one than in some cases, I do not find it a

compelling one. St Cuthbert's gave this silver a home and if the argument is that it is not 'their silver', then that argument cuts both ways: it is they who are wishing to sell it in an open sale and use the proceeds for their church. It also does have a significance for Thetford itself and the history of its churches. When looking at what it is to be used for, I agree with the CBC that it will not even pay by for the completion of the lighting project but be a contribution to it. If I had to put it in one sentence, I am concerned that it is a case of wanting to use the financial worth of this silver for 'something', rather than any compelling financial need that demands the sacrifice of a church treasure.

35. **Decision.** I have concluded with regret that on the facts of this case and for the reasons I have given, the petitioners have not established a case for the sale of this Georgian silver at this point in time and I must refuse their petition for a faculty. Although the petitioners will have to pay (as I imagine they already have) the costs of the faculty application, I waive any costs to which I may be entitled personally for the provision of this judgment. As I have made clear in the judgment, I understand the petitioners' reasoning and appreciate that they have acted with the best of intentions throughout. I have taken into account the CBC's observations about this particular petition and I agree with them.
36. **Specific Observations to the Petitioners.** I hope it is clear to the petitioners now the approach they need to take in the case of any future application to dispose of this silver. They are and remain the custodians of it. If there is a clear and convincing reason for disposing of it in the future, they need to ask themselves, first, if there is a way they can do so, limiting the harm to the treasure. If there is then they should seek to try that first. If, however, their need is such that there is a compelling reason to sell this silver in an open sale, then that need must be set out clearly and in detail with an explanation as to why there is no other sensible way of raising the money. They have the permission of Lord Petre, but, if possible they should try to discuss the position with Mr Mingay. I appreciate this may be either difficult or impossible, and I accept that considerable efforts have been made, but after lockdown it may be easier to achieve this.
37. **General Observations.** When a suggestion is made that a particular church takes treasure from another in circumstances where the donating church is closing, it should be made clear to the receiving church that if they agree to do this then they become the custodian of that treasure and there will be significant limitations on their ability to dispose of it should they wish to do so in the future. They should read carefully the CBC's current guidance on the topic and any additional or revised guidance published after the date of this decision.

D C Etherington Q.C
Chancellor for the Diocese of Norwich
18th March 2021