

In the matter of St Mary and St Nicholas, Lavant

## Judgment

1. By a petition dated 20 August 2013, and lodged in the registry on 22 January 2014, the petitioners seek a faculty for the introduction of a painting into the church of St Mary and St Nicholas, Lavant. The church is Grade I listed and dates from the twelfth or thirteenth century. The picture depicts, in a modern setting, the baptism of Christ. It is intended that this picture be mounted on the west wall of the church proximate to the font.
2. Public notice elicited one objection, from Mr Brian Smith, who responded to the registry's letter of enquiry indicating that he did not wish to become a party to the proceedings but asked that I take the contents of his letter into account when determining the petition. By letter dated 13 March 2014, the first petitioner consented to this matter being determined on written representations and indicated there was no further material they wished to put before the court in addition to those documents lodged already.
3. The petitioners' case is contained in its Statement of Need. It states that the picture is by a local artist, Richard Whincop, and was commissioned by the previous rector of St Mary's who had seen his work at a Roman Catholic church in Scotland. The proposal is to hang the picture, where a utilitarian notice board currently hangs, on the west wall of the church adjacent to the font. They say it will bring this corner of the church to life and will link the ministry of Jesus with the act of baptism at the font. It states:

'Since being hung in position for a trial period, the painting has received unanimous acclaim. Some members of the community have been moved to tears by its spirituality and presence.'

Mr Whincop, in a note annexed to the Statement of Needs, states that the picture incorporates the attractive pastoral landscape of the countryside around Lavant, using local imagery 'to mediate on the more timeless, symbolic dimensions of [Christ's baptism].' He draws upon William Blake's verses in his poem 'Jerusalem'. He describes being moved by the spirit in the creative process, fashioning the representation of the crucified Christ on a painting by Velazquez, as well as being influenced by Gauguin, Constable, Turner and Leonardo. He explains in some detail the imagery and symbolism in his work.

4. The DAC, in a certificate dated 17 September 2013, did not recommend the proposed introduction of the painting. It noted:

'Although the theme of the painting is the Baptism of Christ, the Committee considers that the style is not in keeping with the interior of the building and it is too

large for its intended location. It would encourage the parish to consider relocating the painting to the parish room extension.’

5. The Church Buildings Council was consulted and replied in a letter dated 17 December 2013. After some remarks critical of the parish for the unorthodox commissioning process, and for introducing the picture without authority of a faculty, the letter continues:

‘... it [the CBC] considered that the painting was theologically interesting, even if not to all tastes. It agreed that it would be happy to recommend that a confirmatory faculty be granted for its installation, but considered that it would be appropriate for the Chancellor to limit this permission to 5 years after which time the matter could be reassessed.’

6. The nature of Mr Smith’s objection appears from his letters of 28 September 2013 and 22 January 2014, to which the petitioners have responded in their letter of 23 February 2014. I trust I do justice to Mr Smith’s opinion, when I summarise his objections as follows:
  - i. Lack of consultation with congregation;
  - ii. Proceeding without authority of a faculty;
  - iii. Many within the worshipping community regard the painting as inappropriate for a Grade I listed building;
7. The petitioners’ comments on Mr Smith’s objection suggest that his focus is on procedural shortcomings rather than the aesthetic or artistic merits of the proposal.
8. As to the introduction of the picture without a faculty, it is a source of considerable concern that a previous incumbent and churchwardens should have had such cavalier disregard of the faculty jurisdiction. I note that the petitioners have dealt with this matter responsibly by removing the painting, on the instruction of the Archdeacon, once it was recognised that no faculty had been obtained. Strictly speaking, the removal of unlawful furnishings requires the authority of a faculty, but I am prepared to overlook this second oversight in these particular circumstances.
9. At a PCC meeting on 18 June 2013, a decision was taken on a majority vote to seek a retrospective faculty for the introduction of a painting. I understand that one of the churchwardens spoke against the proposal but accepted the majority vote of the PCC and proceeded on the authority of that vote. From the record of vote as reported in answer to question 35 of the petition, the vote was carried with 9 voting in favour and 4 voting against. However, the actual minute (resolution 283) which is exhibited to the petition records 9 voting in favour of seeking a faculty, 2 voting against, and 2 abstaining.
10. Whilst I take a dim view of the action of the previous rector and churchwardens for introducing the picture without having first obtained a faculty, it would not be proper to allow that conduct to be determinative of the present petition. There should be no penal element to the exercise of the faculty jurisdiction. The issue for this court is simply this: had an application been made prospectively, would it have been granted?

11. I remind myself that the burden of proof lies on the petitioner whenever change is proposed, and that a higher standard needs to be met when the church concerned is a Grade I listed building. Equally, I bear in mind that this is a relatively modest proposal and one which, on any account is wholly reversible.
12. The petitioners' reasoning for commissioning the work is fully set out in the Statement of Needs as is the artist's creative process which he himself records in the accompanying note. I need not incorporate those matters into this judgment. However, I note the lack of unanimity of the PCC, and the assertions of Mr Smith that 'there are many within the worshipping members of the church who believe the painting ... has no place being displayed on the walls of a Grade I listed building'.
13. Where artistic, aesthetic and spiritual concerns are raised, this court must rely upon expert opinion. The DAC, which generally leans in favour of supporting parishes whenever it can, felt constrained to issuing a certificate of non-recommendation. Whilst the petitioners comment that members of the DAC did not apparently visit the church so as to see the picture 'in the flesh' and in situ, they do not address in terms the reasoning behind the non-recommendation, nor do they address the alternative postulated by the DAC, namely that the picture be installed instead in the parish room extension.
14. As to the CBC, its support can best be styled as luke-warm and suggests that any permission be limited to five years in the first instance after which it can be removed. It is not clear from the papers whether the petitioners would be content with a five-year limited permission or persist in their request for its permanent introduction. It seems to me however, that either the picture has artistic and aesthetic qualities justifying its introduction or it does not. I am not convinced that there can be some form of half-way house by which an otherwise objectionable item becomes permissible but for a fixed term of years, subject to a review. The faculty jurisdiction must have a long-term view, even when proposals are relatively modest and reversible.
15. I am mindful that this is the work of a local artist, funded by a benefactor, and marks in some way the ministry of the previous rector.
16. The petitioners, in their letter of 23 February 2014, say this:

'It is clear that the vast majority of our parishioners have become emotionally attached to the painting and have received inspiration from it. As with any work of art it is not unanimously accepted and it is true that some people would rather it was not re-hung. However we are not aware of any "great debate", and rather than "a significant percentage against" it is more accurate to say "a few people" do not find it pleasing.'

17. After considering all the information before me, I am of the opinion that the petitioners have failed to discharge the burden of proof in relation to the grant of a faculty. Whilst there may well be a significant majority on the PCC and in the worshipping congregation more generally in favour of the picture, the objections on the grounds of size, aesthetics, and

suitability for its proposed position in this Grade I church made by Mr Smith, by the DAC, and a little less harshly, by the CBC all militate against the faculty. The petitioners have failed to satisfy me that the visual intrusion of this unashamedly modern image into this fine historic church can be justified.

18. In all the circumstances, this petition must be refused. If, having considered this judgment, the parish considers that there may be merit in the DAC's suggestion that the picture be sited in the parish room extension, this may be a matter which can be dealt with by way of dispensation from faculty. However, I do not wish to prejudge an application which is yet to be made.
19. The additional costs of this petition, to include a correspondence fee for the registrar, must be borne by the petitioners.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

25 March 2014

