

Neutral Citation Number: [2023] ECC Lei 1

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

28 JANUARY 2023

ST NICHOLAS, LEICESTER

IN THE MATTER OF: Petition 2022-077800 - New Altar Frontal

1. A petition has been brought for the introduction of a new altar frontal into St Nicholas Church, Leicester. The petitioners are the Rev Canon Karen Rooms who is the Transition Priest, Holy Spirit Parish Leicester (which includes St Nicholas') and Mr Jay Hulme, an assistant churchwarden. The petition has the support of the PCC.
2. The petition has been advertised and the Registry have received nine objections to the petition. Sixteen letters or emails of support for the petition have also been received.
3. Rule 10.1 of the Faculty Jurisdiction Rules 2015 provides as follows:
 - “(1) For the purposes of this Part “interested person” in relation to a petition for a faculty means—
 - (a) any person who is resident in the ecclesiastical parish concerned;
 - (b) any person whose name is entered on the church electoral roll of the ecclesiastical parish concerned but who does not reside there;
 - (c) the parochial church council;
 - (d) the archdeacon;
 - (e) the local planning authority;
 - (f) any national amenity society;
 - (g) any other body designated by the chancellor for the purpose of the petition;
 - (h) any other person or body appearing to the chancellor to have a sufficient interest in the subject matter of the petition.
 - ...
 - (3) If any question arises as to whether a person is an interested party it is to be determined by the chancellor.”

Rule 10.2(1) provides:

“(1) An interested person may object to the grant of a faculty in respect of all or some of the works or other proposals to which a petition relates in accordance with this rule”

4. None of the persons who have submitted objections to the petition fall within any of sub-paragraphs (a) to (g) above. It therefore falls to me to determine whether any of them have a sufficient interest in the subject matter of the petition to enable them to formally object under rule 10.2.

5. The new altar frontal to which these nine people wish to object takes the form of a Progress Pride image which will have a white cross applied to it. Two potential designs for the cross have been provided. The petitioners seek to have the altar frontal displayed during Sunday worship and on Saturdays when the church is open to the public.

6. The Statement of Need submitted in support of the objection states:

“Over the last 50 years St Nicholas has become a safe worshipping space for the LGBT community, and from being known for this behind closed doors, the church ‘came out’ in 2017 through a public presence at the Leicester Pride Festival. It is now a place of significance in the city, county and nationally – Radio 4 Sunday Service August 2021 and significant direct and indirect Twitter following. The worshipping community has doubled in size in the last year, is inter-cultural and largely under 35yrs, and has a growing reputation as a safe place for LGBTQIA+ people of faith, most of whom have experiences of conditional acceptance, rejection or spiritual abuse in other churches.”

7. The DAC’s advice is that the petition should be approved subject to two conditions:

(1) That the larger of the two proposed cross designs should be applied to the frontal; and

(2) That the frontal should only be used on the altar on an occasional basis and that if the PCC wishes to have it on display when not in use, a suitable location should be agreed.

The latter proposal reflects a paper that has been prepared by the DAC Vice-Chair the Rev Christopher Johnson.

8. The objections that have been received by the Registry object raise a number of grounds. In very broad summary, the main objections raised are:
 - (1) That the introduction of the proposed frontal would be contrary to scripture and the doctrine and canons of the Church of England and the wider Anglican Communion. Some of the objections describe the proposal as “heretical” or “blasphemous”.
 - (2) That the altar should not be used as a place for contemporary cultural and political issues.
 - (3) The Progress Pride flag includes symbols of trans activism; something which is harmful to women.
 - (4) The introduction of the frontal would be immensely divisive within the Church and the wider community and would lead to a section of the Church of England communion feeling excluded from St Nicholas’.
 - (5) The use of the frontal would be contrary to the commonly held tradition of using established liturgical colours for frontals.

9. “Sufficient interest” is not defined in the Faculty Jurisdiction Rules 2015. However, a similar test is applied in the Administrative Court in relation to applications for judicial review. Guidance on how this test of standing should be applied can be found in the decision of the Supreme Court in *Walton v Scottish Ministers* [2012] UKSC 44. Although this was a Scottish case, the relevant test under Scottish law of being “directly affected” has been held to be in substance

the same as the English test of “sufficient interest” (see *AXA General Insurance Ltd v HM Advocates* [2011] UKSC 46). At para 92 of the judgment in *Walton*

Lord Reed stated:

“... a distinction must be drawn between the mere busybody and the person affected by or having a reasonable concern in the matter to which the application relates. The words 'directly affected', upon which the Extra Division focused, were intended to enable the court to draw that distinction. A busybody is someone who interferes in something with which he has no legitimate concern. The circumstances which justify the conclusion that a person is affected by the matter to which an application relates, or has a reasonable concern in it, or is on the other hand interfering in a matter with which he has no legitimate concern, will plainly differ from one case to another, depending upon the particular context and the grounds of the application. As Lord Hope made plain in the final sentence, there are circumstances in which a personal interest need not be shown.”

At paragraph 94, he continued:

“In many contexts it will be necessary for a person to demonstrate some particular interest in order to demonstrate that he is not a mere busybody. Not every member of the public can complain of every potential breach of duty by a public body. But there may also be cases in which any individual, simply as a citizen, will have sufficient interest to bring a public authority's violation of the law to the attention of the court, without having to demonstrate any greater impact upon himself than upon other members of the public. The rule of law would not be maintained if, because everyone was equally affected by an unlawful act, no one was able to bring proceedings to challenge it.”

10. Having regard to this test, I therefore turn to look at the nine objections that have been received by the Registry. All of the persons who have objected have been asked to provide details of their interest in this matter. Objections have been received as follows:

- (1) Alison Wren. She is on the electoral roll of a church in Bristol. She has no connection with St Nicholas' or the Leicester diocese.
- (2) Rev Brett Murphy. He has no connection with St Nicholas' but is a priest in the Leicester diocese.
- (3) Debbie Buggs. She has no connection with St Nicholas' or the Leicester diocese, but is a lay member of the General Synod for the London diocese.

- (4) Rev Dr Ian Paul. He has no connection with St Nicholas' or the Leicester diocese. However, he is a member of the General Synod and of the Archbishops' Council of the Church of England.
 - (5) James Austin. He has not provided the Registry with any details of his interest in this matter.
 - (6) James Partington. He has not provided the Registry with any details of his interest in this matter.
 - (7) Katherine Hales. She lives in Northumberland and describes herself as having "just about left the Anglican Communion". She has no connection with St Nicholas' or the Leicester diocese.
 - (8) Rev Matthew Firth. He has no connection with St Nicholas' or the Leicester diocese.
 - (9) Sam Margrave. He is not on the electoral roll of St Nicholas's, but describes himself as a "regular" there. He has worked and studied in Leicester and is a member of the General Synod for the Coventry diocese.
11. I have concluded that I will treat three of the objectors as having sufficient interest in the petition for the purposes of rule 10.2. The first is Sam Margrave. He is the only objector with a direct connection to St Nicholas'. I am satisfied that as a regular attender at that church (whether or not he is on the electoral roll) he has a direct interest in the use of the proposed altar frontal at services and more generally.
12. None of the other objectors have demonstrated a direct connection to St

Nicholas' but a number of them (and in particular the members of the clergy who have objected) have identified liturgical or doctrinal issues as part of their objection. I also take into account that a number of the objections that I have received refer to concerns that the proposed altar frontal will lead to a section of the Church of England communion feeling excluded from St Nicholas'.

13. I have concluded that I will treat Rev Brett Murphy and Rev Dr Ian Paul as also having a sufficient interest in the petition. Their objections raise points of liturgy and doctrine (beyond those put forward by Mr Margrave) and both refer to the effect that a decision to allow the petition would have on other members of the Church. I accept that there is a general public interest in these matters being considered by me in relation to the petition and both seem well placed to make those arguments.
14. Rev Murphy, as a priest within the Leicester diocese, has a closer connection with the parish than other objectors from outside the diocese who have made similar points. Rev Dr Paul is (like Mr Margrave) a member of the General Synod. Whilst I do not consider this by itself provides "sufficient interest", his objection (among other matters) makes reference to the current debate within the church on the doctrine of marriage and I accept that his position on the Synod may mean he is better placed than other objectors to raise these issue before the court.
15. In determining whether a person has "sufficient interest" I am entitled to consider whether there are other better placed challengers (*R(D) v Parole Board* [2018])

EWHC 694 (Admin) at [110]). The three objections which I have mentioned (those of Mr Margrave, Rev Murphy and Rev Dr Paul) together cover all of the main points that have been raised in the objections received by the Registry. In those circumstances I have concluded that the other objectors do not have sufficient interest for the purposes of rule 10.2.

16. I direct that this decision should be communicated to the petitioners and to all nine of the persons who have lodged objections with the Registry together with, in the case of Mr Margrave, Rev Murphy and Rev Dr Paul (together “the Formal Objectors”), the appropriate notice under rule 10.3.
17. In accordance with rule 10.3 each of the Formal Objectors has 21 days either to become a party opponent by sending to the Registrar particulars of objection in Form 5 or leave the court to take their letter of objection into account without becoming a party opponent.
18. Mr Margrave has asked for an opportunity to supplement his letter of objection and I will direct that if any of the Formal Objectors do not wish to become a party opponent but wish to file a supplemental letter of objection to be taken into account by the Court they must do so within 21 days of receiving written notice under rule 10.3.
19. I also direct that any Formal Objector who wishes to become a party opponent shall, when filing their Form 5 with the Registrar, indicate whether they would be content for me to deal with this matter on written representations pursuant to rule

14.1.

20. If any of the Formal Objectors files a form 5 and become a party opponent, then I direct that the petitioners shall serve a reply thereto pursuant to rule 10.4(4) within 21 days. The petitioners shall also indicate whether they would be content for me to deal with this matter on written representations pursuant to rule 14.1. The matter shall then be returned to me by the Registrar so that I can give directions.
21. If none of the Formal Objectors files a Form 5, the Registrar shall provide the petitioners with copies of their letters of objection and the petitioners may (if they so wish) file a reply to those objections within 21 days. The matter shall then be returned to me by the Registrar for determination pursuant to rule 10.6.
22. In any event the petitioners shall also by the same time set out above inform the court of their views on the conditions set out in the DAC Notification of Advice.
23. All of the notices of objection and support that have been received should be uploaded to the online faculty system by the Registrar (with contact details redacted).
24. Finally I wish to make clear that in making these directions I am not, at this stage, expressing any view whatsoever on the merits of the petition or on any of the objections that have been raised.

David Rees KC

Deputy Chancellor Diocese of Leicester

28 January 2023

Nb the text of the judgment was republished on 31 January 2023 to correct an error in the Spelling of the Petitioner's name.