

DIOCESE OF LEICESTER

IN THE MATTER of WOODHOUSE EAVES, ST PAUL'S CHURCH

CHANCELLOR BLACKETT-ORD

THE FEAST OF THE EPIPHANY 6TH January 2016

JUDGMENT

1. I have before me a Petition by the Minister and Churchwardens of St Paul's Church, Woodhouse Eaves, which seeks faculty permission for the installation of an aumbry in the chancel of the church.
2. An aumbry is a small locked cupboard or safe whose principal purpose is the reservation of the sacraments.
3. It is intended that the aumbry should be set into the south wall of the chancel, very near the altar, and this is the usual place where an aumbry may be found in a church..
4. The church of St Paul's is a well-kept and high-quality Victorian church, listed Grade II*.

5. The proposal was approved by the twelve members of the PCC present at the meeting on 29 June 2015. Although there were at least four other members not present, I have no reason to believe that there is any dissent within the parish in relation to the proposal. No objections have been lodged in response to the public notice.
6. The Diocesan Advisory Committee at its meeting on 7 September 2015 recommended the works for approval subject to three immaterial provisos. The Committee also expressed the view that the work is not likely to affect the character of the church as a building of special architectural or historic interest, and I agree.
7. The only difficulty that arises in this case is this.
8. There was a long-held view that the reservation of the sacraments was illegal. Consequently the existence of an aumbry within the church must be highly questionable. The accepted modern view to be distilled from the authorities which I shall briefly mention below, is that the bishop's licence is required for it: "there must always be an express authorisation in writing by the Diocesan Bishop",¹ or "there is now ample authority for the issue for a faculty for an aumbry in a church where the sacrament is reserved with the bishop's approval"².
9. At the present time no bishop of Leicester has taken office in succession to the Right Reverend Tim Stevens, our former Bishop, who resigned in July 2015. No suggestion has been made that he, or indeed any other bishop, ever gave specific

¹ G. H. Newsom, *Faculty Jurisdiction of the Church of England* (1993) p.140

² *Halsbury's Laws of England*, Vol.34, para.760, text to note 2.

authorisation for either the practice of the reservation of the sacraments in St Paul's Church, or the installation of the aumbry.

10. I have made enquiries of our experienced Diocesan Registrar about the installation of aumbrys within the diocese, and he tells me that he is not aware that Bishop Tim ever gave any directions about such items.
11. The question that therefore arises is whether the Diocesan Chancellor should grant a faculty which specifically approves an aumbry and implicitly approves the practice of the reservation of the sacraments, in the absence of any express approval from the Bishop.
12. It is first necessary to consider why the practice of the reservation of the sacraments was ever thought objectionable.
13. The reservation of the sacraments was a common practice in the Church of Rome both before and after the Reformation. The practice was closely associated with the adoration of the sacraments shown in the pre-Reformation mass, so detested by the Protestants. Article XXV of the Articles of Religion of 1562 includes this:

“The sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should duly use them...”.

Article XXVIII contains this:

“The Sacrament of the Lord's Supper was not by Christ's ordinance reserved, carried about, lifted up or worshipped”.

14. A rubric of the Service of Holy Communion in the Book of Common Prayer of 1662 was in these words:

“and if any of the Bread and Wine remained...if any remain of that which was consecrated, it shall not be carried out of the Church, but the Priest, and such other of the Communicants whom he shall then call unto him shall, immediately after the Blessing, reverently eat and drink the same”.

15. As a consequence ecclesiastical law, reflected (for instance) in the opinions of the two Archbishops delivered by Archbishop Temple in May 1900, was to the effect that “the Church of England does not at present allow reservation in any form”³.
16. The position became more complicated when the revisers of the Prayer Book prepared the Alternative Order for the Communion of the Sick in 1928 which allowed for the taking of consecrated bread and wine to sick persons. Also they provided for continuous reservation in cases where the Bishop thought it necessary, with a licence from him. The 1928 revisions were never approved by Parliament. But the two Convocations of the Church resolved in effect that certain “deviations from and additions to the Book of 1662” might be permitted echoing the 1928 Book, notwithstanding the absence of Parliamentary consent, and one such variation was to allow the reservation of the sacraments and the use of an aumbry. As Sir Philip Wilbraham Baker Wilbraham held in Re Lafford (Devon) Church⁴:

“An aumbry set in a side wall of a church is clearly within the limits which the Church has claimed to authorise...”.

“The duty of a Diocesan Chancellor in this matter is ancillary. He is not responsible for the reservation; but if he finds that reservation is in fact practised

³ quoted by Sir Philip Wilbraham Baker Wilbraham, Dean of Arches, in Re Lafford (Devon) Parish Church (1955) P205 at 211.

⁴ Re Lafford (Devon) Parish Church (1955) P205 at 211.

with the sanction of the Bishop in a church within his jurisdiction, it is his duty to see that the provision made for the keeping the consecrated bread and wine is both safe and seemly.”

17. A further development took place on the passing of the Prayer Book (Alternative and Other Services) Measure 1965, which permitted a wide range of alternative services. Their rubrics were not the same as those in the Book of Common Prayer and did not include that relating to the eating and drinking of the sacraments “immediately after the Blessing” which I have quoted from the 1662 Book above.
18. Chancellor Garth Moore in Re St Peter and St Paul Leckhampton⁵ expressed the view (at p.499) that the rubrics in the Alternative Services gave the officiating minister a wide discretion. He adds:

“But, significantly, no direction whatever is given as to the method of reservation. It is, therefore, quite at large and, being quite at large, it must come within the *jus liturgicum* of the bishop and the discretion of the Consistory Court”.

19. In 1994 Chancellor Bursell QC in Re Thomas Pennywell⁶ discussed the earlier law in the context of the reservations of the sacraments, and commented at p 58D that reservation “takes place with the bishop’s sanction...as in practice is always now the case”. He quoted with approval the summary of the law made by Chancellor Judge Saville QC in Re St John the Evangelist Bierley⁷

“The law today can be stated in the following propositions.

- (1) The bishop of the diocese is entitled to authorise reservation of the Blessed Sacrament for the purposes which he defines.

⁵ (1968) p.495 at 499

⁶ (1995) Fam 50

⁷ (1989) Fam 60 at p.70

- (2) Where the reservation is authorised by the bishop, it is the duty of the chancellor to assist, by faculty, in the safe and proper storage.
- (3) Safe and proper storage is usually provided for in an aumbry in a church wall...".

20. More important, Chancellor Bursell in Re St Thomas (*supra*) at pp.58 and 59 rejected certain of Chancellor Garth Moore's views and in particular that there was a residual "*jus liturgicum*" in a bishop which might somehow decide the legality of a given act. Chancellor Bursell quoting the Australian case of Attorney-General v Wylde⁸ stated

"In particular...there could be no *jus liturgicum* vested in the bishops of England in the face of the explicit provisions of the Act of Uniformity of 1662".

Bursell continues

"In any event, a clerk in the declaration of assent made in accordance with Canon C15 affirms that he, or she, "will only use the forms of service which are authorised or allowed by Canon", and Canon B1 leaves no leeway for the exercise of any *jus liturgicum*". Indeed, the same Canons preclude any further arguments as to "lawful authority", as the only services that are now permitted are those set out in Canon B1."

21. So I return to the question whether a diocesan chancellor may today authorise the installation of an aumbry where there is no record of the bishop having authorised or licensed either the practice of the reservation of the sacraments, or the installation of the aumbry itself.

22. For the following reasons I consider that the answer is yes.

⁸ (1948) 48 SR (NSW) 366, 386

23. First, I am not strictly being asked to decide whether the reservation of the sacrament is permissible in St Paul's, but only the question whether the aumbry should be permitted. I consider that I am entitled to assume that the reservation of the sacraments is lawful. No-one has argued that it is not. Evidently it is the practice in the church. I have in mind of the presumption "*omnia praesumuntur rite acta esse*". Where there is a certain practice, which might have had a lawful origin for instance by the grant of licence of the bishop, and the legality of which has been challenged by no-one, I am entitled to assume that that practice is lawful. If the practice of the reservation of the sacraments in St Paul's is lawful, then there can be no legitimate objection to an aumbry being installed.
24. Secondly, I consider that if the bishop has power to license a practice such as the reservation of the sacraments, then I as his Diocesan Chancellor, Official Principal and Vicar-General, have a like power to do so which I exercise accordingly. It seems to me that because the practice of the reservation of sacraments is no longer illegal as such, and because this congregation through the PCC has expressed a desire to continue to adopt the practice, there is no good reason why the licence for that practice should not be granted.
25. Thirdly, I do not believe that an express licence is necessary anyway, whatever may have been the position in the past. The law today is that the reservation of sacraments is not illegal. The incumbent has a wide discretion to conduct services and make use of the church in any manner permitted by law and supported by the churchwardens and the PCC where requisite. I do not see why any bishop's licence is required.

26. More generally, times have changed since the early C20th, and I do not believe that any thinking Christians today could call the use of an aumbry illegal. The only recent authority upon the installation of an aumbry of which I am aware is the decision of the present Chancellor of Southwark in his judgement in West Dulwich, All Saints, delivered on 23rd July 2015, which makes no reference at all to the possibility of illegality.
27. The application of the principles in Re St Alkmund, Duffield⁹ (which govern what alterations to a listed church may be permitted) and the other considerations relating to the faculty which I have considered in this case are not worthy of report and so I do not lengthen this Judgment by setting them out here. Suffice to say that I grant the Petition as asked, subject to the three provisos in the DAC notification, which I adopt as conditions of the faculty.

Chancellor Mark Blackett-Ord
The Festival of the Epiphany 2016

⁹ (2013) Fam 158

IN THE CONSISTORY COURT

(2016) ECC LEI 1

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