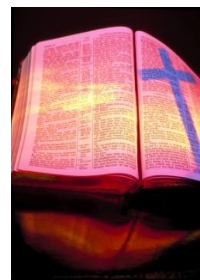


# Gospel & Law

## All Saints and All Souls Edition

Editor: Revd Dr Catherine Shelley [revdr cath@gmail.com](mailto:revdr cath@gmail.com)  
Circulation & events: Andrew Male [admin@ecclaw.com](mailto:admin@ecclaw.com)



Welcome to All Saints and All Souls... as seems fitting for the season there are a number of grave cases in this edition, along with a couple of cases that could almost be a Requiem for crumbling churches. The passing of the impact of Aston Cantlow is also marked! However, there is good and more life-giving news too with the coming into force of legislation to license scrap metal merchants, developments from non-English Provinces on Women Bishops and news of events you might like to attend.

### **Buildings on Burial Grounds...**

Having taken over the redundant *Re St. Peter in the East, Oxford* under a pastoral scheme the college of St Edmund Hall wanted to erect a gardener's office, greenhouses and frames and replace old with new bike stands. They also wanted to re-locate 6 grave monuments. College, DAC and PCC approval had been given to the proposals. The moving of the monuments was uncontentious as none had been visited for 12 years and adverts to advise possible owners (in accordance with *Corven's Case (1612) 12 Co Rep 105, 77 ER 1380*) of the removal brought no responses. It was the building of new structures, unconnected with the Church, on the disused burial ground, that were the problem. The College thought they could evade section 3 of the Disused Burial Grounds Act 1884 by arguing that the proposed buildings were temporary, with rigid bases instead of foundations. The issue was therefore which of the structures were buildings prohibited by the act and which were not. The Chancellor found that the bike racks, cold frames and a cupboard-like storage facility were not buildings within the meaning of the Act but the garden shed, tool shed and storage were and so could not be permitted. Granting a faculty for those parts of the scheme that were not buildings the Chancellor commented that but for the 1884 Act he would have granted the application in full. In his view the proposals were not inconsistent with the earlier use of the land as a burial ground and would have improved the site significantly. It was also noted that had the ground been unconsecrated it would have been possible to approve the scheme in full under the Disused Burial Grounds (Amendment) Act 1981. The outcome led to some illogicality.

### **Requiem for Church Towers...**

*Re St. Paul Eastville [2013] Lincoln Const Ct Mark Bishop Ch.* provides an example of how, under the **Care of Churches and Ecclesiastical Jurisdiction Measure 1991**, courts balance the safety of anyone potentially affected by serious structural damage, including those employed to undertake remedial action, and an unwillingness to engage in precipitate action. St Paul's Church was "a small early Victorian Gothic church built in flat fenland ... the last of 6 churches built under the Fen Churches Act 1816 [1]... completed in 1840," a Victorian jewel in the Fens". It is Grade II listed, not in a conservation area and not used for worship since 2007 due to signs of movement in the structure. The congregation could no longer afford to maintain the building. Though no longer in use, the church was not subject to a formal closure process due to delays caused by pastoral reorganisation anticipated to take 18 months to complete. Following a complaint to the local authority in October 2012 an application was made for St Paul's demolition "in the interests of safety or health and, having regard to the urgency of the matter, there is insufficient time to obtain a faculty". An engineer's report indicated that the damage, caused by trees drawing water from

surrounding ground, raised concerns of 'very severe instability' and the building could collapse imminently. The local authority was prepared to act if the church didn't. Initially the Chancellor's primary concern was the safety of local residents who would be affected if the building collapsed. However, having ordered that his preliminary judgement be considered by English Heritage and the DAC and further engineering reports obtained, the final judgement decided that there was insufficient evidence to order demolition as it seems that there were engineering works that could be undertaken to save the building. Demolition was not the 'minimum measure immediately necessary' to secure the safety of the building under s.18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

### **Re St Mary Le Castro, Leicester**

6 meter long cracks in four of the eight sides of St Mary Le Castro's tower, a distinctive Leicester landmark, have made it unsafe to the point of collapsing. Temporary measures have been taken to remove the spire and close the church whilst longer-term decisions about restoration are made. Raising funds for the work is also a critical issue, neither Leicester Cathedral, Leicester City Council or the dreaded chancel repair liability, can afford to help. A bid to English Heritage had been made for the initial estimated cost of simply removing the spire, which is £200,000. Section 18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 gives a diocesan chancellor the power to take immediate action if satisfied that this is necessary in the interests of safety or health or for the preservation of the church and there is insufficient time to obtain a faculty. If a church is listed or in a conservation area, and "it is not practicable to secure safety or health or the preservation of the building by works of repair or works for affording temporary support or shelter,' the Chancellor can authorise demolition or partial by instrument without a faculty, limited to the minimum measures immediately necessary for safety. A copy of the instrument must be sent to the Council for the Care of Churches and the local planning authority. However, whilst a chancellor may issue an instrument for emergency demolition without a faculty and orders under the instrument for works to restore the church following its demolition or partial demolition, this is dependent upon the granting of an appropriate faculty.

**Scrap Metal Act 2013** now in force... From 1<sup>st</sup> October 2013 scrap metal merchants will require a license, must take details of those from whom they buy scrap metal and abolishes cash payments for metal. The hope is that this will curb the illegality in the metal market that has led to £220 million being leached from the economy through missing railway lines, war memorials and above all, church roofs. Can PCC's breathe a sigh of relief? Time will tell.... The Bill met significant opposition in certain quarters, enforcement may be an issue.

**Chancel Repair Liability** - As the witching hour of midnight passed on 12<sup>th</sup> October 2013 the impact of the decision in Aston Cantlow on Chancel Repair Liability begins to lose its full force as the date for registering a protected, overriding interest has passed, although it is still possible to register an interest. To date 89 PCCs have registered 601 interests and 95 cautions.

**Women in the Episcopate...** following news of the Welsh vote in favour of Women in the Episcopate and Pat Storey's appointment as the new Bishop of Meath and Kildare in Ireland, the news has now been announced of the publication of the proposals of the Steering Committee for the draft legislation on Women in the Episcopate. More information in next month's General Synod edition.

**London Lectures 2014 - Next year's lectures** are still in the process of being finalized but will include:

29<sup>th</sup> January 2014 - The Dean of the Arches, Charles George, on the Faculty Jurisdiction Rules

Mark Hill QC on employee v office holder in *The Methodist Conference v Preston* and *Sharpe v Worcester DBF*

**Day Conference & AGM 2014 - *Safeguarding*** - 5<sup>th</sup> April 2014 at the Cardinal Vaughan Centre, Westminster – cost £35 members & £70 non-members. Speakers include Bill Jacob Archdeacon of Charing Cross, Elizabeth Hall Safeguarding Adviser to the Archbishop’s Council, Nicola Harding Joint Registrar Ripon and Leeds (with Christopher Tunnard) and Adrian Iles, Legal Officer to the Archbishop’s Council with responsibility for Clergy Discipline.

And in the light of both the Funeral Project and a spate of exhumations and other grave cases the focus of the 2015 residential conference will be on funerals and burial law. More news to follow....