

## FIVE FACULTY CASES FROM THE CITY

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### Introduction

Over the years, churches in the City have given rise to some interesting and important faculty cases. This paper notes some of them. I am confident that there are lessons to be learned from them. However, what those lessons might be may be a subject of disagreement!

**St Magnus the Martyr:** ***Vincent v***  
***the Rector and Churchwardens of St Magnus-the-Martyr, St Margaret, New Fish Street and St Michael, Crooked Lane***<sup>1</sup>

Adelaide House on the North East Side of London Bridge was built between 1921 and 1925. Although intrinsically fine it appears to be out of scale with its surroundings<sup>2</sup>, particularly St Magnus the Martyr next door<sup>3</sup>.

However, the developers paid £4000 for the rights of light and that was the background to the first case that I am going to consider.

St Magnus the Martyr is a fine Wren church. In 1919 that did not stop it being identified for demolition – along with 18 other churches - by a Commission appointed by the Bishop of London to consider the provision of churches within the City<sup>4</sup>.

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<sup>1</sup> [1925] P 1 (Court of Arches).

<sup>2</sup> The more so when it was built: it was then London' tallest commercial building (148 feet). It is by Sir John Burnet & Tait.

<sup>3</sup> Even then there were found those who objected: see the *Times* 14 March 1924. Pevsner (3<sup>rd</sup> edition: 1997) says *Curiously enough, the conjunction of the vigorous and imaginatively detailed steeple with the tree close to it and the sheer wall of [Adelaide House] is entirely successful.*

<sup>4</sup> The tower was to be preserved. In a the first chorus from *The Rock* (1934), TS Eliot wrote

*I journeyed to London ...*

I doubt whether wholesale demolition was practical politics by 1919<sup>5</sup>. However that may be, in 1921 a new incumbent was presented to the living, Fr Henry Fynes-Clinton<sup>6</sup>. Previous incumbents had been High Church, Fr Fynes was particularly so. Only one service each week – a shortened Evensong on Sunday evening – was according to the Book of Common Prayer. It was the sort of place where the Protestant Truth Society used to demonstrate and in 1922, John Alfred Kensit (son of John Kensit) did just that.

Following the receipt of the £4,000, the Rector and Churchwardens were able to restore and relight the church and take out the box pews. These works were uncontroversial. But it also gave Fr Fynes the opportunity to apply to install Stations of the Cross, an enlargement of the reredos to include a rood, a statue of the Virgin and Child and a Russian ikon of the Virgin. The Chancellor<sup>7</sup> refused permission for the Stations of the Cross<sup>8</sup> but granted a faculty for the reredos, the statue and the image. In doing so he stated that he was going “to the utmost verge of his discretion”. The party opponent appealed in respect of the statue and the image.

The Dean (Sir Lewis Dibdin) reviewed the chief authorities<sup>9</sup> and held that the test was whether there was a risk of the objects being abused by becoming the objects of adoration or superstitious

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*There I was told: we have too many churches,  
And too few chop houses. There I was told:  
Let the Vicars retire. Men do not need the Church  
In the place where they work, but where they spend their Sundays.  
In the City, we need no bells:  
Let them waken the suburbs.  
Of St Magnus the Martyr, Eliot wrote in The Wasteland (1922):  
Where the fishermen lounge at noon: where the walls  
Of Magnus Martyr hold  
Inexplicable splendour of Ionian white and gold.*

Eliot noted this passage *The interior of St Magnus Martyr is to my mind one of the finest of Wren's interiors. See the Proposed Demolition of Nineteen City Churches. This pamphlet was the LCC's response to the Bishop of London's Commission (see footnote 5 below).*

<sup>5</sup> The LCC objected vigorously: see *Report of the Clerk of the Council and the Architect of the Council* (1920). Two of the 19 were demolished before the bombing of the Second World War took its toll: St Katherine Coleman (1926) and All Hallows, Lombard Street (1937). All Hallows thus was the last Wren Church to be destroyed as a deliberate act (that is, discounting bombing).

<sup>6</sup> He remained vicar until 1960.

<sup>7</sup> FHL Errington.

<sup>8</sup> It seems that the authorisation of Stations of the Cross did not first occur until after the Second World War: *In re St Peter, St Helier* [1951] P 303.

<sup>9</sup> In particular *Phillpotts v Boyd* LR 6 PC 435 (PC) (the Exeter reredos case); *Clifton v Ridsdale* (1877) 2 PD 276 (PC) (a discipline case containing observations about rood screens); and *Vicar and Churchwardens of St John, Pendlebury* [1895] P 178 (Consistory Court of Manchester) (figures surmounting a triptych).

reverence. Rather than go on to say, as he might have done, that this risk was minimal he did uphold the appeal and disallowed the statue and the ikon.

But it is evident that the old objection to statues was waning. It may be noted that in the same year as *St Magnus the Martyr* was decided, *All Saints'*, Margaret Street acquired a statue of the Virgin Mary. I think that there were one or two more restrictive cases before the Second World War; thereafter the old restrictive cases began to look like ancient history.

***St Mary at Hill:***  
***Trower***<sup>10</sup>

***Peek v***

All ecclesiastical lawyers know the name of the case. Although more than 100 years old it is enshrined in up-to-date law: the second of the *Duffield* questions. The *Duffield* questions are those which a Chancellor must ask before granting a faculty in respect of works affecting a listed building<sup>11</sup>.

However many will not have done more than glance at it and they will have no idea of the church to which it related or the background facts.

In fact it related to St Mary at Hill.

And although we are looking at an argument that arose in 1881, the case has contemporary resonances.

The Rector and Churchwardens petitioned for a faculty for the following works:

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<sup>10</sup> (1881) 7 PD 21. There is a link to St Magnus the Martyr in that Sir Henry Peek (the party opponent) had been patron of St Magnus the Martyr (and his grandson had appointed Fr Fynes).

<sup>11</sup> The questions are as follows:

(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

(2) If the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals: see *Peek v Trower (1881) 7 PD 21*, 26–28, and the review of the case law by Bursell QC, Ch in *In re St Mary's Churchyard, White Waltham (No 2) [2010] Fam 146*, para 11. Questions 3, 4 and 5 do not arise.

(3) If the answer to question (1) is "yes", how serious would the harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone [1995] Fam 1*, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II\*, where serious harm should only exceptionally be allowed.

See *In re St Alkmund, Duffield [2013] Fam 158*.

*lowering the pews and in refixing the backs of the pews, so as to render them more comfortable for the occupants, in lowering the Communion rails and in making some alterations in the floor of the east end of the church, in erecting seats convenient and suitable for the choir, and in removing eight pews from the east end, which are never used and are not required, and in making some other minor alterations.*

A parishioner objected on the basis that the works were

- unnecessary
- not in harmony with the architectural design of the church
- a waste of money.

The Chancellor of London<sup>12</sup> had little difficulty in holding that the works were reasonably necessary and granted a faculty.

The parishioner appealed to the Court of Arches. In a famous passage, the Dean<sup>13</sup> discussed the question on whom the burden of proof lies:

*Two widely different principles present themselves. The Court might say this: If some of the parishioners desire this change, and there is a fund out of which it may be made without placing a burden on others, then, unless those who oppose it can show that it will work mischief, that it will impair the capacity, the fitness, or the convenience of the church for the purposes of public worship, it ought to receive the sanction of the Court. The objection to such a principle of decision is that it would open the door wide to all capricious changes—would give no heed to those feelings of attachment and regard with which tradition and long time are apt to invest old churches in the eyes of those whose families have sometimes worshipped for generations in the same spot, under the same roof, and with the same surroundings. There are in these matters, as in most others of the kind, two classes of people—those who are prone to believe that all changes must be improvements and those who love the things that be, and who regard all changes, though they may be improvements, with reluctance and the vigilance of a jealous eye. To give unlimited indulgence to the caprices or whims of the one class would be to wound without need the feelings of the other. And then come questions of architectural beauty and the endless controversies of taste, which, though always subordinate to utility, have a fair place in the controversy when utility is not in question. A principle of decision such as I am now discussing would make short work of all these. On the other hand, the Court might say this: All presumption is to be made in favour of things as they stand. If you and others propose to alter them, the burden is cast upon you to shew that you will make things better than they are—that the church will be more convenient, more fit for the accommodation of the*

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<sup>12</sup> Dr (Thomas) Tristram was a prominent ecclesiastical practitioner as well as the author of Tristram's *Probate Practice*, in print today. He was the last member of Doctors Commons, which ceased to exist upon his death in 1912.

<sup>13</sup> Lord Penzance (Sir James Wilde); appointed a judge under Disraeli's Public Worship Regulation Act 1874, it seems he was not widely respected by the clergy, who resented his jurisdiction. He was the first judge to unite the posts of Dean of the Arches and Auditor of the Chancery Court of York.

*parishioners who worship there, more suitable, more appropriate, or more adequate to its purposes than it was before; and if you cannot shew this to the Court, at least shew the Court that a majority of those for whose worship the church exists desires the alterations which you propose. And this is, I think, the language which in substance the Court ought to hold. **The burden of proof does, I think, properly devolve upon those who propose a change** ... (emphasis supplied).*

One might have expected him to go on to say that the burden had been discharged; but the line he took was that it could not properly be discharged if, as was the case, virtually all the parishioners were opposed to the changes.

It may be noted that the Chancellor was sympathetic to the aesthetic argument against change and perhaps – who knows – this lay at the root of somewhat surprising reversal of Dr Tristram’s decision:

*I have seen the church, and, looking to the position and design of the four stone columns which support the dome and the point at which the tops of the pews meet these columns, I think that a unity of architectural design between them and the pews is manifest.*

And so the Church survived with its high box pews as the energies of the Diocese of London were transferred from the City to the suburbs. The effect of the judgment was to preserve a church interior which became unique.

But, alas! on 10 May 1988 a fire started in the tower and the roof was destroyed. The roof and dome and organ were put back: but not the pews, pulpit and reredos.

Pevsner (1997) (Simon Bradley) observes *Its full restoration is an urgent priority*<sup>14</sup>.

It is said that there was a promise to restore; and that it has not been restored because, if it were, it could no longer be let out for functions.

### **St Helen’s, Bishopgate**<sup>15</sup>

St Helen’s, Bishopgate was damaged in the Bishopgate bombing (April 1992), which added to the issues which the Chancellor<sup>16</sup> had to address<sup>17</sup>.

The congregation wanted a single level flexible worship area. To achieve this, what one might be called the clutter of the multi-level interior, which had been fitted in the nineteenth century with screens and stalls by Pearson, had to be removed and a level floor inserted. The whole scheme was designed by Quinlan Terry. The case is famous because in it the Chancellor formulated the

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<sup>14</sup> Simon Jenkins *England’s Thousand Best Churches* (1999): *Swift must be their return*. Note however that not all the woodwork dates from the time of Wren.

<sup>15</sup> (1993).

<sup>16</sup> Sheila Cameron QC.

<sup>17</sup> The problem was made a bit more difficult as a result of there being a second bomb in April 1993.

*Bishopsgate* questions, which – until replaced by the *Duffield* questions – Chancellors had to apply<sup>18</sup>. There are likely still to be those who prefer the simplicity of the *Bishopsgate* questions<sup>19</sup>.

The case yielded answers to the *Bishopsgate* questions which were perhaps unexpected.

First of all, there was a particular need for the changes. St Helen's was remarkable for regularly attracting congregations in excess of 500 on Tuesday lunchtime and Sunday evening; the existing arrangements were demonstrably unsuitable for their accommodation.

The approach of the Chancellor to the question of adverse effect. The Chancellor held that there was no adverse effect flowing scheme for re-ordering the church viewed generally: *the works will enhance the appearance of the church*; and, specifically, the raising of the floor was *likely to enhance the appearance of the church and improve its spatial quality*.

The Council for the Care of Churches gave evidence to this effect, as did the DAC<sup>20</sup>. Evidence to a different effect was given on behalf of English Heritage, the City of London, the Society for the Protection of Ancient Buildings and the Victorian Society.

The impact of the evidence of the first two was perhaps weakened by their acceptance of a compromise scheme, which may have been viewed as the worst of both worlds.

The position of SPAB was particularly interesting. They had vigorously objected, as one would have expected them to do, to Pearson's scheme in 1892. Now however they were vigorously objecting to the removal of Pearson's changes<sup>21</sup>. The Chancellor was unimpressed. But SPAB's approach reflects the manifesto of its founder, William Morris and represents orthodox conservation practice, namely that you don't seek to put a building back to some ideal or more ideal form which it possessed earlier; at the very least, it would say, doing so causes harm to the historic fabric.

Pevsner (Simon Bradley) expresses this view of the completed works:

*The inspiration seems to be the scrubbed, light-filled church interiors of C17 Holland as painted by artists such as Saenredam. The remodelled interior is intended to allow flexible use for the church's*

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<sup>18</sup> These are:

(1) Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral well being of the church or for some other compelling reason?

(2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historic interest?

(3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

The questions were given the authority of the Court of Arches by their approval in *In re St Luke the Evangelist, Maidstone* [1995] Fam 1.

<sup>19</sup> It will be recalled that the *Bishopsgate* questions are not altogether apt for considering a proposal for eg a new stained glass window, which will not be necessary in any strict sense.

<sup>20</sup> The evidence was given by Ashley Barker, whom we shall see again in a moment.

<sup>21</sup> Before which there had been a level floor.

*current preaching-based services, which it undoubtedly suits better than Pearson's compartmentalised High Church arrangement. But few church interiors were less suited to such root-and-branch treatment. The restoration shows no sense of a creative dialogue between past and present, for all its Neo-Georgian trimmings. The loss to the viewer's perception of the unique early history of the church is also grave. The effect of the uniform floor level on the south transept is particularly unhappy, as a glance at its truncated central pier will show. The even sea of stone flags also laps absurdly close to those of the standing monuments which remain at the previous floor level<sup>22</sup>.*

### **St Stephen, Walbrook<sup>23</sup>**

St Stephen Walbrook is considered to be the finest of Wren's City Church's but it has had a particularly chequered history. No-one has seen it quite as it was designed and built by Wren for a very long time.

In the first place there was Benjamin West's painting of the martyrdom of St Stephen, installed, without a faculty, in 1776 in place of the east window.

Benjamin West's reputation plummeted after his death and in 1850 the painting was moved to the north transept. The restoration carried out at the time was intended to restore the church to "the state in which it was left by Sir Christopher Wren".

But the Victorians could not leave well alone and in 1885, the box pews were taken out, to be replaced by moveable seating<sup>24</sup>.

The church was bombed in the Second World War and then restored.

What happened next is an extraordinary story.

Peter Palumbo was churchwarden. In May 1968 he invited Henry Moore to visit St Stephen's and subsequently commissioned him to produce a circular Holy Table or altar to sit beneath the central dome. Circular: eight feet in diameter, three and a half feet high, made of marble and weighing ten tons, it was shipped to England from Italy in 1973. It was subsequently installed (with a faculty) in the church on a temporary basis, the better for it to be assessed.

It was generally accepted that the altar was a work of exceptional artistic excellence, which is not quite the same thing as saying that it was intrinsically a work of art<sup>25</sup>. Quere whether it was appropriately installed in St Stephen's, Walbrook.

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<sup>22</sup> There was no in principle objection to moving monuments; perhaps there were practical reasons why this did not happen, leading to the effect to which Bradley points. Simon Jenkins *England's Thousand Best Churches* (1999) is equivocal: *The re-arrangement evoked intense protest from conservationists, but churches do not have to conform to historic buildings laws. St Helen's is a vivid reassertion of Anglican independence* (p405).

<sup>23</sup> [1987] Fam 146.

<sup>24</sup> The patrons, the Grocers' Company, who had paid for them, objected but arbitration found in favour of the change.

The Chancellor of London, George Newsom, declined to grant a faculty for it because he said that although, following the enactment of the Holy Tables Measure 1964 a Holy Table could be made of stone, it still had to be a Table – and this was not a Table.

He also held that even if he had had the power to permit the altar he would not have done so because it had an adverse impact on the architecture of Wren's Church.

The case went on appeal to the Court of Ecclesiastical Causes Reserved, because the Chancellor certified that a matter of doctrine was involved. As you will know, the CCECR is constituted of two Lords Justices of Appeal and three Bishops.

The Bishop of Chichester, Eric Kemp, delivered the judgment that dealt with whether the altar was a table. He reversed Chancellor Newsom. I think he was right to do so. The Chancellor had held himself bound by the judgment of the Court of Arches in *Faulkner v Litchfield*<sup>26</sup>. There was force in the submission that a stone holy table as envisaged by the Holy Tables Measure did not have to be what would be described as a table in common or ordinary speech and that *Faulkner v Litchfield* was no longer good authority.

The Chancellor was also overruled on the view he took of the architectural issue.

On this, the Chancellor's reasoning had been as follows.

It was for the Petitioners to demonstrate the case for change. Evidence against change had been given by a distinguished and respected architectural historian, Mr Ashley Barker, who was a member of the DAC and (I think) Head of the London Division of English Heritage (although he did not give evidence in this capacity). The Petitioners had not shown that Mr Barker's evidence was wrong.

That pith of that evidence was:

*It is my opinion that to place a circular altar in the centre of this space is to make a false resolution in favour of the centralised plan against the basilican interpretation and so obscure Wren's intentions...*

*The presence of the great solid form of the proposed altar under the domed centre would be to create an expectation of symmetry all about it by blocking the longitudinal and cross axes and establishing a false centre - reflecting each incident axis in turn - which, in my contention, cannot have been the architect's intention...*

What is this all about?

The point is that the church has a basic longitudinal or basilican design at the east end of which Wren intended there to be Holy Table. However above the nave sits a dome which suggests a central focus. There is an ambiguity at the heart of the design.

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<sup>25</sup> The one dissentient voice was John Newman, a highly qualified architectural historian, who considered it second-rate because it was compromised by being designed for use. Certainly no other sculpture of Henry Moore has a practical use.

<sup>26</sup> (1845) 1 Rob Eccl 184.



You can see this looking at a plan.

It has long fascinated architects<sup>27</sup> so that for example, the interior of the church had received extended treatment in Pevsner's *Outline of European Architecture*<sup>28</sup>, his volume in the Buildings of England series on *The Cities of London and Westminster*<sup>29</sup> and Margaret Whinney's *Wren*<sup>30</sup>.

Thus potentially the new altar was destroying Wren's design concept in the finest of his churches; in the context of Wren being not only an important architect but the finest England has ever produced and, arguably, the only one of European stature. The arguments against a faculty being granted were supported by the Council for the Care of Churches and the DAC (albeit on the casting vote of the Chairman)<sup>31</sup>.

How did the Petitioners deal with these arguments?

They called as a witness Kerry Downes, Professor of the History of Art at the University of Reading and probably **the** expert on Wren<sup>32</sup>.

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<sup>27</sup> The first detailed account by an architect is by George Godwin FRA FSA in the Churches of London (1839). I do not think however that his critique identifies the ambiguity that was Ashley Barker's concern.

<sup>28</sup> The first edition was published in 1949.

<sup>29</sup> (1957). Pevsner wrote:

*[From the W apse of the nave] the church appears at first longitudinal and of classical composition, ending, one can see, round the altar, with just such another bay as that in which one is standing. A number of slender Corinthian columns accompany that procession on the l and r. They are all of the same height – that is, the church is of the Hall Church type. It consists, we can read at once, in this W part, of a nave with oblong groin-vaulted bays, aisles with square flat ceilinged bays, and narrow outer aisles. But almost at once it becomes clear that the church is not simply longitudinal, but leads to a splendidly dominating dome with a dome to let in light from above (reconstructed in 1951 – 2). It is this ambiguity between two interpretations of the space within what is really no more than a perfectly plain parallelogram that connects St Stephen's with the international baroque, in spite of Wren's English insistence on the cool and isolated columns and on classical decoration. The special ambiguity does indeed go much further. For once the dome is reached, one sees that the church can also be understood in quite a different way – as a central building with a dome on eight arches of which four arches form the introduction to cross arms of equal height and, it seems at the first moment equal length. The transepts are actually a little shorter than the chancel. They come very soon to an end against the walls of the outer parallelogram. And the nave consists of course of two bays, not one. But the interaction of cross and dome – two central motifs – is all the same as potent a spatial effect as the interaction of longitudinal and central. That Wren wanted this double meaning is clear from the way in which the chancel has the same groined vaulting as the nave but the transepts are tunnel-vaulted (p159). The text was unaltered in the third edition (1973) revised by Bridget Cherry (but evidently with Pevsner's active collaboration).*

<sup>30</sup> 1971.

<sup>31</sup> Neither English Heritage or the City of London (as local planning authority) appear to have expressed a view.

<sup>32</sup> He had written *Christopher Wren* (1971) and *The Architecture of Wren* (1982). In the former he had written about St Stephen Walbrook as follows:

He took a number of points, emphasising that the existing arrangement – the loss of the original high box pews – meant that one could no longer appreciate the church as Wren intended and that the new sculpture was *on the same level as Wren*.

But at the heart of what he said was

*... the proposed altar would ... be in accord with the geometry of Wren's design ...*<sup>33</sup>

However, in his judgment, somewhat unfortunately, Chancellor Newsom

*...made no reference to the substance of the evidence of Professor Downes nor did he carry out any express examination or assessment of it.*

Accordingly, the Court held that the judgment was flawed<sup>34</sup>.

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*Long before the damage (now repaired) of the Second World War, its internal proportions were marred by cutting down the tall pews for which he had allowed in the height of the column pedestals. Even so, it is still possible to appreciate its fine proportions and assured and lucid yet ambiguous spatial design: assured because it embodies the simple geometry which Wren believed to be the basis of his art, lucid because nothing is concealed, not even the engineering which holds it together, and ambiguous because it is equally possible to read the plan as a rectangular grid with columns marking the intersections or as a radial system from the centre of the dome (p155);*

in the latter he had written:

*... what makes this church so remarkable is neither the delicacy of the plasterwork nor the accuracy of the angles, but the subtlety of the spaces which its geometry defines.*

*From the entrance we pass into a short nave of only two bays with double aisles, to face a chancel of only one bay on the far side of the dome; the main focus of the interior is thus immediately clear. But the space can be read in other ways ... (p66).*

<sup>33</sup> See p 178F.

<sup>34</sup> The Petitioners arguments on appeal went wider than this, asserting that the Chancellor had not brought an open mind to his determination (see p162E); and the Chancellor had also discounted other weighty evidence. But at the heart of the error was the failure to deal with Professor Downes's evidence. The Chancellor had by way of contrast expressly dealt with other, less expert, evidence. Roy Strong, Director of the V & A and a member of the Cathedrals Advisory Council had said that the altar would

*...give the church what it had always needed – a central altar ... The subtlety of line, the beauty of the marble and the care taken to relate it to the building in terms both of the axes and the pillars make it an impressive focus of worship and an enhancement of Wren's building.*

This of course may have been so but it did not mean that the conclusion was wrong: Mr Barker may still have been right and Professor Downes wrong.

One thing the Chancellor had got right: the burden of proof was on the Petitioners and in remaking the decision, Sir Ralph Gibson<sup>35</sup> began by endorsing *Peek v Trower*, setting out the locus classicus.

On the merits, what Sir Ralph did was to discount the possibility that Mr Barker was right and Professor Downes wrong, or vice versa:

*... it seems to me that the chancellor was in error in his approach to the evidence of Mr Ashley Barker and as to the nature of the difference of opinion between him and Professor Downes. I have difficulty in understanding in what sense the opinion of Mr. Ashley Barker could have been shown to be "wrong," or why the difference of opinion between him and Professor Downes was seen as "technical." At the hearing it was not suggested that the witnesses on either side who were experts in architecture had gone wrong on any issue of ascertainable fact or that either side had left out of account any principle or factor by reference to which aesthetic judgment should be exercised in this context.*

*... the contest between the opinion of Professor Downes and that of Mr. Ashley Barker was conducted and explored in terms of aesthetic judgment and not at any point on the basis that either was or could be shown to be right or wrong on any matter of technical analysis or understanding. The chancellor, however, appears to have regarded the issue of geometry as "essential" and "crucial:" he*

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Although acknowledging that this evidence was weighty, the Chancellor said:

*I find it a little difficult to understand how the building can always have "needed" a central altar when Sir Christopher Wren was designing it for the liturgical practice of his day and thought of it as an "auditory" so that the pulpit and not the altar needed the most important place.*

After giving evidence, Sir Roy wrote in his diary:

*I gave evidence at a Consistory Court at St Mary-le-Bow in favour of Henry Moore's circular altar at St Stephen, Walbrook. It is a beautiful artefact placed beneath the dome and enhancing Wren's special values, essentially those within the tradition of the Renaissance centralised church. I was grilled for three quarters of an hour, in particular by a pedantic man conducting the case against the altar remaining. Confrontations like this do great harm to the conservation movement. As stated in my written evidence "There is a fair balance to be kept between conservation and mummification". In a case like this, it is not being observed (see The Roy Strong Diaries 1967 – 1987 (1997) at p396 (29 January 1986).*

<sup>35</sup> Lloyd LJ went further than Ralph Gibson LJ holding that the balance of the expert evidence was clearly and heavily in favour of the petitioners (see p197C). This may be true but Newsom Ch had anticipated a criticism to this approach: it was not numbers but the weight and cogency of evidence which told (p155H).

*recorded these comments in his note against passages in the evidence of Mr. Ashley Barker. It seems to me that Mr. Ashley Barker's references to the "numerical geometry" as being at the heart of Wren's design were explanations of his own informed understanding of and delight in Wren's work and of his respectful but firm dislike of the presence in Wren's church of Moore's altar. He acknowledged, of course, that the fundamental geometry of the church would be the same if the altar should remain but in his view the altar would bring little advantage to the church or the church to the altar. The answers in cross-examination of Mr. Ashley Barker were consistent, moderate and well reasoned but those answers, together with his evidence as a whole, provided no basis in my view for a judicial conclusion that the differences in aesthetic preference between Mr. Ashley Barker and Professor Downes were concerned with issues of technical rightness or wrongness or that the opinion of either on the issue of congruity could be shown to be right or wrong in any relevant sense.*

There were pastoral reasons for installing the altar and it was, as has been noted, a work of exceptional artistic excellence. This spoke to permitting the altar. The difference between the Mr Barker and Professor Downes was a matter of aesthetic judgment and neither being right or wrong, Mr Barker's did not prevail to outweigh the factors counting in favour of the scheme:

*Opinions will differ as to the aesthetic congruence of the altar with Wren's design. Those who will find the altar congruent will find delight in the church and in the altar together. For those who will find the altar incongruous in the church there will remain delight in Wren's design and I see little reason to think that for them their delight need be much reduced<sup>36</sup>.*

I think that there will be many who would say that there is no such thing as architectural expertise, just opinion. But it did rather look that in the case of St Stephen Walbrook, at least, the experts were grappling with an issue to which there was a right or a wrong answer. To say that everything is just a matter of opinion is to write off an entire academic discipline and calls into question the listing of buildings on the basis of their aesthetic value<sup>37</sup>.

When Simon Bradley revised Pevsner in 1997 he said:

*... there is no doubt that the re-ordering around the new altar and its stepped plinth goes against the grain of the interior by emphasising its centralising tendencies at the expense of its longitudinal ones. The altar also obstructs one's natural desire to walk E along the central aisle and experience the unfolding nuances of Wren's interior. A central altar furthermore does violence to the origin of all Wren's churches as settings for the liturgy of the Restoration church, with its revival of the E position for the altar.*

In Bradley's view at least there was harm to the building by the installation of the altar<sup>38</sup>.

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<sup>36</sup> See p190C. It is a pity that the elaboration of Professor Downes's view that the altar accorded with the geometry of the church is not set out. It does not appear that he was cross-examined about it.

<sup>37</sup> Buildings are listed on the basis of their historic and architectural importance. Guidance makes it clear that their architectural importance includes an aesthetic valuation.

<sup>38</sup> I have not identified an authoritative assessment of the installation of the altar from a historic/architectural point of view which approves of it. Simon Jenkins in *England's Thousand Best Churches* (1999) says *The stone ... looks wrong in this severely grammatical architecture* (p412). St Stephen Walbrook featured on the cover of the first edition of English Heritage's *New Work in Historic Places of Worship* (2003) which looks like approval but the note to the picture says *The Henry Moore altar in Sir Christopher Wren's church of St Stephen Walbrook was installed after fierce controversy. The process of understanding significance and need outlined in this guidance is intended to avoid similar difficulties in future.*

Finally in this context I flag rule 11.5 (3) of the Faculty Jurisdiction Rules 2015 relating to expert evidence in the Consistory Court:

**(3) Where the court gives permission to put in evidence an expert's report, it must direct that any such report—**

*(a) contains a statement that the expert understands their duty is to the court, and has complied with that duty;*

*(b) is addressed to the court and not to the party from whom the expert has received instructions;*

*(c) gives details of the expert's qualifications;*

*(d) gives details of any literature or other material which has been relied on in making the report;*

*(e) contains a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;*

*(f) makes clear which of the facts stated in the report are within the expert's own knowledge;*

*(g) says who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert's supervision;*

*(h) where there is a range of opinion on the matters dealt with in the report—*

*(i) summarises the range of opinions; and*

*(ii) gives reasons for the expert's own opinion...*

If the Consistory Court ends up with two conflicting expert's reports where it is accepted that each conflicting view is within the range of views that reasonable experts may hold, one is in *St Stephen Walbrook* territory. But I suspect that it is rarely that simple.

There is a tail-piece to this story. When the new Holy Table was put into the church, the painting by Benjamin West was taken out, without a faculty. Despite the objections of the CBC and the DAC its sale to America for \$2.85m was subsequently approved. Another fascinating story but I think it is for others to tell.

### **St Mary-le-Bow<sup>39</sup>**

After the Great Fire, the parish of St Mary-le-Bow absorbed the parishes of All Hallows, Honey Lane and St Pancras, Soper Lane. The parish of All Hallows, Bread Street absorbed the parish of St John the Evangelist, Friday Street. In 1878, St Mary-le-Bow absorbed All Hallows, Bread Street. After the Second World War, it absorbed St Mildred, Bread Street (w St Margaret Moyses) and St Augustine, Watling Street (w St Faith under St Paul's). One church now stands where historically there had been nine.

The result was that the new parish ended up with a lot of communion plate, certainly much more than it could use.

Yet as Timothy Schroder wrote in his chapter on the church plate in *St Mary-le-Bow: a History*<sup>40</sup>:

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<sup>39</sup> [1984] 1 WLR 1363.

<sup>40</sup> Ed Byrne and Bush (2007).

*There is no better witness to the multi-layered history of the City of London than its church plate. Its evolving topology, its people, their beliefs and prosperity are all reflected in these objects.*

In 1984, St Mary-le-Bow faced a funding crisis. It decided to sell some of the “family silver” to raise an endowment fund of £100,000 (to pay the annual wages of the verger of £7,000)<sup>41</sup>.

The silver eventually selected were three flagons, the gift of Daniel Hollingworth, who was a member of the Merchant Taylor’s Company (and Master in 1641): two in 1631 and a further matching one in 1637<sup>42</sup>.

Despite the objections of the CCC and the DAC<sup>43</sup>, they were sold and added to the Gilbert collection. This has ended up in the V & A, but the flagons are not on display.

There is a problem with church silver.

The display in the V & A of the finest church silver in about five cabinets is absorbing from both an historic and artistic point of view. But it doesn’t particularly require any additions – essentially, when you have seen one Edwardian communion cup, you don’t need to see another – and this is a situation where more rapidly becomes less. So case after case of fine church silver would be a turn off for most people. At Oxford Cathedral, the gift shop is surrounded by cases of silver deposited by parishes from the Diocese. No-one gives them a second glance<sup>44</sup>.

At the moment, the guidance given by the Court of Arches is severely discouraging to sales of significant silver and in my judgment this is right. But if insofar the silver is in church safes and bank vaults, the situation has uneasy echoes from both of the story of the rich young man<sup>45</sup> also of the servant who buried his talent in the ground<sup>46</sup>. I address this issue more fully in an article to be published in the forthcoming issue of the *Ecclesiastical Law Journal*, which I commend to you.

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<sup>41</sup> In his famous speech to the Tory Reform Group on 8 November 1985, Harold Macmillan didn’t actually refer to selling the “family” silver. The phrase “family silver” goes back to the middle of the nineteenth century.

<sup>42</sup> The first two were made in 1610 for domestic use. I am not sure that I understand their original domestic use or why, later in the seventeenth century, such flagons were becoming surplus to requirements. I am not quite sure why they were so valuable.

<sup>43</sup> They very much regretted the sale. The Chancellor in ordering said that he agreed with them and only made the order very reluctantly.

<sup>44</sup> I understand that there are proposals to move the gift shop from the Chapter House, a location which is not ideal.

<sup>45</sup> See Matthew 19 vv 16 – 30.

<sup>46</sup> See Matthew 25 vv 14 – 30.