

proposed heating system must be affordable. Fourth, a proper appraisal of heating options will generally involve placing all possible systems in order of merit in terms of meeting the net-zero target; and identifying the highest-placed system which meets the needs of the church. Fifth, the court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.

The court considered these principles in the present case, and concluded, contrary to the view of the DAC, that the petitioners had followed the guidance. The needs and resources of the church had been assessed; all available options had been considered and assessed with the help of professional heating experts; and the analysis included a well-reasoned discussion as to why the DAC's preferred option of air source heat pumps would be inappropriate on engineering, energy supply and financial grounds. That being the case, it was not necessary to consider whether the petitioners had cogent reasons for not following the guidance.

The court concluded that the proposed new gas boiler was the only viable option, as the only affordable option which met the needs of the church. Accordingly, a faculty was granted. However, when giving permission for a new fossil fuel boiler, a robust approach to conditions was appropriate; the starting point should be that the church should take steps to mitigate the effects of the decision. The faculty would be subject to a condition that the church either switched to a green gas tariff or entered into a separate arrangement with a carbon offsetting scheme to offset the carbon emissions from all non-renewable gas used.

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## Re St Mary & All Saints, Willingham

Ely Consistory Court: Leonard Ch, 26 July 2023

[2023] ECC Ely 4

*Disposal by sale of historical assets*

Naomi Gyane

The petitioner sought a faculty to dispose of by sale a 16th century communion cup valued at £18,500, a 16th century paten valued at £8,500 and a 17th century silver footed paten valued at £5,500.

The 16th century items were not used by the parish for health and safety and security reasons; the 17th century item was not used for security reasons alone.

The petitioners sought the sale of the items as the parish was struggling to pay its parish share and cash reserves were severely depleted. The parish

could not afford to insure the items for their true value and the quinquennial inspection report itemised repair costs within the next five years of approximately £80,000. The DAC's opinion was that the short-term financial gain from selling the items did not justify the disposal of historical assets. The Church Buildings Council objected (without becoming a party opponent) to the sale of the items on the basis they had significance to the town and should only be removed in the most exceptional circumstances.

Applying *Re St Lawrence Oakley with Wootton St Lawrence* [2014] Court of Arches, the court identified three categories of disposal:

1. Where the item was placed on long term loan;
2. Where the item was to be sold to a museum, art gallery or diocesan treasury;
3. Where the item was to be sold regardless of who the purchaser was.

Where disposal was being sought, the Court of Arches in *St Lawrence Oakley* held that, due to the presumption against sale, selling of historical assets will rarely be permitted. It is for the court to decide whether the grounds for sale are sufficiently compelling to outweigh the strong presumption against sale.

In this case, the petitioners sought the sale of items on the basis of financial emergency. The court concluded that, whilst financial emergency could be a sufficiently compelling reason to outweigh the strong presumption against sale, the temporary inability to pay the parish share, and the prospect of the cost of carrying out repairs, did not amount to financial emergency. Therefore, the petition for a faculty was dismissed.

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