The petitioner argued: that the TMRO was an abuse of process, given that it was made after the present application; that even if the TMRO was not in itself abusive, it could not authorise the temporary use of furniture that had been introduced without lawful authority; and that the Court of Ecclesiastical Causes Reserved should sit to consider the damaging departure from Anglican tradition of kneeling for Holy Communion and having a railed-off sacrarium around the altar.

The court found nothing abusive in seeking to obtain a secure basis in law for the temporary use of the moveable altar once that basis had been questioned. The fact that the TMRO had the effect of frustrating the petitioner's application was of little substance. On the petitioner's second point, the court noted that the petitioner sought the return of the moveable altar to 'its correct location', and did not seek its removal from the church. More broadly, an application for a restoration order should not become a forum for a wide-ranging audit of the lawfulness of furnishings in the church. Any petition for a faculty after the TMRO period can encompass any outstanding questions about the retention of particular items. Finally, the court did not accept that the application engaged any matters of doctrine; in reality it was simply a matter of the occasional use of portable furnishings for a limited period. The application for a restoration order was dismissed.

doi:10.1017/S0956618X2300090X

Re St Leonard, Hythe

Court of Arches: Ellis Dean, 29 June 2023
[2023] EACC 1
Restoration order—permission to appeal refused

David Willink

The petitioner in the above case, having been refused permission to appeal by the Commissary General, renewed his application to the Court of Arches. He was unsuccessful, the court giving full reasons for its refusal. As a decision on an application for permission to appeal, it is confined to its facts.

The grounds of appeal rested on the question whether the use of an existing Holy Table as a nave altar required the authorisation of a faculty. Canon F1 provided that a faculty was required if any additions, removals, or repairs were proposed to be made in the fabric, ornaments, or furniture of the church. The present case was not covered by those provisions. Indeed, the 1603 Canons envisioned or required the regular movement of the Holy Table for the celebration of Holy Communion. Canon F2 provides for the resolution of any dispute as to the location the Holy Table by the Ordinary,

not by the court. It followed that there was no jurisdiction to grant a restoration order in this case because the periodic movement and use of the article as a nave altar did not constitute the commission of an act which was unlawful under ecclesiastical law (section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018).

doi:10.1017/S0956618X23000911

Re St Michael, Wandsworth Common

Southwark Consistory Court: Petchey Ch, 12 May 2023 [2023] ECC Swk 2

Replacement heating system—net zero—green electricity

Jack Stuart

The petitioners sought a faculty to replace their existing gas heating system with a 'ChurchEcoMiser' system, which would involve the installation of 23 innovative electric radiators. The parish had been in long-standing discussions about finding a new heating system for its church and, noting the Church of England's goal of carbon neutrality by 2030, a green option was preferred. The petitioners made clear that green electricity would be used to power this system.

The DAC initially raised concerns as to the difficulty in sourcing green electricity and the impact on others of doing so; the cost of electricity; the embodied carbon in the proposed system; and their view that the proposed system remained in its infancy. After initially proposing an air source heat pump, by which the parish were unpersuaded, the DAC elected to neither recommend nor object to the petition. The DAC subsequently confirmed that, although rule 4.2(2)(b) of the Faculty Jurisdiction Rules 2015 was not in force at the time of the petition, the petitioners' explanation of how they had had regard to the net zero guidance was adequate.

The court considered the question of green alternatives and in particular whether the DAC and the court had pressed the petitioners sufficiently hard on other options, finding that the petitioners had taken sufficient steps to explore the available options. The court recognised the DAC's reservations but found overall that the grounds for the proposal were made out. Accordingly, a faculty would pass the seal. The court considered, but rejected, imposing a condition that the new heating system be supplied under a green tariff, relying on the good faith of the petitioners in seeking the best and greenest solutions.

doi:10.1017/S0956618X23000923