

In the matter of St Leonard, Hythe
Application for a Restoration Order

Introduction

1. By an application in Form 16 dated 7 March 2022, Mr Christopher Cooper applies for an order to be made requiring the PCC and Churchwardens of the church of St Leonard, Hythe, to remove a portable altar and associated furniture currently sited on the Chancel steps. The collective terms “Nave Altar” and “Portable Altar” have been used interchangeably in the documents before me; I too use them interchangeably in this judgment. Mr Cooper claims that the Portable Altar had been moved to that location within the church unlawfully. He seeks an order for the Portable Altar to be restored to what he refers to as its “correct location”, such that “full use” of the High Altar is restored.
2. It is worth noting at the outset that Mr Cooper has a longstanding interest in the church of St Leonard, Hythe. That includes vigilance about the lawfulness of alterations to the church’s furnishings. For example, pursuant to a separate application made by Mr Cooper, I have previously made an order for the reinstatement of pews that had been removed from this church without authorisation.
3. I think it is also fair to say, however, that Mr Cooper’s concerns relating to this particular church, and to the Diocese of Canterbury, range far beyond matters within the faculty jurisdiction. Over the course of the last year, during which the present application has unfolded in stages, Mr Cooper has copied me and the Diocesan Registry into numerous emails relating to St Leonard, Hythe and/or the Diocese. To a significant extent, those emails canvassed a range of serious concerns and serious allegations that have no clear connection to the discrete issue currently before the Court, namely whether an order should be made for the removal of the Portable Altar from its current location to a different location within the church. In this judgment, I focus on what seems to me be

relevant to that issue and disregard the extraneous issues aired in Mr Cooper's correspondence.

Evolution of this application

4. Mr Cooper's application of 7 March 2022 was accompanied by a lengthy witness statement, photographs and other supporting materials. Mr Cooper asserted that the Portable Altar had been introduced into the St Edmund Chapel within the church sometime in the first decade of the 21st century, apparently without faculty. He further asserted that, sometime around the end of 2016, the Portable Altar started to be used in a different location, namely the Chancel steps in the nave. Mr Cooper's position was that there is no lawful authority for this use of the Portable Altar, which he wished to have removed from that location. He argued that the use of the Portable Altar in the nave detracts from the use of the High Altar for communion. He therefore said that he considered his application to raise matters of a ceremonial and doctrinal nature.
5. The Priest-in-Charge, the Rev'd Michael Darkins, was then new in post. Shortly after receiving or being alerted to Mr Cooper's application, he approached the Archdeacon of Ashford, the Venerable Darren Miller, explaining that he (Mr Darkins) sought a trial period in which the Portable Altar could be used in the nave for some services. Over that trial period, he would gauge the views of the congregation, and then in due course he, together with the PCC, would consider whether a faculty application should be presented to make the arrangement permanent.
6. In a witness statement dated 27 February 2023, the Archdeacon explains that, for the reasons given by Mr Darkins, he granted a Temporary Minor Re-Ordering licence ("TMRO") under rule 8 of the Faculty Jurisdiction Rules 2015 (as amended), permitting the use of the Portable Altar in the nave. The TMRO was dated 24 March 2022. It expires on 24 March 2024. The Archdeacon imposed a condition that a review of the congregational response to the temporary arrangements should be made to inform any future application to make the arrangements permanent. He added that, in his view and experience, a TMRO was not strictly necessary in these circumstances, given that the furniture in question was moveable. However, to provide Mr Darkins with security about his ability to undertake this trial period, and in light of previous issues this church had

experienced with faculty matters, the Archdeacon thought it appropriate to give a TMRO in this case.

7. The position was therefore that, if lawful authority was required for the use of the Portable Altar of which Mr Cooper complains, that authority was absent at the time of Mr Cooper's application for a restoration order (7 March 2022) but then supplied via the TMRO (24 March 2022). I return below to Mr Cooper's arguments that the TMRO was invalid, such that it is incapable of supplying what Mr Cooper says is the required lawful authority. To better understand that point, however, it is necessary to summarise what the parties involved had to say about the TMRO and the use of the Portable Altar.
8. Pursuant to my directions, Mr Darkins provided a response on behalf of the PCC and Churchwardens dated 23 June 2022 to Mr Cooper's application. That letter said *inter alia* that:

“The Nave Altar does not occupy a fixed position and is moveable. The longest period that the Altar remained on the Chancel steps was from approximately July 2020-March 2022. The Altar was placed on the steps in response to the to the COVID-19 pandemic, but at no time was it ever fixed and remained moveable. Since Palm Sunday (10th April 2022), the Altar has been relocated to the St Edmund Chapel in the North Transept, save for Sunday 24th April when it was placed back on the Chancel steps for the 9:30am service and returned to the St Edmund Chapel afterwards.”

9. Mr Darkins went on to explain that the Portable Altar was now being used in the nave on an occasional basis, pursuant to the TMRO. He said this:

“The Parish's intentions and plans regarding the Nave Altar during the period of the TMRO are to use it for the celebrant to preside from on occasion, but not on any of the Church's Principal Feasts; the PCC have passed a resolution to this effect. The PCC will seek to receive formal feedback from parishioners during the period of the TMRO regarding their feelings towards the use of the Nave Altar. If there is sufficient desire from parishioners to use the Nave Altar on the Chancel steps on occasion, the PCC will apply for faculty permission to do so. There is no intention for the High Altar to fall into disuse.”

10. Mr Cooper was not satisfied with that explanation. He responded to Mr Darkins' letter by email on 4 July and 12 July 2022. In the first of those emails, Mr Cooper provided extensive historical detail about furnishings in this church. He asserted that no altar had been used in the nave prior to 2017. Although he said it was "heartening that the High Altar was now mostly back in use", he also alleged that a "web of deceit and sleights of hand" had occurred in relation to the Portable Altar. He invited me to make an order that went well beyond the scope of his application, including for "the making of a platform and altar rails in as similar style as possible to the originals to restore the position of the [St Edmund] Chapel altar to what it was before unauthorised work occurred".
11. In his further email of 12 July 2022, Mr Cooper again provided extensive historical detail, which as I understand it goes to Mr Cooper's point that works within this church – including but not limited to the introduction of the Portable Altar – had been carried out without lawful authority in the decades before 2017 (when it seems common ground that the Portable Altar began to be used in the nave from time to time). In that email, Mr Cooper took issue with Mr Darkins' account of how the Nave Altar had been used historically, and he took issue with the timing of the TMRO the Archdeacon had granted, but he did not to any material extent take issue with Mr Darkins' account as summarised at paragraphs 8 and 9 above.
12. I therefore sought further clarity on what Mr Cooper wished this Court to do, in light of the authorisation conferred by the TMRO, and on what basis., The relevant directions were not sent to Mr Cooper until 20 December 2022. They included the following:

"Having considered the submissions made by both the Applicant and the Respondent, my preliminary view is that the application made by the Respondent to the Archdeacon for a licence for a [TMRO] to make use of the "nave altar", as it has been called, was a proper application within the Rules notwithstanding that this application for a restoration order had been made before the TMRO was applied for and that the TMRO was properly granted by the Archdeacon. Therefore, my preliminary view is that the application for the TMRO by the Respondent did not constitute an abuse of process.

The TMRO permits the Respondent within a strictly limited time to test the use of a nave altar, particularly now that a new priest-in-charge has been appointed, and if the Respondent considers it appropriate to do so, to petition for faculty to make the use of the nave altar permanent and, if so, on what terms. The Applicant would then have the opportunity to engage with and respond to any such petition in the normal way.”

13. On 15 January 2023, Mr Cooper provided a 40-page response document headed “Apologia Pro Vita Sua”. Much of that document was not (and did not purport to be) relevant to this specific application. Mr Cooper made a range of very serious allegations against persons involved with the Diocese of Canterbury. Section 2 of that document responded to the preliminary view set out in the letter cited above. Mr Cooper described that preliminary view as having been arrived at “doubtless upon the strongest application of pressure of duress upon him [i.e. me] by the Diocese of Canterbury”. Pausing there, it is important that I rebut that allegation in the clearest possible terms. Save for my correspondence with the Registry about managing this case, and save for the documents I cite in this judgment, I have had no communication whatsoever with anyone, whether from the Diocese of Canterbury or otherwise, about this case.
14. As far as I can discern, the key relevant points from Mr Cooper’s “Apologia Pro Vita Sua” document can be distilled as follows. First, Mr Cooper argues that the giving of the TMRO was abusive, in that it formed part of a Diocesan agenda to cover up unlawfulness at this church and to frustrate Mr Cooper’s application for a restoration order.
15. Secondly, Mr Cooper relies on his detailed evidence, to which I have made reference above, about the history of this Portable Altar. He argues that, even if the TMRO had not been abusive, it cannot authorise the temporary use of furniture that had been introduced into the church without lawful authorisation in the first place.
16. Thirdly, Mr Cooper argues that “the Court of Ecclesiastical Causes Reserved should sit to consider the serious damage and departure from Anglican tradition of kneeling to receive the Holy Communion and not having a railed-off sacrarium area which is set aside from the public walking around or through the area as with a longstanding High Altar...”.

17. I reiterate that Mr Cooper’s “Apologia Pro Vita Sua” advanced a wide range of further arguments and allegations, but the three I distil above seem to me to be the relevant points for the purposes of this application.

18. In a response of 29 January 2023, Mr Darkins explained that, at the time of Mr Cooper’s application, he was new in post and uncertain about the status of the Portable Altar. He wanted to proceed with a “clean slate”, by way of a trial of the use of the Portable Altar in the nave on occasion, and therefore sought a TMRO to authorise that use. Mr Darkins added this:

“Throughout the process I have been clear that I do not wish to cease using the High Altar, nor do I wish to establish the Moveable Altar as a permanent structure on the Chancel Steps. Although the TMRO grants us permission to celebrate on the Nave Altar more regularly, I and the PCC have been content to restrict its use to only those Sundays which are All Age services, and when there is no choir present.”

19. In light of Mr Cooper’s argument that the granting of the TMRO was an abuse, I invited a submission from the Archdeacon, whose evidence is summarised at paragraph 6 above. In a further letter dated 9 March 2023, Mr Darkins added that:

“The [Portable] Altar is placed on the Chancel steps just prior to the 9:30am Sunday Eucharist, and this is only for one Sunday in a month. The Altar is in the St Edmund’s Chapel for the 8am Eucharist on that Sunday, and is returned there immediately following the conclusion of the 9:30am Eucharist. It remains in this chapel for the rest of the month.”

20. Mr Cooper then suggested, in an email of 12 March 2023, that Mr Darkins had deliberately misled the Court via the above statement. In a response of 22 March 2023, Mr Darkins clarified what he had meant. I am satisfied that there was nothing misleading in anything Mr Darkins said, and that nothing turns on this minor point of clarification in any event.

21. In parallel, however, Mr Cooper advanced a further argument in an email of 9 March 2023. He said this:

“I restate the chief premise however, on which I contend the paramount reason for this Restoration Order should be granted, and the reason I persisted with it, even after the Registrar gave me the opportunity to withdraw once the Archdeacon had considered he could issue a TMRO: If the Commissary General were to permit this TMRO Licence to stand, then it would open the floodgates for churches within the Diocese and across England and Wales (because the Judgment will be seen by all) to do anything requiring a TMRO Licence without actually applying for one.”

Findings and conclusions

22. I remind myself that the granting of a restoration order is a matter for the Court’s discretion. By rule 16.5 of the Faculty Jurisdiction Rules 2015:

The chancellor may issue an injunction or make a restoration order on such terms as appear to the chancellor to be just.

23. I decline to exercise that discretion so as to make the restoration order Mr Cooper seeks. I conclude that it would not be just or proportionate to do so in these circumstances. This is for the following reasons.
24. First, I accept the accounts given by Mr Darkins and the Archdeacon, as summarised in this judgment, about the current (i.e. since at least March 2022) use of the Portable Altar, the rationale for the TMRO and the intended actions following the expiry of that TMRO. Mr Cooper does not seem to me to take issue with the central facts relating to those points. I am satisfied that what Mr Darkins and the Archdeacon have told the Court is correct.
25. Secondly, I do not accept Mr Cooper’s argument that the granting of the TMRO was abusive in these circumstances. On the basis of the explanations given by Mr Darkins and the Archdeacon, which I accept, my conclusion is that the TMRO was an appropriate authority and was lawfully granted. The Archdeacon was entitled to support Mr Darkins’ wish for a trial period for the use of the Portable Altar in the nave for some services, particularly in light of Mr Darkins being new in post and wishing to try certain arrangements before reaching a settled position on what the parish wished to formalise on a permanent basis. I conclude that Mr Darkins and the Archdeacon acted

appropriately and in good faith in seeking and providing a secure (but time-limited) basis in law for that trial.

26. The fact that the TMRO was made after Mr Cooper brought his application does not render it abusive or otherwise unlawful. Mr Cooper's application was no doubt a prompt underlining the merits of obtaining a secure basis in law for this temporary use of the Portable Altar, but I see no problem with that. I conclude that the TMRO was made not for the purpose of frustrating Mr Cooper's application, but rather for the purpose of facilitating Mr Darkins' legitimate objective. The TMRO may have had the effect of frustrating Mr Cooper's application, but that consequence is in my view of little substance. I say that for this reason: if, for example, I had made the restoration order on (say) 8 March 2022, that would not have precluded the granting of a TMRO in the weeks thereafter. The premise for a restoration order would have been the lack of lawful authority; the TMRO would supply the requisite lawful authority, if such authority was required in these circumstances in the first place.
27. Thirdly, I do not accept Mr Cooper's argument that the TMRO was unlawful because the furniture whose use it authorised had been introduced without faculty in the first place, allegedly well over a decade before this restoration order was made. The Archdeacon says he did not consider this historical point when making the TMRO. I am satisfied that he did not need to do so. I note that Mr Cooper's application form stated that he wished the restoration of the furniture to which he objected to their "correct location". He did not appear to me to be making an application for the removal of any furniture from the church altogether. More broadly, I do not consider it to be just or appropriate for this application for a restoration order to become a forum for a wide-ranging audit of the lawful introduction of furnishings into this church in previous decades. If a petition for faculty comes to be made following the end of the TMRO period, that can encompass any outstanding questions about the retention of items within the church.
28. Fourthly, I do not accept Mr Cooper's suggestion (see paragraphs 4 and 16 above) that his application engages matters of doctrine, particularly in light of Mr Darkins' account – which I accept – of the limited use of the Portable Altar and the ongoing use of the High altar. In reality, this is a relatively straightforward case about whether this church should be permitted to use certain portable furnishings for some services in the nave on a time-

limited basis within the terms of a TMRO. I reject Mr Cooper's argument that this has material implications for matters of doctrine.

29. I conclude that, if lawful authority was required for the uses of the Portable Altar to which Mr Cooper objects, that authority was in place from 24 March 2022 onwards, by virtue of a valid TMRO. It would be both unjust and disproportionate for me to make a restoration order in the face of that TMRO, not least given that, upon the expiry of that TMRO in March 2024, there may be a petition for faculty to set matters on a permanent lawful footing. Mr Cooper, and anyone else concerned, can provide their input in connection with any given petition as and when it is made. In my view, that is the appropriate stage for determining the appropriate long-term arrangements for the use of the Nave Altar and associated furnishings within this church.

Disposal

30. For those reasons, this application for a restoration order is dismissed.
31. As to costs, these are entirely at my discretion but the normal principle in the Consistory Courts is that the unsuccessful party pays the costs of the successful party and of the Court and the Registry. In this case, I note that neither party has been legally represented and therefore, fortunately, costs may be limited; necessarily, however, there will be Court and Registry costs to be paid. I direct that both Mr Cooper and the PCC and Churchwardens have twenty one days from receipt of this judgment to submit written representations on costs to the Registry, if they so wish; I will then make a decision on costs.

ROBIN HOPKINS
Commissary General

26th April 2023