(2014) 16 Ecc LJ 335–350 © Ecclesiastical Law Society

COMMENT

Accommodating Bishops

Frank Cranmer
Fellow, St Chad's College, Durham
Honorary Research Fellow, Centre for Law and Religion, Cardiff University

David Pocklington
Independent Researcher

Keywords: bishops, property, Church Commissioners, Church of England

THE CHURCH COMMISSIONERS' PROPOSAL

Earlier this year the Church Commissioners decided that the newly appointed Bishop of Bath and Wells should live in the Old Rectory,[1] Croscombe, instead of at the historic palace in Wells. When the decision met considerable local opposition, not least in the House of Commons,[2] the Archbishops' Council appointed a committee consisting of Mrs Mary Chapman (in the Chair), Philip Fletcher and Archdeacon Cherry Vann to consider objections. After a hearing, the committee directed that the transaction should not proceed.[3]

THE LAW

The decision to relocate the bishop's residence was a 'regulated transaction' under section 7(1)(a) of the Ecclesiastical Offices (Terms of Service) Measure 2009. Where a regulated transaction concerns the residence for a diocesan bishop, section 7(2) requires the relevant housing provider to serve notice on the office-holder concerned and on the Bishop's Council; and under section

1 A draft of this note was published on our blog, *Law & Religion UK*, <http://www.lawandreligionuk.com>, accessed 11 June 2014.

2 At Prime Minister's Questions. David Cameron told Tessa Munt, the Liberal Democrat MP for Wells, that he would go away and look into the issue: HC Deb 29 January 2014, col 860.

3 *Bishop's Council & Standing Committee of the Diocesan Synod of the Diocese of Bath and Wells v Church Commissioners for England* [2014] Committee of the Archbishops' Council (unreported), available at <http://www.churchofengland.org/media/1983886/wells%20decision%20final.pdf>, accessed 28 May 2014. Further references to this decision are given in the text.

https://doi.org/10.1017/S0956618X14000532 Published online by Cambridge University Press

7(3) any person on whom such notice is served has the right to object to the transaction. Regulations 16(2) and (3) of the Ecclesiastical Offices (Terms of Service) Regulations 2009 provide that, if notice of objection is given, the relevant housing provider must within five days send the notice of objection to the body which is to consider it.

Where, as in this case, the Commissioners are the relevant housing provider, they must send the notice of objection to the Archbishops' Council unless they either conclude that the objection is well founded and decide not to proceed further or consider whether to proceed with a different regulated transaction. Where the Commissioners do not give notice that they consider the objection to be well founded and therefore send the notice of objection for consideration by the Archbishops' Council, Regulation 16(4) provides that:

> The Archbishops' Council . . . shall, after considering the grounds of objection and all relevant circumstances, direct that the transaction shall proceed if the relevant housing provider satisfies it . . . that any objection should not be upheld and, in any other case, direct that the transaction shall not proceed.

The function of the committee appointed by the council is to consider the substantive merits of the proposed transaction in the light of the grounds of objection and all relevant circumstances. The burden of satisfying the committee that the objection should not be upheld rests on the housing provider: in this case, the Commissioners.

THE PROCEEDINGS

This was the first occasion on which the procedure under Regulation 16(4) had had to be invoked. In the course of proceedings the committee heard oral evidence from the parties' representatives and their witnesses, from the bishop in person and from the Palace Trust. It also received written representations from the Chapter of Wells and a number of letters from members of the public (paragraphs 19–21). The committee applied the civil standard of proof: 'normally referred to as the balance of probabilities, but sometimes expressed as whether a disputed fact is more likely than not to be true' (paragraph 30).

The Commissioners' duty under section 4(1) of the Measure is to provide full-time stipendiary office-holders (but not incumbents) with accommodation which is 'reasonably suitable for the purpose'. In the present case, the committee took that to mean

> accommodation that is reasonably suitable for the purpose of accommodating the individual currently holding office as Bishop of Bath and

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> Wells and his family. That involves taking account of any relevant considerations concerning his role and duties as bishop of the particular diocese and any relevant considerations concerning his personal circumstances. (paragraph 27)

The committee accepted that the Commissioners, 'as those with the primary responsibility', had a margin of appreciation in determining suitability (paragraph 28).

There were three main grounds of objection: that the proposed temporary accommodation at Croscombe was unsuitable and that no case had been made for a move (either temporary or permanent), that there had been inadequate consultation and that 'the decision was damaging to the pastoral relationship between the Bishop and the diocese' (paragraph 31). The Commissioners argued that, on the contrary, the apartment in the palace at Wells did not provide 'reasonably suitable' accommodation for the bishop, while the Old Rectory at Croscombe did (paragraph 32).

THE COMMITTEE'S FINDINGS

In considering the matter, the committee chose to take into account the context of the relationship between the bishop and the city:

> it is clear to us that the City of Wells has a very particular history and identity within the Diocese of Bath and Wells. In this smallest of English cities, with a population of just 11,000, the Cathedral and Bishop's Palace are a dominant presence in the community. The Bishop is closely associated with the city in the popular mind, notwithstanding his ministry to the whole of the diocese. His predecessors have had a residence on the site for over 800 years. Whilst very few diocesan bishops still live in a historic palace we had a strong sense that it was important to the city and the diocese more widely that the Bishop should at least live within the community of Wells and be seen to go about it. (paragraph 33)

On the evidence before it, the committee concluded as follows:

i. That, 'in the light of all the evidence and in the context of the diocese and city that we have already described', the bishop needed to live in Wells (paragraph 41);
ii. That, 'even allowing the Commissioners a margin of appreciation', the Old Rectory at Croscombe was not 'reasonably suitable . . . even on a temporary basis' (paragraph 42);

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iii. That, nevertheless, the money spent at Croscombe had not been wasted and that there was no reason to doubt the Commissioners' view that it represented 'an attractive investment asset' (paragraph 43);
iv. That the Commissioners' concerns about the privacy of the bishop's apartment at the palace were 'significantly overstated' (paragraph 50); and
v. That the Commissioners' concern that if the bishop were to live in the palace he would be at risk of becoming drawn excessively into the affairs of the Palace Trust (with the concomitant reputational risk if the trust were to get into financial difficulties) was unjustified (paragraphs 52–55).

The committee concluded that the apartment in the palace was 'reasonably suitable' for accommodating the bishop (paragraph 59) but stressed that its conclusion did not imply that 'only the apartment in the Palace could ever provide reasonably suitable accommodation' (paragraph 60).

The committee accepted that the Commissioners had to take account of their duty to make provision 'for the cure of souls in parishes where such assistance is most required' and their responsibility for clergy pensions under the pre-1998 pension scheme when deciding how to allocate their resources; however, those were not strong arguments in the present case (paragraphs 61–62). But the committee did *not* accept the interpretation placed on the legislation by the Bishop's Council that it had created a presumption in favour of the status quo:

> If the Commissioners were faced with a choice between two properties, one of which was the existing see house and both of which were found to be reasonably suitable, it would be within the Commissioners' discretion to determine which of the two properties should be the see house. That determination might well be informed by the financial implications of the choice on their wider responsibilities. (paragraph 62)

As to the issue of consultation, though the committee accepted that the Commissioners were not under any statutory duty to consult on the matter and that they *had*, in fact, carried out some consultations with the bishop's senior staff, it concluded that the Commissioners had not taken sufficient account of the particular context of Wells (paragraph 65). That said:

> We have not reached our decision on the basis of inadequate consultation: our conclusions have been reached on the merits of the decisions in question. But it seems to us that the wrong result might have been avoided had

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> more satisfactory consultation been carried out and at an earlier stage. (paragraph 66)

Equally, though the Commissioners had failed to anticipate the impact of their decision in Wells and in the wider diocese (paragraph 67), the committee's own conclusions had not been reached on the basis of any damage to pastoral relationships that might have occurred (paragraph 69).

COMMENT

As noted earlier, this was the first occasion on which the procedure under Regulation 16(2) and (3) of the 2009 Regulations had been used. Three points come to mind. First, the Regulations do not provide for any mechanism of appeal against the decision of the Archbishops' Council (on the recommendation of the committee) in the case of 'regulated transactions', even though they provide for appeals to an employment tribunal by office-holders under common tenure. Secondly, Regulation 16(5) authorises the Archbishops' Council to delegate the consideration of the objection to a committee. Paragraph 71 of the committee's determination, 'We accordingly direct that the transaction shall not proceed', seems to suggest that, once the full council has delegated its power to make a decision in a particular case, the committee's decision in that case is final. Thirdly, the Archbishops of Canterbury and York are both Church Commissioners *and* joint Presidents of the Archbishops' Council. So, by a curious legal quirk, the archbishops had an interest in both sides of the dispute.

Finally, perceptions of the way in which the Churches in general provide accommodation for their senior clergy reach far wider than the local MP and, maybe, a handful of protesters. The Roman Catholic Church faces similar issues in relation to the historic residences part-occupied by some of its bishops. These tend to have a range of additional non-residential uses, from office accommodation to meeting venues, and there are often restrictions on their disposal: at Westminster, for example, Archbishop's House is part of the cathedral complex. From a Roman Catholic perspective, Christopher Lamb, an assistant editor of *The Tablet*, suggests that, though Pope Francis has stated that how bishops live should reflect that fact that they are pastors, not princes, 'the simplistic notion that every bishop who owns a large house should sell it and live in a poky flat is misguided'.[4]

doi:10.1017/S0956618X14000532

4 C Lamb, 'Spare us the faux outrage over bishops' houses', *Tablet Blogs*, <http://www.thetablet.co.uk/blogs/1/349/spare-us-the-faux-outrage-over-bishops-houses>, accessed 28 May 2014.

https://doi.org/10.1017/S0956618X14000532 Published online by Cambridge University Press