

Chancellor Seed Q.C.

Re: St Michael Cornhill

JUDGMENT

1. By a petition dated 18 December 2006 The Rector and Churchwardens of St Michael Cornhill seek a faculty for:
 - the erection of a new ring of twelve bells in place of the current ring, at the lower level in the tower (to include a new frame),
 - re-hanging of the three original bells of 1728 from the original historic frame at the upper level in the tower to be used as chiming bells,
 - disposal of the 9 remaining bells.

The net cost of this work was estimated at the time as £132,000; this was provided by Taylors Eayre Smith Ltd, bell founders who were to cast the 12 new bells and to whom would be traded in the 9 retained bells. Although the petition did not so specify, the cost was to be met wholly privately. The cost varied depending upon whether or not the bells to be disposed of can be traded off. It was hoped that they would be re-hung in Perth Western Australia rather than destroyed. I have made various enquiries about the cost and financing and am satisfied, other things being equal that the funds are in place. The original proposal was approved by the Parochial Church Council by 12 votes in favour, none against out of a total membership of 24,

in April 2006. I note that this represents only half of the Council which originally caused me some concern.

2. The proposals in the petition represented a change from those originally put forward by the PCC; the modifications having been brought about by provisos to the first DAC certificate and concerns raised by the Council for the Care of Churches. I have decided not to set out all the details of the original proposals and the modifications and the technical considerations; suffice it to say that at the preliminary stage the Petitioners consulted the appropriate authorities and modified their proposals in the light of the views and recommendations of the DAC and the CCC. The Council for the Care of Churches, however, ultimately recommended the retention of all 12 bells rather than just the original 3, although they accepted that the bells should be re-hung in a new frame of a different design. English Heritage were also consulted and, although aware of the views of the Council for the Care of Churches, nevertheless had no objections to the proposals, nor did the Victorian Society and I have been mindful of the English Heritage publication *Bells and Bell frames: Guidelines for consultation*, which was published during the course of my deliberations on this case. I should also add that the Department of Planning and Transportation of the Corporation of the City of London (the local planning authority whose consent would have been needed if it were not for the ecclesiastical exemption from the need for listed building consent) was consulted and had no objection either. The Ancient Society of College Youths (the body responsible for the ringing of the bells at this and many other City churches as well as St Paul's Cathedral) also passed a resolution "by a huge majority" in support of these proposals on 11 July 2006.
3. The reasons given by the petitioners for these proposals are that the current bells were considered not to be of good tonal quality. The bells are described as a mixed lot from seven different casting periods between 1728 and 1968. A private donor had offered to pay for new bells so the church could have a new ring with true harmonic tuning. The Statement of Need explained further, that because the different castings span a 230 year period, the bells do not blend tonally and I shall return to this in due course. It was also said that the bells had long been considered too big for the tower, resulting in more tower movement than is conducive for good ringing and even though they

were re-hung in a new cast iron frame it is said that it remains very difficult for ordinary ringers to cope with them. Details of measurements of size, weight, tone etc of the existing bells are set out in considerable detail in a Note dated 8 February 2006 from the Central Council of church Bell Ringers, prepared by Mr Windsor, in addition there is an Analysis of Bell Tuning dated 1 August 2006 by W. A. Hibbert which is a very detailed and comprehensive document.

4. It was therefore proposed that there should be a new ring cast to the best harmonic tuning standard which would resolve the question of the poor tonal blend and the new bells would be slightly lighter in weight which would reduce the tower movement by two thirds which will also make them easier to ring. A detailed specification for this new ring was prepared by Taylor Fayre & Smith of Loughborough dated 20 April 2006 and I do not set those details out here.

5. Objections were received in response to general citation from the following:

Alan Hughes, of West Wickham, Kent, a director of the Whitechapel Bell Foundry;

Martin Sankey, of Sevenoaks, Kent, a past master of the Worshipful Company of Drapers who are the patrons of the living of St Michael Cornhill;

J.R.B. Saunders, of Bedford, a bell ringer and a member of the London County Association of Church Bell ringers;

The Worshipful Company of Founders, of Cloth Fair London EC1;

Christopher J Cooper, of Hythe, Kent, a bell ringer, former casual attendee at divine service but mainly “hidden agendas” as he described his objection;

Philip Chalk, of Hurstbourne Priors, Whitechurch, Hampshire, a former ringer and churchwarden at St Michael’s;

Anthony W J Appleton, of Woodbury Salterton, Exeter, a former member of the Ancient Society of College Youths and former bell ringer at St Michael’s;

Noel J Diserens, of Wallingford, Oxfordshire, a member of the Ancient Society of college Youths and “camapanologist of 60 years experience”;

The Reverend Roger Fry, of Wells, Somerset a former bell ringer;

John Gipson, of Royston, Hertfordshire, a member of the Ancient Society of College Youths;

Rear Admiral Michael Harris, of Whitchurch, Hampshire a member of the Ancient Society of College Youths and former clerk to the Worshipful Company of Clothworkers;

Graham Hayward, of Coventry, a former London bell ringer who has rung at St Michael's;

Sir Nicholas Jackson, of London W2, a past master of the Worshipful Company of Drapers and former member of the PCC of St Michael's;

Dr Christopher Johnson, of Cambridge, a member of the Ancient Society of College Youths;

Lord Luke, whose locus I could not ascertain, but who wrote in support of the clerk of the Drapers' Company (which company as I shall explain in due course was not objecting to the proposals;

Michael P Moreton, of South Croydon, a past master of the Ancient Society of College Youths and weekday ringer at St Michael's;

Martin Neville, of Stroud, Gloucestershire, a past master of the Drapers Company and worshipper at St Michael's;

Robert Strick, of Midhurst, West Sussex, a former clerk of the Drapers Company and member of the PCC of St Michael's;

D. Paul Smith, using the address of Phillip Chalk above, but resident in Malaysia, a former member of the Ancient Society of College Youths and ringer at St Michael's.

6. There was also one objector, Mr E J Hearn of High Wycombe, who had no direct or active connection with St Michael Cornhill, who elected to become a Party Opponent but subsequently withdrew. At that point I gave the opportunity for a properly qualified objector with some current direct connection to the church to become a party opponent. Two objectors sought to become parties opponent but having reviewed their interest, I was satisfied that they did not qualify to be joined under rule 16 of the Faculty Jurisdiction rules and I so ruled in August last year. I further determined in that situation that I would determine the case on the submitted papers: a) because they contained sufficient (if not an excess) of material for me so to do and b) because I discerned from some of the remarks in the letters of objection that there were

irrelevant personal issues and undercurrents being brought to bear and there were ulterior motives in certain quarters for wanting a hearing to raise matters not necessarily connected with the bells.

7. The Drapers' Company did not have a formal view, although the clerk stated that the company was not persuaded that there are strong engineering or technical reasons for replacing the current ring of bells. I remind myself at this stage, and will restate this in due course, that the test I must apply is not whether there are strong reasons for allowing the works, but whether the balance, having considered the evidence as a whole, is in favour of the proposal. Given this official position adopted by the Drapers Company, who as I have said are the patrons of the living, I treated all those objectors who prayed in aid their past or present connection with the Drapers Company as acting as individuals and not as representatives of the Company.
8. The case for the proposals was very technical indeed, as was the case against, but because of the emotive and nuanced nature of many of the objections, few of which concentrated solely on the technical issues and avoided the emotional or personal, the case against, whilst it undoubtedly existed was harder to evaluate. I therefore asked the Registrar if somebody with appropriate technical skills, but not directly involved in the case, could look at all the submissions to assist in focussing my attention. I was quite happy for such a person to express an opinion on the proposals, but on the clear understanding that the final decision would be mine and mine alone and this person's opinion would just be one of the many factors I would take into account, giving it such weight as I thought appropriate in the light of all the other evidence and what the parties said about this opinion. I should make it clear it was made available to all parties to comment on and I have taken all comments received into account.
9. The person who performed this task was Mr Robert Cooles, Bells Adviser to the Diocese of Southwark who also consulted his counterpart in the Diocese of Chelmsford. It is an unfortunate fact of this case that the London Diocesan Bells Adviser is the Inspecting Architect of the church in question. Mr Cooles produced a helpful and thorough review of the papers in the case, dated 19 February 2009. He came down in favour of the proposals, but as I have indicated I have not allowed that to influence my decision, although I have taken it into account, as I have all views that

have been expressed; rather I used his review as I way of revisiting all the submissions myself and analysing what I found.

10. Needless to say, on receipt of Mr Cooles' review, those who were opposed remained opposed and denounced it and I have taken what they have said into account. It is also the case that during the long time that it has taken me to determine this case, Taylors Eayre & Smith went into liquidation. This was on 18th September 2009, although I did not hear of it right away and it was just I was finishing my final review of all the evidence and preparing to make a decision and start writing my judgement for the first time.
11. In the event, by the time I found out about it and queried matters, a bid from a consortium had been accepted and trading would continue as John Taylor & Co, Bell Founders Loughborough. This was in October of last year when it also emerged that Mr Cooles was to be the company secretary of this new company. He immediately declared this interest but this was some eight months after he had written his review for me and having carefully considered the matter I do not think it undermines his review – or indeed his conclusion, which as I have indicated is not something I have allowed to influence me in reaching my conclusion.
12. As must by now be clear, this case has been fraught with difficulties on every front and at every stage. Originally I was proposing to set out my analysis and findings in detail, but after many months of reading and writing and rewriting, I decided that that was neither helpful or necessary as all the relevant detailed papers are readily available and I thought it would be better to set out my findings and conclusions more simply, without setting out everything that is in the many pages of submissions, save in summary form. I shall set out a summary of the points made in objection in a moment but I shall make some limited specific observations first.
13. Several of the objections contained intemperate language and made all sorts of unsubstantiated allegations. Christopher Cooper's was particularly bizarre and mostly unhelpful, but the Incumbent's response to it did not help matters either. Alan Hughes made detailed and technical objections that are well informed, as one would expect; but I have to bear in mind that he is a director of the Whitechapel Bell Foundry who

cast the original bells and have done the various re-castings over the centuries and who have a financial interest in the outcome of this case. D Paul Smith produces a “review document” as though he were an expert witness rather than an objector and it is a detailed and technical case against the proposals. However, some of the language is emotive and disparaging of the carefully set out technical documents provided by accredited experts in the relevant fields in support of the proposals. He disagrees in detail with each statement and much of the technical detail in the documents submitted by the technicians in support of the proposals and relies on his own expertise as an engineer and former bell ringer to support his position.

14. Mr Smith, as with most of the other objectors who have submitted technical objections, prays in aid his former, and they, their current membership of the Ancient Society of College Youths. However, against that I must set the fact that the proposals before me were specifically considered by The Ancient Society of College Youths who passed a resolution “by a huge majority” in support of these proposals on 11 July 2006; so these objectors can only be speaking as individuals and the majority view of their society, the principal bell ringing body in the City of London, is at odds with theirs.

15. The principal salient points of objection are as follows:

a) **The Loss of the only old style ring in the city of London.** I do not go into the technicalities of this as they are fully set out in the papers. This is relied on by Mr Smith, amongst others, but he does not go into any great detail other than the hum, saying how subjective the issue is and then firmly stating his preference for “old style” over new. Mr Chalk also refers to the question of hum and expresses his preference for old over new style but also frankly admits he has no professional knowledge of the casting or tuning of bells. Mr Hughes also discusses hum and does go into some technical detail and mentions the minimal amount of retuning his firm did in 1960. Others, while asserting that this is the only “old style” ring left in the City demonstrate no real understanding or expertise on the subject of

old versus new. The point is that prior to a form of tuning advocated by Canon Simpson in the late nineteenth/early twentieth century, bells were cast to strike a true note of good tone without any great concern as to whether the subsidiary notes were in tune with each other or the strike note, or necessarily to any exacting degree, with other bells in the ring. Where is “new style” is concerned with harmonic accuracy. There appears to be no precise agreement about how “old style” tuning is defined, other than that the bells have not been tuned in accordance with true harmonic tuning as was advocated by Canon Simpson. It appears that old style tuning is rather like describing an elephant – you know it when you hear it. None of the objectors explores this issue in the same detail or to the same degree as do Taylor Eayre & Smith and Mr Hibbert.

- b) Linked to that objection is: **the destruction of an historic ring.** Most objectors rely on the fact that this is the first or oldest ring of 12 bells in the City of London.

- c) **The present bells are not difficult to ring/the go is satisfactory.** All of the objectors who have experience of bell ringing either assert that the current bells are not difficult to ring or with the appropriate expertise or experience, they are not difficult to ring and are not too heavy for their purpose as claimed by the Petitioners and their bell ringers.

- d) **The movement/oscillation of the tower is within acceptable parameters.** This is despite detailed evidence adduced by the Petitioners to the contrary.

- e) **The cost of the proposals cannot be justified or the money could be better spent elsewhere.** Only a minority of the objectors made this point but I do not consider it devoid of merit.

- f) **The original bells in the tower were originally cast by the Whitechapel Bell Foundry and all subsequent recasting, tuning and associated works had been**

undertaken there. Some objectors thought it inappropriate to break this historic connection.

16. I start from the premise that the burden of proof that a faculty should be granted rests upon the petitioners and they should satisfy me of their case for these proposals on the balance of probabilities. The Petitioners themselves, on behalf of their PCC and their bell ringers wish to have “new ring” of twelve bells which will be more harmonic and which they consider will sound better and be easier to ring, have less effect on the tower and they have the means to pay for it and they wish the work to be done by another foundry than that which has hitherto provided the bells for this tower. Have they established that I should allow them to do this?

17. **Old style ring.** The petitioners and their bell ringers are entitled to have their views taken into account. I accept that opinions are sharply divided and that “old style” rings have been progressively replaced by new style. I must take into account, in my judgment, that this is because there is a preponderance of opinion, including some devotees of the old style, that the new style is musically superior. I do not express a view about that, but in light of the significant technical evidence, in particular Mr Hibbert’s analysis of the tuning, in support of the petitioners’ proposals and the “enthusiastic support” therefor from the Ancient Society of College Youths, I consider that the weight of the available evidence is in favour of the proposal. I then examined the objectors’ evidence to see if there was anything there that would defeat the petitioners’ evidence on the balance of probabilities.

18. The only objection that came anywhere near, was that of Mr Hughes who made submissions on this question that were far more detailed and probative than any other objector. However, Mr Hughes’s evidence on this and other aspects of the case, to which I will refer in due course, was very significantly undermined. This is because, when the petitioners first began to invite quotations for these proposals Mr Hughes submitted quotations in 2004 and 2005 for providing a new ring on behalf of the Whitechapel Bell Foundry Ltd. These quotations are in evidence before me and there

is no suggestion of objection to a new ring being provided for this tower. Mr Hughes only objected after the contract was awarded to Taylors Eayre & Smith. In any event I preferred the detailed and cogent submission of Mr Hibbert on this point and I find that the Petitioners have made out their case in this respect.

19. I also gave separate consideration on this point to the submission that this is the only “old style” ring left in the City. If, as I have accepted, the aesthetic and musical case is made out for a “new style” ring it would not be right in my judgment, and it would infringe the rights of the petitioners and those whom they represent to say that because others have been allowed to have new rings and “old style” is in short supply, these petitioners must suffer the disadvantages that I accept there are, by having to retain their existing bells. Furthermore, I do not accept that this is the only old style ring left in the city. There is evidence before me that St Sepulchre without Newgate has an old style ring of 12 bells with more of the original bells left in the ring than there are at St Michael’s. St Paul’s cathedral although its ring is one of nineteenth century bells, is in fact an “old style” ring, as is the 1735 ring in Southwark Cathedral, which of course is not in the City of London but is within the vicinity and so it cannot be said that St Michael’s bells are the only surviving example in that locality. Furthermore, they are not the same ring as they originally were as they have been subject to many re-castings, which I will deal with shortly and there was also retuning, albeit described as limited by Mr Hughes, as part of a recasting in 1960; so the old style ring of these bells, although not eliminated has, in my judgment been compromised.

20. The complaint that this is **the destruction of an historic ring** is, in my judgment, ill founded. The original peal of twelve bells cast by the Whitechapel Bell Foundry was hung in 1728. However, there have been many re-castings of individual bells since then, in fact some, including the tenor, were deemed to be of poor quality soon after installation and were replaced in 1738. The 8th was replaced in 1740 two trebles in 1746 and the 5th and the tenor again in 1795. So within seventy years of the installation only three of the original bells were still in existence and it is proposed that these should be retained, although not as part of the ring but as chiming bells.

Nevertheless it means that such bells as are original are being retained and not destroyed or even sold to be hung elsewhere.

21. Since 1795 there were re-castings in 1910 and 1960 when, as I have mentioned, there was some retuning and a new bell frame was installed and in 1968. Insofar as it can be said that this is an historic ring dating from 1728, the only original bells from that date are to be retained and I do not consider that there is any real merit in this objection, which is more emotional than real and I find that the petitioners' case is fully made out in this respect. In this, as with the previous point of objection, I am mindful of the fact that if it were not for the ecclesiastical exemption, it would be for the Corporation of London as the local planning authority, to determine such conservation and heritage issues and the Corporation's Department of Planning and Transportation has no objection to these proposals.

22. **The difficulty of ringing the bells.** This is well attested to by those who ring them and their views receive technical support in Mr Windsor's report. He gives considerable technical detail on this and on tower movement. The material from the objectors consists mainly of unsubstantiated opinion and assertion, and certainly nothing approaching the detailed analysis provided by Mr Windsor. I accordingly find that the petitioners have made out their case in this respect as well.

23. **Tower Displacement.** This issue is clearly set out by Mr Windsor in considerable detail in his addendum of 10 July 2006. According to criteria accepted since the early nineteenth century the displacement produced by the present ring (1.61mm north-south and 1.99mm east-west) is greater than the 1.55mm recommended. The new ring (.57mm north-south and .57mm east west) is well within the recommendation. Such objectors as deal with this issue do not dispute Mr Windsor's measurements but assert that the current displacement is within acceptable parameters. I am unconvinced by that and I accept Mr Windsor's careful and thorough evidence on this subject. It follows that in my judgment the petitioners have made out their case on this issue as well.

24. On initial reading it appeared to me that this case was finely balanced and on several occasions I invited further evidence and submissions as the terms of the initial objections were vehement and led me to believe there was significant factual evidence, as opposed to the opinion of those believing themselves to have some expertise in the relevant areas, that undermined the evidence on behalf of the petitioners. However, truly informed expertise, without some ulterior interest or motive is not present amongst much of the objectors' material, all of which I have taken into account and read at least three times, as I have the very detailed and expert material submitted by the petitioners. As I have indicated, on all the points considered so far, the case is made out. I should just add that I am satisfied that if the Perth scheme comes to nothing and no purchaser can be found for the nine non-original bells then the case is made out for their metal being reused, as was accepted by Mr Hughes of the Whitechapel Bell Foundry when he was quoting for the work.

25. **The cost of the proposals cannot be justified or the money could be better spent elsewhere.** Initially this gave me considerable concern, given that things seemed so finely balanced. If these bells were adequate for their purpose could one justify spending so much money on their replacement? But even if that were part of a Chancellor's remit – and providing the expenditure would not be unlawful per se, I am not persuaded that it is – I have no power or jurisdiction to compel the private donor to spend his money in a way that I consider more appropriate. If for example, I were to refuse this petition on the basis that the donor's money would be better spent on providing a ring of bells at St Bride's Fleet Street whose bells have never been restored after war time bombing, as one objector has suggested, but the donor did not wish to and chose to spend his money on opening a night club instead: then St Bride's would not benefit and St Michael Cornhill would not acquire the bells to which, on all the preceding arguments, they are entitled. I therefore do not consider that this would amount to a reason for refusing to grant a faculty.

26. Finally I turn to the suggestion that: **The original bells in the tower were originally cast by the Whitechapel Bell Foundry and all subsequent recasting, tuning and associated works had been undertaken there.** This I have to say caused me great difficulty and I felt obliged to seek further submissions from the petitioners on this point. Having considered the petitioners' further submissions on this point and that which has been said on behalf of the objectors, I have come to the conclusion that it would not be a valid and proper ground for dismissing the petition or refusing a faculty. The only bells originally cast by the Whitechapel Bell Foundry are being retained in situ, the rest are the product of recasting as recently as 1968 and the majority 1960. As far as I am aware the Whitechapel Bell Foundry is not in danger of going out of business and even if it were, in the absence of some contractual agreement to the contrary, it would not be lawful for the Consistory Court to direct by whom works, for which it had given approval, should be carried out unless the DAC or the Local Planning Authority or one of the legitimately interested Amenity Societies had made its support conditional on such a requirement and that at best could only be advisory and not binding on the Court. It therefore follows that I do not consider that this objection provides a reason for refusing the faculty.

27. For all of these reasons this petition is allowed and a faculty may issue. The faculty is conditional on the works being carried out in accordance with the final version of the specifications as recommended by the DAC and the bells being disposed of in accordance with such directions as the Archdeacon of London may see fit to give in the light of this judgment and any proposal from the petitioners. Given the length of time it has taken for me to determine this complex issue I shall allow two years from today's date for the completion of these works, which time may be extended on written application.

26 August 2010