

Religious Obligations

The Parochial Church Council of Aston Cantlow and Wilmcote with Billesley, Warwickshire -v- A and G Wallbank [5 February 2007] High Court

The Message:

A property owner was required to pay substantial sums to a Church Council for the repair of the chancel of its parish church.

The Case:

Mr and Mrs Wallbank were the owners of Glebe Farm in the Parish of Aston Cantlow. They were amongst the lay rectors of Aston Cantlow, which meant that they owned property that had once belonged to the rector of the Parish. The Cantlow case has become synonymous with the issue of chancel repair liability with the Wallbanks' battle to resist the imposition of liability on them, as lay rectors, to pay for the repair of a chancel of the parish church. Their argument that the imposition of such a liability on them was incompatible with the Human Rights Act 1998 went all the way to the House of Lords, where they lost. The Wallbanks were, therefore, liable for the chancel repair.

Following the House of Lords' decision, the task for the High Court in this case was to assess the amount for which the Wallbanks were liable in respect of the chancel repair.

The Wallbanks' principal argument was that a lay rector's liability was limited to keeping the chancel wind and watertight. The High Court analysed the common law and legislation, which referred to "the sum required to put the chancel in proper repair". The Court concluded this was inconsistent with Wallbanks' position.

Having rejected Wallbanks' interpretation, the Court's task was to determine the sum that appeared to the Court to represent the costs of putting the chancel in proper repair.

The Court considered that "proper repair" necessarily meant more than simply wind and watertight. On the joint instructions of the parties, a member of RIBA was appointed to provide a report on the chancel's condition. He did not believe that temporary repair was a satisfactory solution and the costs for the repair of the chancel were estimated by a surveyor at over £215,000 plus value added tax.

Whilst the Wallbanks did not in principle dispute the report, they argued that a "Rolls-Royce job" was recommended when a more limited works programme would have been enough. The Wallbanks said that the Church ought to act in accordance with its own teaching and "temper the wind to the shorn lamb". They argued that the liability for chancel repairs was anachronistic and unfair. What was a liability once intended to keep the chancel in a state in which the incumbent could celebrate the Holy Office has become a means of keeping up parts of the national heritage to high standards at the expense of a few landowners.

However, the Court stated that it must apply the law as it finds it. Also the Wallbanks did not propose an alternative scheme of works. The Court disallowed part of the costs but gave judgment against the Wallbanks in the sum of almost £187,000 plus any VAT together with the Parochial Church Council's costs.

This case highlights an issue that is currently causing some controversy in the property industry, namely the potential liability of certain property owners because of the location of their properties to contribute towards the repair of the chancel of parish churches.