

Remember the Wallbanks? - Beware of 'Chancel Charges'

Chancel Charges



Although most surveyors will be aware of *Aston Cantlow -v- Wallbank*, others may not, and the approach of Christmas serves as a timely reminder to take care when advising clients who are purchasing former church property.

Names such as 'The Old Rectory', 'The Glebe', 'The Vicarage' will provide warning that the premises might be liable at some time to payment of 'Chancel Charges' and any surveyor providing advice to a purchaser should recommend careful investigation by the conveyancer in the same way that advice might be given to commission a 'mining records search' or to confirm a 'right of way' or to recommend the need to confirm easements for private service systems.

In essence ...

Aston Cantlow v. Wallbank

Mrs. Wallbank inherited a farm which was not adjacent to the parish church (St John the Baptist Church in Aston Cantlow) but it was within the parish and when she inherited the property she also inherited the liability to repair the chancel. The case went to the House of Lords and she and her husband lost - Lord Rodger of Earlsferry sums up

" ... As owners of Glebe Farm Mr and Mrs Wallbank are the lay rectors or impropriators of the parish church and, as such, potentially liable to pay the cost of repairs to the chancel. By 1990 the chancel was in disrepair, [the Parochial Church Council ("the PCC")] simply asked Mrs Wallbank to pay for the repairs. She disputed the liability. In 1994 the PCC, as the responsible authority, served notice on Mrs Wallbank under section 2(1) of the Chancel Repairs Act 1936, calling on her to repair the chancel. When she still refused to do so, the PCC began these proceedings under section 2(2) of the 1936 Act to recover over £95,000, the estimated cost of the repairs." Ultimately the Wallbanks were faced with a bill for £230,000 including costs.

Lord Scott of Foscote in the *Aston Cantlow* case summarises the obligation for Chancel repairs and its origin ...

*"A description, even a brief one, of the law on chancel repairs must, if it is to be comprehensible, start with mediaeval times when every parish had its parish priest, the "rector". The rector had, by virtue of his office, a number of valuable proprietary rights which, collectively, constituted his "rectory". These rights included the profits of glebe land and tithes, usually one-tenth of the produce of land in the parish. Responsibility for the repair of the parish church was, absent some special custom to the contrary (see *Bishop of Ely v Gibbons* (1833) 4 Hagg. Ecc. 156), shared between the rector and the parishioners. The parishioners were responsible for repairing the part of the church where they sat, the western end of the church. The rector was responsible for repairing the chancel, the eastern end of the church. The rector's glebe land and tithes, the "rectory", provided both for his maintenance and a fund from which he could pay for chancel repairs."*

**Rectorial
property**

Since the time that the rectorial property was first defined, Enclosure Acts have converted certain rectorial tithes into rectorial property thus attaching chancel repair liability to the ownership of those lands. As rectorial tithes were widespread through historical parishes, so too is the liability to pay for an apportioned amount of the chancel repair liability for that parish. It is therefore very difficult to define what land within an historical parish boundary has chancel repair liability. It is possible but requires an expensive personal search of the national Archive.

"The liability to pay for chancel repairs mainly affects rural communities, but it can apply in towns and cities {such as Brighton, Manchester, Bedford and Lancaster}, especially where ancient settlements now form part of larger urban conurbations.

Until then, homeowners should be wary because that cherished view of their local parish church just might come with a price tag attached."

**Review of
liability**

The Government has acted on this issue and a Transitional Provisions Order covering chancel repair liability has been made and which took effect when the Land Registration Act 2002 came into force on 13th October 2003. The Order preserves the status of chancel repair liability within the Land Registration systems and for the next 10 years chancel repair liability will remain an interest that binds successive owners of a property even though it may not be protected by an entry in a register.

**Land
Registration Act
2002**

The Land Registration Act 2002 (Transitional Provisions) (No 2) Order 2003 (S.I. 2003 No. 2431) came into force on 13 October 2003.

Liability to repair the chancel of any church was an overriding interest under section 70(1)(c) of the 1925 Act. The Order extends the overriding status of this interest for a transitional period of ten years.

After 13 October 2013 the right to enforce the liability will be capable of protection by registration of a notice. The liability will no longer constitute an overriding interest. This means a buyer for value will take free of the liability unless it is protected by a notice on the Register.

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