

**Neutral Citation No: [2018] Der 1**

**In the Consistory Court of the Diocese of Derby**

**In the Matter of and the Parish of Findern, All Saints, and**

**In the Matter of a Petition presented by the Vicar, Rev'd Susan Starkey, Assistant PCC Secretary, Mrs Patricia Maddock, and Churchwarden, Mrs Jean White, for the removal of the organ.**

- 1) Findern is a village some 5 or 6 miles to the south of Derby. It has a long and interesting history. The present church building was erected in 1863/4 in accordance with plans by the architects, Stevens and Robinson, and stands on the site of a Norman chapel of ease. It is listed as Grade II. The *Statement of Significance* describes it as '*small and compact*'. There is a nave and north aisle, and chancel, with the vestry protruding off that to the north-east. The porch is on the south side and there is a spire surmounting the tower at the west end. A plan within the Statement of Significance, which is a good deal smaller in scale than is convenient or useful to use, shows the main body of pews to be only 6 rows deep, with an equivalent number against the south wall, and shorter pews in the north aisle. The building is described as being overall in a poor state of repair both inside and out, with inefficient heating.
- 2) It is also short of the usual amenities. There is no running water, and no toilet or kitchen facilities. Mains water and drainage are located beneath the highway next to the church. Facilities in the nearby Parish Rooms are no longer available for use by the congregation, following their recent letting to an outside body as a café. In so far as the PCC was involved in that, I am sure they took full account of the impact on the church of the loss of facilities they had previously enjoyed. In any event, depending on facilities in another building is not an ideal solution to the needs of a congregation in 2018. The PCC's overall aim is to remedy the lack of facilities within the church building.
- 3) Within the base of the tower there is an organ. It is not used at present, and has not been used as part of the worshipping life of the congregation for some years, although it continues to be tuned twice a year. There is no regular organist available, and for weddings and funerals an organist is sought with the assistance of the diocese. Sunday services are accompanied by a keyboard or by means of 'recorded' music. The petitioners wish to remove the instrument and dispose of it through the Institute of British Organs, so it can find a home where it can be treasured and used to its potential. I am told it occupies a significant space of a little under 8 square metres. Within that space, the parish wish to create kitchen facilities of a simple kind, and also install a toilet. The petitioners originally put forward an entire scheme covering removal of the organ and introduction of those facilities, but on the advice of the DAC, given on 24<sup>th</sup> April 2017, this present petition relates to removal of the organ alone, rather than the full scheme.

- 4) The parish recognises that the '*organ is of significance and of historic importance*'. It was installed apparently a few years after the church was built, so it is around 150 years old. I am told it was refurbished some 40 years ago. Mr Rodney Tomkins was formerly the Organs Adviser to the DAC, and he has published "*Historic Organs of Derbyshire*". He says this about the organ: "*Though "Rebuilt by C Lloyd and Company" at some date from 1876, its features such as the 'bridge' arrangement of drawstops (all with square shanks), the 54 note compass and the remnants of a Tenor-C Swell suggest that it may be by Lloyd and Dudgeon, in which case the date of the church could offer a very convenient starting point. Though by no means in original condition, there is still plenty of good 1860's character about its tonal quality.*'
- 5) The present Organs Adviser is Mr Terry Bennett, who visited the church on 4<sup>th</sup> April 2017. He believed the first organ in the church was installed around 1863, and subsequently enlarged around 1875, into much as we see it now, two manuals and pedal, 15 stops in total. It was refurbished in 1972 with small alterations. He considers that the cost of replacement would be in the order of £150,000. He considers the present proposal to show the classic signs of the '*baby and bathwater*' syndrome in his email of 6<sup>th</sup> April.
- 6) On 18<sup>th</sup> May 2017, the DAC secretary, Mr Nigel Sherratt, who is himself an organist, met with the three petitioners at the church, on what is described as an '*Informal Site Visit*' which was used to assist the DAC in the advice it gave. I have been sent a copy of the Report that arose from that, which is helpfully illustrated. The visit arose from a request by the Vicar and PCC for advice in relation to the full application (ref 2017-008456) for the installation of a kitchen and toilet in the base of the tower, where the organ is presently located.
- 7) The site visit considered a number of possible ways to re-order the building. First there could be an extension to the north-east corner, nestling between the east end of the north aisle, and the vestry, and possibly incorporating the vestry as well, which is presently used for storage purposes. This would be '*tucked away*', but would depend on grants to cover the cost. The vestry is only accessible by mounting several steps, so is not in itself a site for suitable toilet facilities. The second possibility was at the west end of the north aisle, an area presently used as the '*children's corner*'. The PCC view was that this would take up too much space in what is a small building. In addition, a stained glass window has been placed there as the result of a recent bequest, and there would be a danger of its being obscured. Next there could be a re-location of the organ to the west end of the north aisle, so as to free up the base of the tower, but this had the disadvantages of the second option, and would also involve the costs of moving the organ, which would still not be played. Fourthly it would be possible to move the kitchen to the vestry, and build some sort of '*pod*' area, at the west end of the north aisle. (I am not sure if this was to be inside the present building, or on the exterior. I incline to the former, as there is no comment about how access would be gained to the exterior.) This would be untidy and involve bringing a water supply and drainage to

both ends of the building. Finally an extension on the south-west of the porch was considered but dismissed as being too intrusive.

- 8) The PCC were clearly of the view that the base of the tower was the best site, and for disposal of the organ to enable that course to be taken. Other general advice was proffered by Mr Sherratt in the Report, namely the importance of '*making the case*' for removing the organ, considering if and how the two bells in the tower could be brought back into use – the ropes being at present behind the organ, against the west wall of the tower – and the possible use of a type of toilet not dependent on mains drainage, of which different kinds have been used in several churches in the diocese. Although not spelled out elsewhere in the documentation, I observe that any extension to the building will require planning permission, which may of course be granted, but in my experience 'building on' always adds greatly to the cost of any scheme, and the costs for even very modest additions can be considerable, and surprisingly 'out of all proportion' to the extra space that is obtained.
- 9) Mr Bennett wrote to Mr Sherratt again on 12<sup>th</sup> October. He regrets the parish's apparent desire to get its own way in the matter whatever advice it receives, and makes several points he considers suggest other possibilities for providing the desired facilities. He welcomes the fact the parish nonetheless appreciates the historical significance of the organ which stands in the location for which it was originally designed. It is one of the church's listed artefacts and is important within the historic context of worship and Christianity in the village. He ends his email with these words: '*If this organ were allowed to go, then a precedent would be created, whereby hardly any small parish church organ could be considered "safe"*'.
- 10) **Consultation.** The DAC recommended that the ***Church Buildings Council ('CBC')*** alone be consulted, and did not seem to have regard to the general requirements of ***Schedule 2 of the Faculty Jurisdiction Rules 2015*** regarding consultation, despite having taken the view that the proposal was likely to affect the character of the church as a building of special architectural or historic interest, which is the general 'trigger point' for consultation with the amenity bodies.
- 11) The ***CBC*** is not one of the bodies mentioned in the Schedule, but it may be the DAC had in mind the specific requirement in Rule 9.6 whereby the chancellor must have the advice of that body where the proposal is for disposal of an article of special historic or architectural interest. That Rule does of course apply to the present proposal, as the DAC advice indicates.
- 12) Under the Schedule, paragraph 2(3) indicates that in the case of a Grade II building, such as this, ***Historic England*** should be approached about a proposal to remove a principal internal feature, such as an organ. HE replied on 30 January 2018, but did not wish to be involved in the pre-application discussions.
- 13) This is a Victorian church building, and as such the ***Victorian Society*** needs to be consulted about a proposal to alter it to such an extent as would be likely to affect its character as a building of special architectural or historic interest, under paragraph 3(1)(a). In similar

circumstances, the **local planning authority** is to be consulted under paragraph 4 (a). The Registrar in fact consulted with these two bodies, and I am informed that no reply was received from either of them, which is disappointing. Overall I am satisfied sufficient efforts to consult have been made.

- 14) The **CBC** replied on 24<sup>th</sup> July 2017, through their Senior Church Buildings Officer, Dr David Knight. He accepts there is a good case for the new facilities. He notes the advice of the DAC about exploring the range of possible sites, but raises the possibility of separating the kitchen, if it is to be used for light refreshments only, as I assume, to some place in the aisle, thus simplifying finding an appropriate location for the toilet. The CBC is anxious for the organ to be kept intact in view of its historic interest and '*Serious consideration should be given to its remaining in place*'. In other words it should not only not be removed from the church, but should be left where it is.
- 15) Mrs Maddock and Rev Mrs Starkey responded to the CBC on 3<sup>rd</sup> October. They rejected the idea of placing kitchen facilities within one of the aisles and state they believe a site in the base of the tower would be preferable as it is unobtrusive, and nearer to the existing drains. No other site in the church would be as convenient. The parish wishes very much to make the building fit for wider use within the community, rather than keep it for Sunday worship alone. The tradition of the church is in any event not that of hymns and traditional music (although I suppose that may partly be due to the lack of an organist over a considerable time.) By his email of 10<sup>th</sup> October, Dr Knight indicated he did not wish to add to his earlier comments, and acknowledged that having visited the church Mr Sherratt and the DAC were in a better position to take a view on this (matter).
- 16) At its meeting on 23<sup>rd</sup> October **the DAC** gave its view on the proposals, namely that it did not object to approval of the works (by the Chancellor) subject to the following provisos:
- ) The organ should only be removed to another place of worship where it will be used
  - ) The organ should be kept in as close a condition to its existing specification as possible.

I well understand the intentions behind these provisos, and indeed the advice to the parish to resolve the question of the organ first, was based on the same aim, namely to concentrate on finding the organ '*a good home and (that it) not be disposed of without thought for its value or historic significance*' (per the Registry clerk's email to me of 12<sup>th</sup> April 2018).

- 17) **Discussion:** However laudable those sentiments are, I have to ask how far the provisos are realisable in practice. I assume the petitioners anticipate it will, if it can indeed be sold, be purchased for use in another place of worship. If it is to be a Church of England church, then in all probability its introduction into that church will require the consent of the diocesan chancellor of that diocese, and it can no longer be within the jurisdiction of the Consistory Court of the Diocese of

Derby. If it is a church in Derby diocese, that consent will be mine, (or the deputy chancellor's). In any event I cannot compel that it be played. However it might be disposed of to a non-Anglican place of worship, or might go to a secular institution. In those latter circumstances, I will certainly have no control of any kind over what happens to it. One can only imagine that anyone who acquires it, intends to use it, but there is no way to ensure that it is played frequently or at all, or that it is properly looked after. That is true to a large extent even if it is to find its home somewhere in the Derby diocese.

- 18) Again, for similar reasons I have to ask how can I ensure it is kept as close to its existing specification as possible? There have been some changes to the instrument within All Saints over the years, and this requirement seems to want to freeze its present specification as being normative. Yet past alterations to the instrument have arisen from changing tastes or preferences, rather than by reason of the need for repairs. Clearly any restrictions about the future specification (if they were in practice enforceable) may make it more difficult to sell. Purchasers may have good and genuine reasons for changing the musical specification, and, in order to fit it into a new location in a different building, might need to alter the casing or other parts.
- 19) Doubtless the powers of diocesan chancellors are considerable, but they are exercisable only within the context of the Church of England, and the possibility of enforcing the provisos suggested by the DAC, is in my view unrealistic, and may in fact also be inadvisable. ***I think that the most that could realistically be imposed by way of conditions, if permission to dispose of the organ is given, is that the organ remain as it is until the petitioners have permission from the Court to install the proposed kitchen and toilet facilities, and have the means to carry their scheme through, and a buyer is found and terms agreed.*** In that way the organ will not be reduced to its constituent parts prior to its having a home to go to, with the consequent risk of damage or loss or undue deterioration in its condition.
- 20) I ought to note that I have an asbestos survey for the building, which if I understand it correctly, raises the possibility of there being asbestos within the organ itself. This may well mean that specialists are needed in the dismantling of the instrument for its disposal, and re-enforces the need to keep it intact until it is finally to be disposed of. There is not much information on the topic, but the petitioners suggest that the advice they have from IBO is that the purchaser is usually liable for the costs of removal, which will include any charges that arise because of the asbestos. Although an instrument like this is very expensive to acquire from a commercial organ builder, I rather suspect that a purchaser in circumstances like these, is unwilling to pay very much, when they are shouldering the costs of removal and transportation, re-erection and installation. There is no suggestion in the papers that the petitioners are expecting to make any substantial profit by the disposal. Doubtless they will wish to obtain what they can.
- 21) A decision on the application needs to be made within the correct legal context. The test (or framework or guidelines) within which the court is

**required** to come to decisions about proposed alterations to listed buildings is set out in paragraph 87 of the decision of the Court of Arches (the ecclesiastical court of appeal) in the case of *Duffield, St Alkmund* (2013) in a series of questions:

- 1) *Would the proposals, if implemented result in harm to the significance of the church as a building of special architectural or historic interest?*
- 2) *If the answer to question (1) is 'no', the ordinary assumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's, White Waltham (No 2)** {2010} PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.*
- 3) *If the answer to question (1) is 'yes', how serious would the harm be?*
- 4) *How clear and convincing is the justification for carrying out the proposals?*
- 5) *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see **St Luke, Maidstone** at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?  
*In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2\*, where serious harm should only be exceptionally be allowed.**

This provides a structured and logical method of coming to a conclusion.

The answers to questions 1) and 3) are in my view *Yes* and *Moderate*. There is no quantifiable way to assess these things and the judgement is somewhat impressionistic. I would qualify my assessment by saying any harm would be on the low side of *Moderate*. The decision on the remaining questions is more difficult because, on the advice of the DAC, the petitioners have not pursued their whole case, and I have little information how they will eventually put their design for the base of the tower.

- 22) **Conclusion:** Let me say at the outset I have not found the decision in this case to be straightforward. Put at its most negative, the proposal is to strip out of the church a purpose-made item of financial and historic value, which is roughly contemporary with the building of the church, but which is no longer used, principally I suspect because there is no

organist readily available. The purpose is to provide facilities for light refreshments and a toilet. Even if not the best place in the petitioners' view, there are other possibilities for their location elsewhere than the base of the tower. If the organ is to be removed, then it is very unlikely the church would ever again be able to purchase such a traditional organ, or, I suspect, even a good modern substitute.

23) Mr Bennett raises a wider point, namely the danger of smaller churches seeking to remove their pipe organs, when they have no one to play them (although they are still playable), and from there it is but a short step to the prospect of small churches, or at any rate those struggling to deal with their financial commitments, whether the need for repair, or their parish share, or indeed their weekly needs, by simply seeking to sell off assets - furniture or fixtures and fittings- because they are 'not really needed', or the mission of the church locally is more important.

24) I do not think this danger is altogether fanciful. I recall some years ago, a request in regard to a struggling inner city church in another diocese, a church with serious financial problems, to be allowed to remove and dispose of some large stained glass windows, at what appeared to be a very handsome price, to a Japanese firm of builders or shop-fitters, to adorn some building for rest, recreation and refreshment thousands of miles away. The church would have been much assisted financially in its work as a local centre of worship and mission, and doubtless members of a country with a very different culture and religious tradition would have been edified and uplifted by viewing the images within the Victorian or early 20<sup>th</sup> century windows, which exemplified a traditional English or British style. My recollection (after many years) is that on going further into the evidence at the hearing in the church, the arrangements for payment of the purchase monies were not as secure as the parish had hoped. The principal reason for refusing the request however was that it was wrong in principle for churches to look round their interiors in times of need to see what 'treasures' they could dispose of as decorative items, whether they be unused pulpits or balconies, or pews or windows, or indeed anything else, that might find a ready sale, and raise some funds.

Such items are part of the heritage, and were probably first acquired in many cases as the result of many small and sacrificial gifts by a large number of parishioners and benefactors contributing to the costs of erecting and fitting out the church. So in my own limited experience, I think the danger is real.

25) On the other hand, the need in principle for facilities of this kind hardly needs any argument, whatever the position in past times. For the petitioners to seek wider use for the building, whether as part of its Christian mission or as a simple service to its wider community, or even with a view to being of benefit to the congregation, and meeting their pastoral needs, such facilities are a necessity.

26) Even on what I have before me, and not the 'full' scheme, I am prepared to find the proposed location to be the best available, without undue expense. Other sites have been looked at and discarded from

consideration. The cost of the 'full' scheme, cannot be beyond the means of even a small congregation. The 5 members of the PCC were unanimous in approving the current 'limited' proposal at its meeting on 25<sup>th</sup> October 2017. There is no local opposition following the exhibition of the Public Notices.

27) I have had regard to the hesitations of the amenity bodies and Mr Bennett. However, I am struck by the fact this is by no means a money-raising scheme. The organ is not seen as a financial asset, which would more conveniently be turned into cash. It is about making space for things that are required for the on-going life and work of this small church. The loss to the building visually will be limited in extent. One does not go into a church assuming there will be an organ located in the base of the tower. The remaining *Duffield* questions are resolved on the evidence, in the petitioners' favour.

28) **Decision: I therefore grant the petition for removal and disposal of the organ, but subject to the restriction on that being done set out in paragraph 19 above.**

29) **Further, this permission will remain valid only for a period (in round terms) of 2 years, namely to 31<sup>st</sup> May 2020.** (If terms for disposing of it have not been agreed by then, it seems unlikely they will be, so the prospect of the organ going to a new home where it will be loved and used will not happen, and it will be better then for it to remain unused and un-played in its present location, and for the petitioners to re-think their proposals.) **There will be liberty to seek further directions by letter or email sent to the Registrar.**

John W. Bullimore  
Chancellor  
9<sup>th</sup> May 2018