



Faculty – Grade I listed church – Existing pipe organ – Purchase and installation of electronic organ – “Mothballing” of pipe organ – Whether faculty should be granted – Appropriate conditions

Application Ref: 2020 - 051214

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: 23 December 2020

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

ST PETER & ST PAUL, NEWPORT PAGNELL

THE PETITION OF THE REVEREND NICK EVANS (Rector), KIMONIE NICHOLLS (Churchwarden) and MALCOLM GODWIN (Parish Administrator)

Determined on paper

The following cases are referred to in the Judgment:

Re St Alkmund, Duffield [2013] Fam 158

Re All Saints, Findern [2018] ECC Der 1, (2019) 21 Ecc LJ 113

Re Christ Church, Fulwood [2017] ECC She 6, (2018) 20 Ecc LJ 251
Re St Denys, Ravensthorpe [2018] ECC Pet 1
Re St. Giles, Skelton [2019] ECC Yor 5
Re St Helen's, Bishopsgate (1993) 3 Ecc LJ 256
Re St James, Heckmondwike [2019] ECC Lee 1, (2020) 22 Ecc LJ 118
Re St John the Baptist, Penshurst (2015) 17 Ecc LJ 393
Re St Luke the Evangelist, Maidstone [1995] Fam 1
Re St Nicholas, Guisborough [2018] ECC Yor 6, (2019) 21 Ecc LJ 255
Re St Nicholas, Radford Semele (2012) 13 Ecc LJ 457
Re St Nicholas, Warwick (2010) 12 Ecc LJ 407
Re St Peter, Shipton Bellinger [2016] Fam 193
Re St Peter & St Paul, Aston Rowant [2019] ECC Oxf 3, (2020) 22 Ecc LJ 265

JUDGMENT

Introduction and overview

1. By an online faculty petition dated 17 June 2020 the rector, one of the churchwardens, and the parish administrator (designated by the PCC to lead on faculty applications) of the Grade I listed church of St Peter & St Paul, Newport Pagnell, in the Archdeaconry of Buckingham, apply for a faculty to purchase and install an electronic organ in accordance with a quotation provided by The Cotswold Organ Company Ltd dated 10 February 2020. It is said that the specification will be custom-designed to suit the church building and the church's busy music programme and it has been approved by Mr Barry Williams, the Diocesan Organ Adviser. The twelve main speaker cabinets will be distributed so as to produce a much better spread of sound around the building than the existing pipe organ; and it is hoped that they will create an authentic English pipe organ sound that can be heard from a wider source than just the individual speaker cabinets. It is not presently proposed to dispose of the existing pipe organ.

2. Since the existing pipe organ is to be mothballed, and not removed from the church, the immediate effect of the proposal is not likely to harm the setting, the appearance or the significance of the church building; and it is said that it will facilitate worship at the church and advance the church's mission in the local town community. However, since the grant of a faculty may affect the future of the existing pipe organ, the petition raises the question of how the court should approach the longer-term potential implications of the purchase and installation of an electronic organ.

The church

3. This town centre church is the largest church in this part of the County of Buckingham. It is set in a prominent position on the eastern side of the town. It is the focus of key views

from both north and south, where major roads cross the two rivers (the River Lovat and the River Great Ouse) that meet at the eastern-most point of the churchyard. The fall of the land to the River Lovat, and the verdant character of the churchyard extension, enhance the view from the south in particular. Out of 107 listed buildings in Newport Pagnell, the church is one of only two rated at Grade 1, the other being Tickford Bridge, which is also a scheduled ancient monument. There is one Grade II* listed building in the High Street, namely No. 84. All of the other listed buildings are rated Grade II. The Grade I listing of the church recognises its national importance and exceptional interest; therefore the church building has a high significance which rests very largely upon its surviving medieval fabric.

The existing pipe organ

4. According to the Statement of Needs the existing pipe organ was newly built for the church by Henry Willis in 1867. It therefore comes from the period of Willis's most celebrated and vigorous work, with the organs of Reading Town Hall, St George, Preston, St Dominic's Priory, Haverstock Hill and other organs all having been built in the mid-1860s. Unsurprisingly, a Willis organ is seen as a valuable asset although relatively few survive in their original form. Even fewer remain from the "elusive period" of the 1860s, before the firm fell into the sometimes repetitive pattern of the late 1870s and 1880s, building excellent instruments that satisfied demand but often lost some of the organ builder's earlier inspiration. This particular organ had a simple mechanical action and in most respects it appears entirely typical of Willis's work at that time. It was decidedly modest in the number of stops. If the original organ had survived unchanged, it would now be viewed as a very important part of the nation's organ heritage. However, in the usual way of things, the organ has been altered several times, principally in 1905 by the well-respected firm of J. J. Binns of Leeds, which aimed to fill gaps in the organ's resources. The Statement of Needs gives the original stop list and the stop list which resulted from the 1905 alterations, when the organ was given an entirely new tubular-pneumatic key action, operating on wind-pressure, and the system of reservoirs was much rebuilt. After the 1905 restoration, the console retained the original Willis keys and pedals but it was otherwise new. Later changes to the organ have been relatively minor: the very small firm of Kingsgate Davidson undertook some work around 1950, and the organ was last cleaned by J. W. Walker & Sons in 1972; but neither of these firms is said to have left any significant marks on the organ's character, except in 1972 when the choir swell box was removed to allow the swell organ to be heard more clearly. Around the year 2000 some cosmetic cleaning of exposed surfaces took place, following structural repairs to the building, but the mechanism of the organ remained untouched. Since the year 2000 the organ has been tuned on a regular basis but very little maintenance work has been carried out to it. This is said to have resulted in the deterioration of the organ to the stage where it is now in a very poor state and very difficult to play effectively. The wind supply has a number of significant leaks and some of the pneumatic motors have failed, resulting in missing notes, particularly on the swell organ.

5. The pipe organ is recorded in the National Pipe Organ Register maintained by the British Institute of Organ Studies. It is not on the Historic Organs Register. The entry (which refers to a survey in 2000) records that a new organ with mechanical action was built for the church by Henry Willis and was dedicated on 19 October 1867. It was reconstructed with pneumatic action and additional stops by Binns in 1905. The organ was apparently restored by Kingsgate Davidson in 1949 and again in 1950 (following storm damage). It was overhauled and rebuilt and the choir box was removed by J.W. Walker in 1972. The case is positioned in the north chancel chamber and is of a pipe rack type. The main display pipes face into the chancel and

there is a small display facing west. All of the display pipes are painted grey. There is a stop list and details of the console, the couplers, and the organ's accessories. Five photographs show the case and the console in 2006 (when there was a further site visit) and in 2007. The organ is described as "playable".

A new digital organ

6. The Statement of Needs goes on to record that the church have undertaken extensive research over the past couple of years about what to do with the current organ. As part of this research, advice was received from the Diocesan Organ Adviser and quotations were obtained from two reputable organ builders (The Village Workshop and J. W. Walker & Sons) with a view to restoring the current organ. Both quotations were in the region of £220,000. At the same time, information was obtained about replacing the current organ with a new digital organ, and this included site visits to other churches with digital organs. Following this research, the general conclusion was that the cost of restoring the present pipe organ is prohibitive and undesirable, given the current focus on reordering the church. A competitive quotation has been obtained from Cotswold Organs Ltd to supply and install a Viscount 356D digital electronic organ with amplification, speakers and installation at a quoted price of £46,850.00 (incl. VAT at 20%). This will be supplied with a full 10-year parts warranty directly from the manufacturer; and the supplier will add 10 years free labour cover, to be separately underwritten by an independent, specialist insurer. The PCC agreed at its meetings in September 2019, January 2020 and March 2020 to proceed with the installation of an electronic organ, with the existing pipe organ being 'mothballed' for the time being.

7. The DAC have recommended the proposal for approval by the court (subject to the conditions identified below). They advise that the proposal is not likely to affect the character of the church as a building of special architectural or historic interest.

The faculty application

8. The court first received the faculty application through the online system towards the end of June 2020. At that time I indicated that I would grant the faculty sought subject to there being no objection received in response to the display of the usual public notices. Since the existing pipe organ was only to be mothballed, and not removed, the court's provisional view was that the proposal would not harm the setting, the appearance or the significance of the church building; and that it would facilitate worship at the church. At that stage, the proposal appeared to have the support of the church's temporary organist, Mr Nick Read (who is also a member of the PCC.) Indeed, it was Mr Read who, in September 2019, had proposed to the PCC that they should purchase and install an electronic organ; and he had been appointed to the position of temporary organist in October 2019, whilst the church considered its musical options and advertised for a permanent organist and choir leader.

Mr Read's objection

9. In response to the public notices, however, Mr Read lodged an objection to the faculty application. He made it clear that he was not against electronic organs in churches as such; but his original support for the proposal to install an electronic organ had been based on the information available at that time. When the PCC had unanimously agreed to purchase an electronic organ in September 2019, it had understood that the costs involved in restoring the existing pipe organ would be somewhere in the region of £220,000. Information received since then now suggests that the pipe organ could be put back into good working order for a sum

considerably less than had originally been thought, namely for around 10% of the original estimated costs. Mr Read's concern was that further investigation by the PCC could possibly result in the restoration of the pipe organ and negate any need for a new electronic organ to be purchased. Mr Read pointed out that the PCC had access to funding in what he described as a dedicated "Organ Fund", the value of which was currently said to stand at some £53,225. This had been set up in the 1980s by the then incumbent (who is said to have had the foresight to understand that the pipe organ would need restoring in the future); and it had accumulated from fee income charged for the use of the organ at weddings and funerals. Mr Read was concerned that if the money for the electronic organ (£46,850) were to be taken from this fund, then there would be little or no possibility of the pipe organ ever being restored in the future. Mr Read attached a recording (to which the court has listened) of 'Nun danket alle Gott', played on the organ by Hilary Davan-Wetton in 1977, shortly after its restoration, to demonstrate the quality of the organ's sound when fully functional.

10. When, on 3 July 2020, Mr Read's objection was first referred to me, I directed that he should be served with the formal rule 10.3 notice and that the Registry should also send a copy of his objection to the petitioners for their comments. In the meantime, the issue of any faculty was put on hold. I expressed the hope that the matter could be sorted out amicably on the basis that if this fine organ could be brought back in to use, that would be to everyone's long-term advantage.

11. On 29 July 2020 Mr Read completed his particulars of objection to the petition for a faculty (in Form 5). He acknowledges that over the past 20 years or so the organ has been poorly maintained, resulting in the deterioration to its current state. This includes a number of major leaks in the bellows and wind supply, together with a number of pneumatic motors having failed. As a result of the deterioration in its condition, a significant number of notes stopped working, particularly on the swell and the choir divisions of the organ; but nearly all of these missing notes on the choir and swell organs have now been rectified by the new organ builder when he visited in March 2020. Because of its history and build quality, the organ is an instrument worthy of being preserved. It has the potential to be a robust instrument of superior performance compared to an electronic organ, which would maintain the long-standing musical tradition of the parish. Mr Read records that on 23 March 2020, the organ builder (Mr Peter Spencer) made a second visit to the parish church to carry out the six monthly tuning of the organ. However, as the church was not heated, and it was about to be closed due to the Coronavirus lockdown, instead he spent the day repairing faults and bringing many missing notes back into action. Following this visit, the organ builder provided a brief assessment indicating that all the faults were due to perished leatherwork (most of the leatherwork being from the J. J. Binns rebuild of 1905); and that with re-leathering of the pneumatic action and bellows and cleaning, the organ could be restored to proper working order. On 27 July 2020, the organ builder re-visited the church; and he has since provided a full written assessment of the organ and a quotation for its restoration. The quotation provides for the work to be carried out in two stages. Stage one is the restoration of the manual and pedal actions, the repair of bellow corner gussets and the adjustment of pedal couplers for £36,770 (£44,124. including VAT). The organ builder has confirmed that the execution of stage one of the restoration would put the organ back into full working order. The optional second stage provides for the top cleaning of the organ for £20,719 (£24,862.80 including VAT). The organ builder has recommended that this second stage would best be executed after the proposed internal re-ordering of the church has taken place due to the amount of dust which his will create. There is said to be enough

money available in the dedicated organ fund to complete stage one, with only a further £4,210.64 (or £15,708.44 if VAT cannot be reclaimed) needed to complete the optional stage two. As this fund was set up with the intention of being available to fund repairs to, and the restoration of, the pipe organ when needed, it should not be used to purchase an electronic organ, particularly as it is now feasible to restore the pipe organ to full working order within the value of this fund, with only a modest further sum if both stages of the work are completed.

12. Mr Read refers the court to a number of previous cases where permission has been sought to replace an existing pipe organ with an electronic organ. He cites the case of *Re St Nicholas, Warwick* (2010) 12 Ecc LJ 407 where the court held that those seeking to replace an existing pipe organ with some other type of organ had to discharge a heavy burden, there being a presumption in favour of replacing one pipe organ with another pipe organ. This presumption results from the musical quality, and the longevity, of such instruments. In other cases, the argument that a digital organ would cost less in terms of both capital outlay and maintenance has been attributed little weight, on the basis that pipe organs are better value for money due to their longer lifespan. The court is said to be unsympathetic to arguments that it is justifiable to install something of lesser quality simply because it is cheaper. The court has also discounted arguments that a digital organ is easier for a non-expert organist to play. Pipe organs are valued for their authentic musical qualities, and with periodic maintenance a well-made instrument is robust enough to stand the test of time. Where it is sought to substitute an electronic organ for an existing pipe organ, good reason must be shown for the change. Relevant factors will include: the qualities of the respective instruments, the financial burden involved, the musical tradition in the parish, and any resultant alteration in the internal arrangements of the church involved. The court has held that, in borderline cases, the presumption should be in favour of retaining a pipe organ. Mr Read submits that it is evident that previous decisions of the court require a petitioner to rebut a strong presumption in favour of the preservation of pipe organs. In the present case, he does not believe that the petitioners have reached the high hurdle that they must achieve in order to rebut this presumption, and successfully demonstrate that the pipe organ should not be restored. Further, the court should attribute little weight to the petitioners' submission that the installation of the electronic organ is a better alternative than the refurbishment of the existing organ. In September 2019, when the PCC unanimously agreed to purchase an electronic organ, it was understood that the costs involved in restoring the pipe organ would be somewhere in the region of £220,000. New information received (in October 2019 and March and July 2020), since the initial decision was made, indicates that the pipe organ can be restored to good working order for a sum considerably less than that initially quoted, and well within the resources of the parish. It is therefore reasonable to conclude that this quality, and historic, instrument could now be restored to full working order, negating the need for the purchase of an electronic organ and, as a result, the present faculty application should be rejected.

Other objections

13. The Registry have received a further letter of objection from Mr Richard Heyes, who has subsequently completed formal particulars of objection (in Form 5) dated 8 August 2020. He makes five points: (1) The pipe organ can be restored for less money than the PCC has been led to believe. (2) There is almost enough in the organ fund to complete this. (3) That money should not be diverted to a digital imitation. (4) The pipe organ's sound is superior to any electronic replacement. (5) The longevity of electronic instruments is limited whereas pipe organs last for centuries.

14. The Registry have also received emails from two parishioners, and active members of the church congregation, who do not wish to become formal objectors but wish their views to be taken into account by the court. One is Ms Elly Cooper who is concerned that, should the faculty application be approved, the future of the existing pipe organ would be sealed, and it would eventually be decommissioned because a lack of use will further harm its functionality. Whilst Ms Cooper has no objection to an electronic organ being purchased, if it were deemed not financially viable to restore the existing organ, until all the options have been explored she feels that the current application is “jumping the gun”. The second is Ms Julie Eldridge, who feels that the decision to apply for a faculty has been taken without due attention having been paid to the alternative possibility of repairing the existing organ, which would cost significantly less than a full restoration. She believes that should the faculty be granted, there would no longer be any incentive to seek repair of the existing pipe organ, which would fall into greater disrepair through neglect. She considers that it is disingenuous to suggest that the organ is simply being “mothballed” since neglect will inevitably lead to decommissioning being the only option.

The Diocesan Organ Adviser

15. Upon receiving these objections, the petitioners requested, and the objectors agreed to, a three months’ stay of the proceedings, until 1 December 2020, in the hope that the matter could be resolved by agreement. In the meantime, the Diocesan Organ Adviser was consulted about Mr Spencer’s proposals. He has had the benefit of a detailed report on the organ (comprising some 20 pages) produced in May 2002 by Mr Ian Bell, an organ builder of immense experience, based upon a survey of the organ that he had undertaken on 25 April 2002. That report is divided into four main sections and comprises: (1) a brief overview of the history and status of the original builder of the organ and of the firm that undertook its principal reconstruction in 1905; (2) a summary of the organ’s original form and subsequent changes to it; (3) the organ’s then condition; and (4) future options, which Mr Bell summarised as: (a) continued low-key maintenance, with minor repairs as and when necessary; (b) rebuilding or restoring the organ in broadly its present form and in its present location; (c) re-siting the existing organ where it could be better heard, using existing materials or starting afresh; and (d) replacing the existing organ with a digital imitation. Option (a) was swiftly discounted on the basis that the organ had reached the point where selective patching and repairs could not be seen as a real solution but only as a limited time-gaining exercise. Funds would bleed away steadily, and musicians would become increasingly disheartened, and harder to replace when they became fed up as a result and left the church. Option (d) was also dismissed on the basis that the only reason for pursuing it when there was a restorable pipe organ of good quality was financial. Published statistics were said to suggest that digital organs only had a trouble-free average working life of around 15 years; and their sound quality was far inferior to a pipe organ. A real pipe organ should be the aim, and anything less should be kept in reserve as the last resort that it truly is. In weighing the relative advantages and disadvantages of options (b) and (c), Mr Bell observed that “despite this organ’s original high pedigree, the later changes do rather obscure much of the original character”. The Diocesan Organ Adviser understands Mr Spencer to be proposing a restoration of the 1905 pneumatic action. He comments that if the mechanism were eventually to be electrified, as he would hope, much of Mr. Spencer's proposed work on the pneumatic action would fall to be discarded. The Organ Adviser observes that pneumatic action rarely lasts much more than 100 years and it is highly susceptible to modern church heating (which would not have been so much of a problem when the organ was installed in 1905); and he cites instruments with pneumatic

action which, although skilfully restored, have had to be converted to electric action (sometimes little more than a decade later) as a result of the subsequent effects of heating on the pneumatic mechanism. Whilst the Organ Adviser has much respect for Mr Spencer's work, he finds it difficult, in plain economic terms, to support his proposal. Mr Bell had not recommended restoring the pneumatic action. A short report dated 22 March 2018 from J. W Walker Ltd had specified replacing the wind chests and using a modern electro-pneumatic action, which would suggest that the present wind chests cannot be restored. The Organ Adviser considers that the most economic solution, in the longer term, would be to wait until the entire organ can be restored, with a new electric or electro/pneumatic action.

16. The Organ Adviser also questions whether the parish need to spend so much on a temporary electronic instrument. He points out that second-hand models are often available, and he suggests that this might be a better way forward. Cotswold Organs usually carry a number of such instruments, and they could reasonably be asked to quote for something less expensive that would, nevertheless, almost certainly meet the present, quite modest, musical needs of the parish. Electronic instruments, like new cars, are said to carry a significant initial depreciation. However, second-hand instruments usually retain some value, which is why it is often better value to buy an instrument and sell it on, rather than to hire one. The Organ Adviser considers that this might see the parish through the present situation without significantly depleting the organ fund, as would happen under the proposal currently before the court.

The objections are formally withdrawn

17. At an extraordinary meeting of the PCC on 9 September 2020, the issue of the organ was fully debated. At the end of the meeting, the following proposal was put to the vote: "Having reviewed the feasibility of repairing the pipe organ, the PCC propose that the application for the faculty to install an electronic organ proceeds as agreed previously." According to an email from Mr Read dated 21 October 2020, the result of the vote was eight votes for the motion, with seven against and one abstention. Mr Read states that some of the concerns regarding the restoration of the pipe organ centred on a lack of funds to complete the project. He contends that the cost of restoring the pipe organ is within the resources of the parish. Following what was described by the Rector as a "constructive conversation rather than a proverbially divisive situation", in October and November 2020 Mr Read and Mr Heyes withdrew their formal objections to the PCC's request for an electronic organ, on the basis that their letters and notices of objection should be taken into account by the court. I have treated them as having ceased to be parties opponent. Mr Read has made it clear that although he still objects to the faculty application, he has no wish to put the parish to the expense of a formal Consistory Court hearing. Since the petition is no longer formally opposed, I have dealt with it on the papers. I have naturally had regard to the views expressed by the objectors.

The arguments for the faculty

18. Following a further meeting of the PCC on 16 November 2020, the Rector wrote to the court on behalf of, and with input from, those seeking an electronic organ to set out their reasons for wanting the faculty. He also attached a financial statement from the PCC Treasurer (Mr Dick Smith) clarifying the parish's financial situation.

19. Although the Treasurer has been unable to find any PCC resolutions regarding the establishment of the organ fund, he believes that it was set up in the 1970s, following the

refurbishment work that had been undertaken to the organ in 1972. It is a designated fund (unrestricted) and has been accumulated over the years by the net amount of fees received from funerals and weddings at the two churches within the parish less the cost of organ maintenance at both churches. It was a PCC decision to put the money into a designated fund to be applied towards the cost of any future maintenance of the existing pipe organs at both of the parish churches so that musical accompaniment could be provided at services since this was the only available option when the fund was set up. With the arrival of good quality electronic organs, that is now another option; and it is said to be up to the PCC to re-allocate the money as they deem appropriate. The balance of the organ fund is said to be £51,356; but since £996 has already been spent on maintenance in 2020, and there has only been income of £220, that balance is likely to be reduced.

20. Mr Smith reports that over the last 20 years various quotes have been obtained for a full refurbishment of the organ at St Peter & St Paul, the last being in 2017/8 when the cost was approximately £220,000 (although this included the provision of a remote console so that the organist could be moved into the nave of the church). At the same time, replacement with an electronic organ was investigated with a cost of around £50,000. The PCC decided that the refurbishment cost was prohibitive and that the church should continue with the pipe organ until it failed completely and it would then install an electronic organ. In September 2019, Mr Read (one of the objectors to the faculty) had raised a proposal to install an electronic organ in the nave at a cost of £53,500. This was approved by the PCC as the organ fund contained almost that figure at that time. Subsequently, an alternative quote was obtained, reducing the cost to £46,850, which was well within the funds available. In October 2019 a new organ builder who had been appointed to tune the organ advised that he felt that the organ could be “restored” for less than £100,000 (without a remote console). The PCC felt this was still not an appropriate project as it was still twice the cost of an electronic organ. In March 2020 his estimate was reduced to £20,000 plus VAT (£24,000) but he said that he would need to do a full evaluation (at a cost of £350). Again, the PCC decided to continue with the faculty for an electronic organ. In June 2020 the PCC agreed to the organ builder undertaking an assessment of the organ, and he came back with quotations. The costs had now risen to £36,770 plus VAT (£44,124) to undertake all the repairs that were identified in the assessment plus a further £20,717 plus VAT (£24,862) to do a top clean of the organ. This again took the cost above that of purchasing an electronic organ and also above the funds available in the organ fund. Mr Smith is also concerned that these quotations are only for the repair of what could be seen on a visual inspection of the organ, and that included within the quotes are statements that “if woodworm is found on dismantling the organ, this is not covered and would be an additional cost” - which is considered to be highly likely in view of issues the church have had with the chancel pews - and “should additional problems be found following dismantling and additional work required” the organ builder would quote for the additional work. The church cannot therefore assume that the figures quoted are definitive figures; and, in that event, the PCC would be in the position of having to fund the additional cost or finding themselves with an unusable organ once it had been dismantled. They would also have to fund the ongoing maintenance costs which have not been identified in the quote; and if the income from the use of the organs in the two parish churches did not cover these costs, they would have to be funded out of the parish’s general income. Mr Smith notes that although there were suggestions at the meeting of the PCC that they could organize a fundraising campaign for the additional costs to renovate the pipe organ, that would compete with the much larger fundraising campaign that they need to run to finance the costs of

their re-ordering project, which is considered to be an important priority for the mission of the parish.

21. In his letter to the court, the Rector explains that he has been asked by the PCC to submit, on their behalf, the arguments in favour of their request for a faculty for a high-quality electronic organ. He makes it clear that although he is neither a musical expert nor a keyboard player, he does like organ music - whether it be pipe or electronic - and that he therefore approaches this task with no personal musical prejudices. He considers that it is important to stress the question that was put to the PCC at various meetings, and at the recent extraordinary general meeting. The issue was not to make an either/or decision about whether to spend existing funds on restoring the pipe organ, or using them to purchase an electronic organ; rather, the question was whether the parish wanted to purchase an electronic organ. The new information about the possible costs of repairing the pipe organ was put before the PCC. All the members felt that those who wanted to keep pipe organ worship should have any new proposals fully explored. After a further professional examination of the pipe organ had been undertaken, the following question was put to the extraordinary general meeting: "Having reviewed the feasibility of repairing the pipe organ, the PCC propose that the application for the faculty to install an electronic organ proceeds as agreed previously". This was agreed at the meeting following a thorough discussion. Although many believe that the cost of restoring and maintaining the pipe organ is prohibitive anyway, the key reasons for requesting an electronic organ are:

- (1) It would provide greater musical flexibility and help to promote the church's mission to a wider age range.
- (2) At the time of first discussing this, the church had been exploring a necessary church reordering, and an electronic organ, and relocating the organ and the console, would make it easier to train a choir and a musical group. (The church are making progress with their church reordering plans).
- (3) The huge potential costs of properly restoring and maintaining the pipe organ could, in any event, be money more effectively spent on an electronic organ, without the constant demands for finance which the old pipe organ is likely to incur at present and in the future.

Other important points to note are said to be that:

- (a) There are no plans in any of this to remove, dismantle, or dispose of the pipe organ itself.
- (b) The present debate is not acrimonious as can sometimes happen in churches over musical matters. In fact the Rector and Mr Read have a close and positive relationship, and those on each "side" of the debate are in positive good relationships with the Rector and each other. They are all trying to discern God's will as to how the church should move forward. Nobody wants to end up in any costly diocesan court to decide the matter.
- (c) The parish also have the expense of maintaining a smaller, old pipe organ at St Luke's, which is part of the benefice.

22. The rector explains that St Mary's, Moulsoe and All Saints, Lathbury are two separate, rural parishes within the benefice, whilst St Luke's and St Peter & St Paul are part of the same parish in the town of Newport Pagnell. Although the four churches have their own differing

and distinctive identities, the Rector would describe their churchmanship as “central”, in that they all remain committed to a liturgical eucharistic tradition. This is important since the desire for an electronic organ is not an attempt to replace the church’s traditions with contemporary “modern” worship styles at the expense of traditional pipe organ music and other traditional liturgies. Since the arrival of the Rector in 2015, the parish have together explored ways of increasing church growth and outreach to the community. This has led to developing more contemporary services alongside what they normally do in order to encourage the “unchurched” to participate in worship to which they can relate. The church always hope that this will lead to a greater participation in the eucharist as part of new Christians’ growth in the faith. The musical versatility the church needs is said to be particularly important given that St Peter & St Paul, the parish church located on a busy high street, receive much footfall throughout the year, and a variety of different types of service occur there on a regular basis. The parish are not currently blessed with lots of musicians who can play a variety of different instruments but Mr Read, the current organist, says that an electronic organ would produce a variety of different sounds for different occasions. Consequently, an instrument which can help to provide a variety of musical styles, along with the traditional, would be a great help with this. The parish recognise how important music is to people of all ages in their community.

23. The church are also said to be in the early stages of exploring a church reordering since the church building is not particularly hospitable in terms of a meeting area and catering and toilet facilities. This is a pressing priority since none of the four churches in the benefice have a church hall; and this, coupled with the financial burdens of being in a Grade I listed building, make it difficult to cater effectively for the needs of the community throughout the year. The church are trying to increase their flexibility in reaching out to the community in the worship and space which they wish to offer as part of their mission in a busy town centre. The church are aware that other large church buildings also use electronic organs due to the musical flexibility they can offer. Given that the church is a Grade I listed building, they feel that they must prioritise their spending and fundraising. They do this by providing the necessary costly maintenance of the fabric and they are mindful of the funds that need to be spent on the actual mission of the parish. They hope that with successful mission, in the future they may be able to afford a restored pipe organ, as well as having the benefits of an electronic organ, with its more advantageous location within the church. Their aim is mission and not simply to become a centre for groups coming in for organ recitals – which rarely leads to any new weekly worship or increased financial commitment. Mission is what the church is for.

24. The Rector explains why the church want an electronic organ. One of their two organists (who is a member of the PCC) is in favour of an electronic organ. She is a traditionalist, and her husband is the longest-serving member of the choir. Their view is that modern electronic organs can produce a magnificent sound and that the electronic organ console would be in closer proximity to the choir and whoever is singing or playing at the time. This makes it easier to train a choir or a music group. Currently the organist sits in the high chancel whilst the choir sing in the nave. Given the large size of the church, this makes training a choir difficult. All of the organists in this debate recognise this. The electronics would enable everyone to sing with the same timing and tempo, however distanced they all were from the organ itself. An electronic organ would offer a greater musical flexibility in terms of the sort of sounds that can be played, ranging from traditional sounds to the sort of music that is played at more contemporary mission outreach and community services. Mr Read has stated that this is an advantage of an electronic organ; and the one he recently suggested seems to fit the bill

perfectly, and many remain enthusiastic about this proposal. There would not be the high maintenance costs of the regular tuning of a pipe organ. The church would not be having to raise large sums of money to ensure that the pipe organ was properly restored. Such fund-raising would be at the expense of mission in an understaffed parish. The parish have to spend a lot on bricks and mortar already, using specialist maintenance engineers; and this is said to be a huge burden upon the congregation in a Grade I listed building. An electronic organ would fit in well with the reordering plans which have been suggested by the experienced church architect who is assisting the church with their reordering process. In these plans, the current nave choir stalls would be removed to a place behind, and on either side of, the nave altar, and close to a new electronic organ console. Moving the existing pipe console would involve even more money should any pipe organ console be suggested in future years. The church would be looking at a substantial increase in the proposed costs of renewing the pipe organ. If necessary, an electronic organ could be moved to other locations within the church building (although it is not anticipated that this would happen very often).

25. The Rector addresses the parish's current concerns. There are significant cost concerns about any restoration of the pipe organ. A complete renovation has been quoted in the past as £220,000 or so. If they were to include the pipe work that is needed, the renewals suggested by Mr Spencer would add significantly to the cost, from the £57,000 quoted to nearer £80,000. In addition to this, there may be other costs that may come to light once work has begun on the pipe organ, such as discovering woodworm and other faults. This is particularly alarming, and it would therefore be a risky project to embark upon. Before the present Rector's time, one of the other churches in the benefice had their organ taken apart and now St Mary's, Moulsoe cannot afford to have all of its pipes replaced. They are still lying in a storage space at the back of the church. The estimated costs of the renewal of the St Peter & St Paul pipe organ have increased significantly since the first ballpark estimated figure of around £20,000 last autumn. What would significantly push the quote up still further would be the need to build a pipe organ detached console in the nave so that a choir could be more effectively trained and engaged with. This would entail even more prohibitive costs than the current quotes. Quite a number of the parishioners are concerned that the parish's financial focus would, once again, be on the church's fabric rather than mission and worship flexibility. At the moment, there is not the incentive to raise large sums of money for such a project. The parish are, however deeply committed to church growth and providing the worship flexibility to accommodate this, in line with the diocesan mission aims. Ideally, it would be good to have enough money to spend on fully restoring the pipe organ and have an electronic organ as well. However, the parish are not a wealthy commercial enterprise, and it is not possible anyway, in the current climate, to hold events to raise money for financially demanding projects. The parish are struggling to afford to be able to recruit much-needed staff to cover the four churches in the benefice, as well as ensuring that there is enough money in the kitty to maintain their historic buildings. For example, they have had to spend lots recently on St Peter & St Paul's boiler system. Additionally, the court's focus should be upon why the church want an electronic organ, rather than whether they can afford to renew the existing pipe organ. Musically, the ambiguity over the long-term health of the pipe organ is likely to be a disincentive to the appointment of a new musical director who can also work to build up a choir or any other musical innovation. Mr Read is currently employed on a temporary basis and, apart from Covid restrictions, he does not want to be involved with choir training.

26. The Rector points out that at the extraordinary general meeting that was convened to consider these issues, one person who spoke said that if there were a choice to be made, Diocesan Advisory Committees nearly always prefer monies to be spent on pipe organs rather than electronic instruments. This gave the clear impression that discussion of the matter would not lead to the church's request being granted anyway. PCC members had also received information from Mr Read about several cases in other churches where a faculty for an electronic organ had not been granted. Up to this point, recent earlier PCC meetings had been heavily in favour of requesting a faculty for the installation of an electronic organ. The Rector considers that this perception may have led few members to vote against the proposal to install an electronic organ since nobody present wanted to be involved in any costly legal challenges concerning the motion they were discussing. That is so despite the view that this is not essentially about whether the church should spend money on either the pipe organ or an electronic organ. The issue, for supporters of an electric organ, is about the other reasons for preferring an electronic organ with a much-needed detached console. Finance is part of this discussion but is not the whole picture.

27. The Rector proceeds to consider the points raised by the objectors to the faculty application. In doing so, he emphasises that all of the objectors contribute greatly to the life of this parish, and they are all in a good relationship together. However, Mr Heyes is a former organist at the church who retired two years ago and now lives and worships outside the parish, at Olney. Although the church are all still on good terms with him, he has not been part of the ongoing discussions about where they are going in the parish regarding their mission, their outreach, and the consequent reordering project; and he has not been part of the financial discussions about this issue. Despite this, at the extraordinary general meeting Mr Heyes is said to have given some positive technical musical insights as to the advantages of having an electric organ console in the nave, where the choir or any musicians are located. Other points raised by the objectors are addressed as follows:

(1) Mr Read

The dedicated organ fund which was set up in the 1980s was simply an organ fund and was not specifically created only to maintain the existence of the pipe organ. In those days, electronic organs were rare in churches anyway, and particularly in Grade I listed buildings like St Peter & St Paul. The Rector suspects that electronic organs were not then of sufficient quality to be installed into historic churches. There is nothing in writing to state that the organ fund was only ever to be used for the current pipe organ. The fund is applicable to any organ which the church is using, now or in the future. Regarding the PCC discussions at which Mr Read was not present, regardless of pipe organ repair costs, other reasons as to why the church should positively install an electronic organ were also discussed. Part of the enthusiasm for such an organ was connected with the process that the church had embarked upon of reordering the church for mission purposes. This is clearly a long-term process; but the advantages of an electronic organ fit well with the architect's suggested plans and aims for reordering, and with the church's current outreach to the community through more flexible offerings of musical styles.

(2) Mr Heyes

Mr Heyes is correct that there is more than £20,000 in the organ fund. However, even this would not be enough properly to renew the pipe organ, including pipe cleaning and providing a much-needed detached console. There is also the possibility, stated by the organ company, that

there may be other issues discovered once any renewal work occurs. The organ restorers make it clear in their quotation that the price excludes any other further work that is discovered once any renewal project is under way. Also, the arguments regarding flexibility in worship and the church reordering should be considered. The church must look at how they fund mission as a priority seeking to achieve a balance between preserving the old and church growth.

(3) Ms Cooper

The church understand Ms Cooper's concerns. However, Mr Read's proposals have been fully aired and have not been "disregarded". This is precisely why the church have followed up his suggestion, have asked for a delay in the progress of the faculty, and have invited a professional organ builder to examine the organ and quote for any work needed now and in the future. As regards the issue of an electronic organ leading to a disincentive to restore and renew the pipe organ, in an ideal world it would be good to have both types of organ operational in the church. If the church were to be left a large legacy ringfenced for renewal of the pipe organ, then they would have no hesitation about properly restoring the pipe organ, in addition to utilising the advantages offered by an electronic organ. The problem is that the church currently do not have sufficient funds to do all of this. They must work with what they have and look at the issues about the need for a detached console, choir training and their mission imperative. A repair of the pipe organ, along with the organ restorer's other recommendations and quotes, is still going to be prohibitive and distract from other spending priorities.

(4) Ms Eldridge

The church have to prioritise how they use their funds and what they raise them for. Many of the parishioners love pipe music but they are not museum curators who must restore everything at any cost. Funds are limited and the reason for the church being here is to worship God and promote the gospel. They have already spent a fortune on the fabric of this parish church for repairs that are crucially necessary, such as the roof. The fact that the organists themselves are divided over the quality of the sound an electronic organ makes shows that, with a good quality electronic organ (as with the one that Mr Read proposed to the PCC), the sound is good enough to be played in public worship. One of the church's keyboard players thinks that a good electronic organ can produce a magnificent sound, so that to an "average" person, it is hard to tell the difference between pipe and electronic organs. Electronic organs have been used for cathedral worship and this is evidence of their suitability for parish worship. Furthermore, the parish have given due attention to Mr Read's viewpoint by exploring more fully the costs involved in renewing the pipe organ. These costs are even more than previously envisaged. If a much-needed relocation of the console were to be added to all of this, then the cost would be well over £100,000. Regarding the point about "historic vandalism", the Rector reiterates that there is no intention to remove the pipe organ, and that if someone ever left a huge legacy to the church, with the intention of renovating the pipe organ, then they would happily oblige (even though they would still need an electric organ for other reasons concerning musical flexibility).

28. The following concluding thoughts are said to have occurred to those in favour of purchasing an electronic organ:

(1) Although the vote was close at the extraordinary general meeting, everyone agreed to abide by whatever decision was arrived at. In the case of a "yes for the faculty", all agreed to press ahead with approaching the DAC with the request. (A number of people who voted against the

proposal had declared that they were sitting on the fence and were undecided anyway, and two others could not make the meeting).

(2) There is a bigger context to all this that it is imperative to consider. The church face the financial tension between preserving what is historic and spending upon mission and ministry. The church try to exercise what responsibility they can within their means. It is understandable that “musical organ purists” should want to preserve the function of a pipe organ; but this comes at a huge financial cost that is borne by others. The church need to keep their eyes on “why we exist at all”, and how they can best go about this in terms of their music and outreach initiatives. For example, the whole proposed reordering project, which will take years to achieve, is under way and is calculated to enhance the parish’s ability to reach out to the community. There is nowhere in the building where the Rector can talk to someone in private who may need help. This is a serious, and more pressing, problem for a parish with no church hall.

(3) As far as worship goes, the distance between the choir and the organist is unhelpful in terms of choir training, and the reordering plans are concerned both with promoting the church’s mission and their outreach to the community.

(4) St Peter & St Paul are not King’s College, Cambridge and the church’s primary purpose is not about providing a facility for magnificent public organ recitals. Given all the other fabric expenditures that they have to incur, the church must now focus their spending on mission and enlisting the ministry support that they need, with all the attendant costs that this entails. This has to be the church’s priority since it about why they exist as a church at all.

(5) The bottom line is that the church cannot afford the proposed renewal of the existing pipe organ and all the recommendations in the organ repairer’s report. Also, the argument for an electronic organ is about other issues than finance; and the church can afford an electronic organ installation anyway. It will be significantly cheaper than renewing the existing pipe organ, and the church have to be responsible stewards of the finances they have.

(6) If the faculty asked for is not granted, then this does not necessarily mean that the existing organ fund will be spent on the existing pipe organ. There is not enough in the pot to do a “proper job”, and the church do not know what other costly problems may be discovered once any work is under way.

(7) In the church’s view, the money in the existing organ fund should be spent upon a new high-quality electronic organ that enables them to better reflect their traditional and more contemporary musical mission objectives to a diverse population.

Consequently, on behalf of the PCC, the Rector requests permission for a faculty to install a high-quality electronic organ of the type that Mr Read originally recommended for the church.

The applicable law: The Duffield framework

29. Since the church is a Grade I listed building, this faculty application falls to be addressed by reference to the series of questions identified by the Court of Arches (which is the ecclesiastical appeal court) in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court’s later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These are:

- (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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that, in the absence of a good reason, change should not be permitted?
- (3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) In the light of the strong presumption against proposals which will adversely affect the special character of a listed building, 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?

This provides a structured and logical method for determining a faculty application.

30. The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the particular listed church as a whole, and whether this would be adversely affected overall by the proposed works. The court needs to consider whether the proposed works will adversely affect the appearance, the character, and the setting of this Grade II* listed church, not in the abstract, but rather as “a building of special architectural or historic interest”. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted; and that serious harm to a church listed as Grade I or Grade II* should only be permitted in exceptional cases. As this court recently observed in the case of *Re St Peter & St Paul, Astown Rowant* [2019] Oxf 3, (2020) 22 Ecc LJ 265 (at paragraph 7), when applying the *Duffield* guidelines the court has to consider whether the same, or substantially the same, benefit could be obtained by other works which would cause less harm to the character and the special significance of the church. If the degree of harm to the special significance which would flow from the proposed works is not necessary to achieve the intended benefit because the desired benefit could be obtained from other, less harmful, works, then that is highly relevant. In such circumstances, it may be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit. When applying the *Duffield* guidelines, the court should bear in mind, at all stages, that the desirability of preserving the listed church, and all the features of special architectural or historic interest which it possesses, in their setting is a consideration of considerable importance and weight. The court has directed itself by reference to these expanded guidelines, which it bears very much in mind. The court is also required (by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*) to pay due regard to the role of the church as a local centre of worship and mission.

The applicable law: Church organs

31. In *Re St Nicholas, Warwick* (2010) 12 Ecc LJ 407 (in the Coventry Consistory Court) the petitioning churchwardens sought a faculty for the removal of the existing pipe organ (which had originally been built by J. J. Binns for Farsley Baptist Church in Leeds in 1919-1920 and brought to St Nicholas in 1970 and was located in a case in a gallery at the west end of the listed church) and its replacement with a combination, or hybrid, organ. There were no formal objections to

the petition. The Diocesan Advisory Committee had certified that the proposed work was not likely to affect the church's character as a building of special architectural or historic interest but they did not recommend the proposal. In addition, the Church Buildings Council's "strongly preferred option" was the replacement of the current organ with a further pipe organ. In the light of those representations, Chancellor Eyre decided to hear evidence in open court. It was common ground both that the existing organ should be removed and that, with unlimited resources, a replacement pipe organ would be the best solution in terms both of durability and musical quality. The dispute turned on the questions of whether that ideal was achievable and what should be done if it were not. The petitioners said that the acquisition of a new pipe organ (whether by new construction or a purchase from elsewhere) would neither be practicable nor necessarily the best use of the parish's limited funds. They said that the proposed combination organ was the best alternative in the particular circumstances. The contrary view was that the proposed course was risky, expensive, and musically unsound. It was suggested that for the parish to take the course advocated by the petitioners, could be a costly blunder which would be difficult to remedy. The cost of the combination organ would be some £76,525 whilst it appeared that a new top of the range pipe organ would cost in excess of £250,000 (although the Church Buildings Council believed that a redundant pipe organ could be obtained and installed for a similar cost to the proposed combination organ). The Chancellor held that the case was finely balanced but concluded that it was appropriate in the particular circumstances to grant the faculty sought. In doing so, the Chancellor emphasised the very particular circumstances of the case: all involved agreed that it was appropriate to replace the existing organ rather than attempt to restore it and the parish had arrived at its preferred course after a lengthy, balanced and detailed investigation. This led the Chancellor to conclude, on balance, that the petitioners had displaced both the presumption against the removal of an existing pipe organ and the expectation that one pipe organ should be replaced by another one.

32. In the course of his judgment, the Chancellor said this (at paragraphs 15-20, but omitting his references to the authorities):

"15 A pipe organ will normally be a fixture rather than a chattel and so in a listed church (such as St. Nicholas) the well-known *Bishopgate* questions must be considered in respect of any application to remove such an organ ...

16 It is well-established that the onus is on those seeking to obtain a faculty for removal of a pipe organ. Account is to be taken of the musical qualities and durability of pipe organs. Accordingly, in borderline cases the approach of the consistory court should be to require the retention of such an organ ... Indeed the cost of repairing an existing pipe organ is not likely to be a sufficient justification for its removal ... However, in an appropriate case a pipe organ can be removed and replaced by a digital instrument ... The presumption in favour of the retention of a pipe organ can be overcome in such a case.

17 ... the views of the parish were not determinative no matter how 'united and eager they may be'. However, account had to be taken of the views of the parish; of the comparative costs involved; of the impact on the other activities of the parish if it had to incur expenditure in respect of a pipe organ; and the comparative musical qualities and importance of the competing instruments ... the replacement of a pipe organ by a supposedly more modern and cost-effective substitute can turn out to have been a false economy.

18 In the preceding cases consistory courts were considering whether to allow the removal of a pipe organ in circumstances where there was doubt as to whether such removal was appropriate. The situation here is somewhat different. There is agreement on all sides that the Binns organ currently in St. Nicholas is a poor instrument; that restoration is neither sensible nor practicable; and that removal is the appropriate course. The issue is not whether the existing organ should be removed but with what it should be replaced. What are the principles which should guide my exercise of my discretion in those circumstances?

19 I have concluded that in petitions seeking to replace an admittedly inadequate pipe organ account must still be taken of the musical quality and potential longevity of such instruments. Accordingly, the expectation amounting to a presumption will be that the appropriate replacement for a pipe organ is another pipe organ and the burden lies on those seeking to say that some other instrument is an appropriate and adequate replacement. It will be possible in a suitable case for that burden to be discharged but the lasting benefits of a pipe organ are not lightly to be disregarded. In deciding whether the burden has been discharged account will have to be taken of the wishes, needs, and resources of the parish in question; of the comparative costs involved; of the merits and demerits of the proposed alternative; the scope for other solutions; and of the steps taken to consider potential alternatives. The last of these is likely to be a significant factor. The presumption in favour of a further pipe organ is more likely to be rebutted by those who can show that the preference for an alternative results from careful and reasoned consideration after detailed and informed research. Those whose preference for an alternative is based on a consideration which does not take proper account of the merits of pipe organs are unlikely to persuade the court that their preference can displace the presumption in favour of replacing a pipe organ with another pipe organ.

20 In his submissions to me on behalf of the Petitioners Mr. Perkins contended that I should focus on the particular petition and should consider whether the course proposed was appropriate and permissible without being distracted by consideration of other potential alternatives. Mr. Perkins was right to say that I can only rule on the particular petition before me but I conclude that the general thrust of this argument was misconceived. I have to decide whether a particular proposed alteration is appropriate and in order to do that I have to consider what other courses could be adopted and what alternatives there could be. Mr. Perkins is right to the extent that where there are a number of potential courses each of which would be appropriate and where the choice between them is a matter of local judgment or taste a faculty will normally be granted for any such course. Nonetheless, consideration of the potential alternatives is required before deciding whether any particular course is a potentially appropriate one.”

33. In *Re St Nicholas, Radford Semele* (2012) 13 Ecc LJ 457 (also in the Coventry Consistory Court) the question was whether the petitioners should be permitted to replace a pipe organ with a digital organ. The former Grade II listed church had been virtually destroyed by fire leaving just a stone shell. The petitioners emphasised that they were not just replacing an existing organ in an existing building. Rather there was nothing left for them to replace and they had to provide “a new instrument in a completely new redesigned interior”. The Chancellor was satisfied that the decision to install a digital organ had not been made lightly but was the result of a proper analysis, in line with the thoughtful and considered approach which had been taken to the reconstruction as a whole. Having referred to the approach which he considered to be

applicable to the replacement of pipe organs, as set out in his judgment in *Re St Nicholas, Warwick* (citing in particular paragraph 19) Chancellor Eyre said that where an existing pipe organ had been destroyed, the starting point remained that such an organ should be replaced by a pipe organ. At paragraph 13 Chancellor Eyre said this:

“The expectation approximating to a presumption that a pipe organ will be replaced by another pipe organ results from the musical quality and the longevity of such instruments. It is those qualities which make them particularly apt for installation in churches and which justify the additional expense involved. I should add that the longevity of pipe organs means that the questions of whether and the extent to which in the longer term they are more expensive than the alternatives are much less clear-cut than an initial comparison of the initial purchase cost might suggest. Those qualities are present and those considerations apply whatever the reason necessitating replacement in any particular case. Accordingly, where an existing pipe organ has been destroyed the starting point is still that such an organ should be replaced by a pipe organ. That remains the starting point even where the destruction of the organ was in the context of the destruction of the church building. It is not an invariable rule that the replacement for a destroyed pipe organ is to be another pipe organ but those who seek a faculty to install a different kind of organ bear the heavy burden of showing a convincing reason for such a course. Such a reason does not have to be compelling in the sense of there being no tenable alternative but it does have to be a reason sufficiently strong to overcome the presumption flowing from the benefits and importance of pipe organs. Those who seek to replace a pipe organ with a different type of instrument will almost invariably fail if they cannot show that there has been a proper consideration of the issues with due account being taken of the importance and benefits of pipe organs. This is because those who have not engaged in such consideration and analysis will almost inevitably be unable to demonstrate that their reasons for installing a different kind of organ are well-founded: those reasons having been formed without proper attention to the important countervailing factors. Even where there has been such consideration, those seeking a faculty must still discharge the burden of explaining why there should not be a replacement pipe organ. Proper consideration is a necessary but not sufficient condition for the grant of such a faculty.”

34. Chancellor Eyre decided that in the particular circumstances of that case it was appropriate to grant a faculty to install a digital organ. In doing so, he made it clear that some of the factors on which the petitioners had relied were not sufficient to justify the installation of a digital organ. First, the argument based on the comparative costs carried little weight. Over time, pipe organs were rather better value for money than replacements of other kinds which had a more limited life span. Moreover, the duty to ensure that there was excellence in worship meant that the consistory court could not be sympathetic to the argument that it was justifiable to install something of lesser quality simply because it was thought to be cheaper. Secondly, the assertion that the church had “no future young organists” and that a digital organ was easier to play was unimpressive: “I must say in the plainest of terms that the answer to other petitioners who sought to remove a pipe organ because they believed that they had no future young organists would be that they should be taking steps to find, to nurture, and to encourage such organists.” The Chancellor considered the case to be a borderline case about which he had some reservations but there were particular factors which, on balance, made it appropriate to authorise the installation of a digital organ in the reconstructed church. First, the PCC had engaged in

serious consideration of the way forward and, in particular, of the type of instrument which they would wish to be installed in the reconstructed church. That was a necessary, but not a sufficient, condition for the installation of an instrument other than a pipe organ. Second, and rather more significant, was the impact which a pipe organ would have upon the intended use of the space in the reconstructed church. Enabling the parish to enjoy the benefits of space and flexibility to the full was, on balance, a sufficient reason for the court to permit the installation of a digital organ rather than insisting on a replacement pipe organ.

35. It should be noted that both of these authorities were decided at a time when consistory courts were still asking the *Bishopsgate* questions (see *Re St Helen's, Bishopsgate* (1993) 3 Ecc LJ 256, which had been approved by the Court of Arches in *Re St Luke the Evangelist, Maidstone* [1995] Fam 1). The current approach is of course now governed by the *Duffield* framework. In *Duffield* the Court of Arches (at paragraph 87) pointed to the “danger of imposing an unduly prescriptive framework on what is essentially a balancing process”. They particularly criticised the “necessity test” involved in the first of the *Bishopsgate* questions, which was directed to proving a necessity for some or all of the proposed works, pointing put (at paragraph 85) that “as long ago as 1987, and well before the *Bishopsgate* questions were first formulated, the Court of Ecclesiastical Causes Reserved had firmly rejected the applicability of any test of ‘necessity’ in listed building applications (see *In re St Stephen's, Walbrook* [1987] Fam 146), although we accept that on the facts of that case the court concluded that the architecture of the church would be enhanced by the new altar, and was not considering a case such as this where there will be some loss of special historic interest”. Nevertheless, it seems to me that the considerations and the factors identified by Chancellor Eyre (and summarised at paragraph 13 of his judgment in *Radford Semele*) remain of relevance.

36. In *Re St Nicholas, Guisborough* [2018] ECC Yor 6, (2019) 21 Ecc LJ 255 the proposal was permanently to retain a Hauptwerk digital organ (belonging to Wakefield Cathedral), which had been introduced into the Grade II* listed church under an archdeacon’s licence for temporary minor re-ordering. The church already had a faculty in place for the removal and disposal of the existing pipe organ, which the DAC had advised was not fit for purpose and should be replaced, subject to the condition that it should not be removed from the church building until a faculty for a suitable replacement instrument had been issued. Although the Diocesan Advisory Committee had not recommended the proposal, Chancellor Collier QC granted a faculty. He was satisfied that the petitioners had discharged the burden of displacing the presumption that the Harrison & Harrison organ should be replaced with a pipe organ. He was also satisfied that they had considered the merits and demerits of alternatives to their preferred digital organ solution, particularly the relative costs, and that their proposal was, in all the circumstances, a reasonable one in terms of their wishes, needs and resources. Having considered Chancellor Eyre’s judgment in *Re St Nicholas, Warwick*, Chancellor Collier QC noted that the starting point had to be that the current organ was not fit for purpose. He continued (at paragraphs 37-38):

“37 The next step is that there is no principle of law requiring that it be replaced like for like with a pipe-organ. However, there is a presumption that the starting point should be to replace a pipe-organ with a pipe-organ but that that is a presumption that can be rebutted.

38 If they are to rebut the presumption the petitioners will need not only to give an account of the ‘wishes, needs, and resources of the parish in question’ but will also need to show that they have considered the merits and demerits of any alternative proposals,

including those suggested by the DAC, and taking account of the comparative costs involved. In particular they will need to show that their preference for an alternative to a traditional pipe-organ follows careful and reasoned consideration after detailed and informed research. In just the same way the Chancellor must have regard to the advice of the DAC but is not bound to accept it if there are good reasons for not doing so.”

37. In *Re St. Giles, Skelton* [2019] ECC Yor 5 the proposal was to replace the existing pipe organ in the Grade I listed medieval church with an electronic organ. A letter of objection was received from a former organist at the church, who argued that the small instrument was ideal for the size of the church and, with minimal maintenance, it had been working well for approximately 130 years; there was no reason why the organ should not continue to be effective for another 100 years; the life of an electronic organ, he claimed, rarely exceeded 20 years. The petitioners stated that the proposal to replace the pipe organ with an electronic organ was part of a long-term proposal to reorder the church. The advice of the organ adviser was that the organ had no historical importance, was tonally undistinguished, and there were problems with the pedalboards. Applying the principles set out in his earlier decision in *Re St Nicholas Guisborough* [2018] ECC Yor 6, Chancellor Collier QC was satisfied that a good case had been made out for the replacement of the pipe organ, that the loss of the organ would not be significant in terms of history or architecture, and that none of the arguments advanced by the former organist, whether taken singly or together, overcame those advanced by the petitioners in favour of their proposals; and he therefore granted the faculty sought.

38. In other recent cases concerning applications for the removal of existing pipe organs, and their replacement by digital alternatives, the cases have been decided solely by reference to the *Duffield* framework: see *Re Christ Church, Fulwood* [2017] ECC She 6, (2018) 20 Ecc LJ 251 (Chancellor Singleton QC) who makes the valid points (at paragraph 35) that “A musical instrument should not become a memorial monument but should be played and appreciated” and (at paragraph 36) “That application of the *Duffield* test to the organ is not the end of the matter because I cannot and should not ignore the fact that the instrument stands in its own right as a church treasure of considerable value both historically and musically (not to mention financially)”; *Re All Saints, Findern* [2018] ECC Der 1, (2019) 21 Ecc LJ 113 (Chancellor Bullimore); *Re St Denys, Ravensthorpe* [2018] ECC Pet 1 (Chancellor Pittaway QC); and *Re St James, Heckmondwike* [2019] ECC Lee 1, (2020) 22 Ecc LJ 118 (Deputy Chancellor Samuel), expressly rejecting (at paragraph 23) the notion that, as organs “sing to heaven”, no pipe organ should be removed from a church without exceptional reason in favour of the application of the *Duffield* test.

39. In his book on *Changing Churches: A Practical Guide to the Faculty System* (published in 2016 and believed to be accurate as at 24 July 2015) Charles Mynors considers the repair or replacement of pipe organs at paragraph 13.5.2. He suggests (omitting footnotes) that:

“Consistory Courts tend to repeat the mantra that every proposal for the substitution of an electronic or digital organ for a pipe organ will have to be considered on its merits; but they then, in many cases, go on to grant a faculty. In some cases, a key factor may be the quality, age and condition of the existing instrument and the amount it would take to restore it to working order. However, there is considerable support for the view that parishes are expected to retain (and restore) existing pipe organs, and to make financial arrangements accordingly; but this may be a counsel of perfection. A further factor may be that the removal of a large pipe organ unlocks a significant amount of space (or

unblocks a window) at a critical point in the layout of a church. But that will not always be determinative. Another possible alternative, as yet relatively untried, is a hybrid/combination organ. And it may sometimes be appropriate for a parish to buy an electronic instrument while it raises funds for the purchase or refurbishment of a pipe organ.”

40. The Church Building Council’s “Church Care” web-site contains useful advice and guidance on organs, including papers on pipe organs, digital organs, and the factors to be considered when deciding whether to repair or to replace a church organ. This latter Guidance Note identifies the questions that should be asked as: 1. Who built the organ? When? 2. Has it been restored or rebuilt? By whom and when? 3. Does it contain earlier material, such as pipes or casework, which may be of historic value? 4. Within its own category, is the instrument of any musical distinction? Is it mechanically well-made? 5. How suitable is it for the liturgical and wider uses of the church? 6. How much will it cost to repair or restore and how accurate are these costs? Under the heading “Restoration”, the Note advises that: “If the instrument is either of historic value or is fundamentally sound, the best advice is likely to be that the organ should be restored. However, if the suitability of an instrument is in question, it is necessary to look closely at the reasons advanced for change. These often include: 1. The organ is too small to meet the musical needs of the church. 2. It is unreliable and has been declared irreparable. 3. It is in the wrong place. 4. It looks ugly. 5. It is physically too large. 6. The repair of the organ is beyond the financial resources of the parish. A series of issues lie behind such statements. It is important to think them through before any decisions are made.” The Guidance Note addresses these issues in detail.

Discussion

41. The court must begin by identifying the special architectural and historic interest of this particular listed church building. This is to be gathered from its listing description which, in the case of this church, dates as far back as 24 October 1950. The listing description (which notes that the church forms part of a group with Nos 7 to 27 (odd) High Street) is as follows:

“Parish church, standing at the east end of the High Street partly screened by buildings facing the street. C14 to C20, mainly medieval with mid C16 ashlar faced west tower, early C19 south aisle. Restored early C19, when battlements and pinnacles added to tower. North vestries added 1905. Windows C14-C16 in design, some original stonework. South doorway and porch circa 1355. Impressive proportions, late C15 tie-beam nave roof with carved bosses and figures. C18 and C19 wall monuments include carved tablets with cherubim, 1702, 1705 and 1719, carved cartouche of 1726, finely carved Revis monument of 1755.”

The organ is not specifically mentioned in the listing description. Nor is it mentioned in the current (2nd) edition of the volume of *Pevsner’s Buildings of England: Buckinghamshire* (published in 1994).

42. The Statement of Significance is dated March 2019 and is by Mr Brian O’Callaghan JP BA MSc PhD FHEA IHBC and Ms Diana Coulter Dip Cons Hist Env MA IHBC of Artemis Heritage. It is an impressive document, extending to 16 pages, with many high quality colour photographs and images of historic floor plans. The document notes that the existing church is primarily medieval and dates to the 14th century. The north aisle, nave roofs and tower date to the early 16th century. Further alterations were undertaken in the 17th century. In the 18th

century galleries were added and the church was apparently re-seated with box pews. On the acquisition of an organ in 1738, a loft standing on four columns was built to house it in front of the tower arch. In 1828-30 the architect James Savage restored the church, but fundamentally the church maintained a Georgian feel. This was only altered in the 1870s and 1880s when the nave roof collapsed over the organ gallery leading to the building of a new organ chamber to the north of the chancel in 1867 to designs by A. W. Blomfield to accommodate a new instrument. The existing pipe organ is not specifically mentioned in the Statement of Significance.

43. The court is satisfied that the existing pipe organ is not an important feature or aspect of the significance of this church as a building of special architectural or historic interest. Since the existing pipe organ is not going to be removed from the church or disposed of, the proposal to purchase and install a digital organ will not harm the setting, the appearance or the significance of the church building. The first of the *Duffield* questions therefore receives a negative answer. The petitioners have shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason, change should not be permitted. The proposal will provide greater musical flexibility, facilitate worship at the church, and help to promote the church's mission within the wider community. In these circumstances, the third, fourth and fifth of the *Duffield* questions do not fall to be considered. The parish have carefully considered the merits and demerits of the alternative proposal of repairing and restoring the existing pipe organ and they have taken due account of the comparative costs involved. They have demonstrated that their preference for a digital organ follows careful and reasoned consideration and deliberation, after having undertaken detailed and informed research. The proposal has been recommended for approval by the DAC. The former formal objections have all been withdrawn, although the court has taken the reasons for those objections fully into account in reaching its determination. In these circumstances, the court should grant the limited faculty sought so as to enable the parish to purchase and install their proposed digital organ.

44. However, two concerns remain. The first is the point made by Ms Cooper and Ms Eldridge that should the faculty application be approved, the fate of the existing pipe organ will effectively be sealed because a lack of use will further harm its functionality and neglect will inevitably lead to decommissioning being the only option. In my judgment, the court cannot ignore these fears or the "bigger picture". Nor should the court turn a blind eye to the possible implications of any faculty that it may grant. The petitioners have throughout emphasised that "there are no plans in any of this to remove, dismantle, or dispose of the pipe organ itself"; and the court should not do anything that might be construed as facilitating this, effectively by a sidewind. The removal and disposal of the existing pipe organ would require appropriate consultation with, and proper consideration of the responses of, a number of different bodies – English Heritage, the Church Buildings Council, the Victorian Society, and the British Institute of Organ Studies – who, because of the limited nature of the present proposal, have, quite properly, not yet been consulted. Any proposal to remove the existing pipe organ should also fall to be considered in the context of any proposals for the reordering of the church building, their nature and justification. For this reason, I propose to impose a condition that will, hopefully, operate so as to preserve the status quo, whilst recognising the financial burden that this may impose upon the parish. This condition will require the parish to continue to maintain, insure, and regularly tune the existing pipe organ and to use their reasonable endeavours to ensure that it continues to be playable whilst the electronic organ remains in the church, with permission to apply to the court if this obligation becomes unduly onerous for the parish.

45. The second arises out of the Diocesan Organ Adviser's concern as to whether the parish really need to spend so much on a temporary electronic instrument and his suggestion that a less expensive second-hand model might be a better way forward in terms of meeting what he describes as "the present, quite modest, musical needs of the parish". Since the present application is to be in no way determinative of the future fate of the existing pipe organ, the court shares this concern. To address it, the court will include a further condition that, with the prior approval of the Diocesan Organ Adviser, the petitioners may substitute an alternative electronic organ for the model identified in their faculty application.

Conclusion

46. For these reasons, the court will grant a faculty for the purchase and installation of an electronic organ in accordance with the quotation provided by The Cotswold Organ Company Ltd dated 10 February 2020 on the following conditions (the first four of which were recommended by the DAC):

1. The installation of this electronic organ is permitted for a period of up to ten years.
2. The final speaker locations, and the installation generally, are to be supervised by the Diocesan Organ Adviser.
3. The fixings for the speakers are to be made only into mortar joints or plain plaster.
4. The petitioners are to follow the DAC's April 2018 Guidelines on Electrical Installations.
5. The parish are to continue to maintain, insure, and regularly tune the existing pipe organ and are to use their reasonable endeavours to ensure that it continues to be playable whilst the electronic organ remains in the church, with permission to apply to the court if this obligation becomes unduly onerous for the parish.
6. With the prior approval of the Diocesan Organ Adviser, the petitioners may substitute an alternative electronic organ for the model identified in their faculty application.

For pastoral reasons, the court waives its fee for this judgment.

The Worshipful Chancellor Hodge QC

23 December 2020