

SHEPHERDSWELL, ST.ANDREW

Diocese of Canterbury

JUDGMENT

1. INTRODUCTION

1.1. By a Petition dated 2 March 2014, the Rector and Churchwardens of St.

Andrew's Shepherdswell seek a Faculty for the following matters:

"Disposal of the existing pipe organ, its replacement with a Viscount Envoy 23S digital organ, the construction of a new timber screen in the south arcade of the chancel and associated minor alterations to the chancel furnishings, all in accordance with a Statement of Needs, an email by John Reynolds dated 29 January 2014 giving details of the new instrument and a drawing no. 1312A/01 by Rutherford Architects dated January 2014."

John Reynolds is one of the petitioning churchwardens.

1.2 The Faculty is, in part, confirmatory because, on 24 January, I authorised the installation of the new organ on an interim basis, pursuant to Part 14 of the Faculty Jurisdiction Rules 2013 ("FJR").

As I understand it, the new organ has been installed but none of the other works have been undertaken.

1.2. The Petition was duly publicised from 2 February 2014 and provoked one objection, from a Mr Eddie Higham, who is resident in the parish. Mr Higham is a member of both the choir and the music group of the church and is a regular attender at services. In fact, Mr Higham first wrote to the Registrar to protest about the then proposed installation on 11 February. The Registrar explained that it was not possible to deal with an objection to a Petition in advance of its being lodged with the Court. I shall summarise Mr Higham's objection to the proposals in the next section of the Judgment.

2. THE PROPOSALS AND THEIR PROCEDURAL HISTORY

2.1. The Statement of Needs is in the following terms:

"There is an urgent need for the new organ as described at the end of this document for the following reasons:

- *The present pipe organ which was installed in the church in 1894 is no longer functioning effectively. It is unreliable and extremely difficult for an organist to play in some cases.*
- *The cost of any effective renovation of the organ is prohibitive.*
- *St Andrews has a tradition of congregational singing during worship.*
- *There is a small but active choir which regularly leads the congregation in worship.*

In view of these points St Andrews consider that the installation of a replacement organ is not only desirable but essential if we are to maintain music as an important part of our congregational worship.

In considering a suitable replacement it became clear to us that the cost of a replacement pipe organ would be prohibitive and consequently sought advice on appropriate digital organs. After careful consideration we decided upon the Viscount Envoy 23S instrument.

Its installation will have minimal impact upon the existing fabric requiring the removal of cupboards from the north side of the choir to allow the siting of the console. The four main speakers will be positioned on the wall-plate above the console. The bass speaker will be placed on the floor in an area adjacent to the console. Necessary wiring to speakers will be in white mini-trunking. Once the installation is complete the existing pipe-organ will be disassembled and removed.

At a recent meeting, St Andrew's PCC passed the following motion unanimously: 'That the PCC of St Andrews seek a faculty for the removal of the cupboards in the north side of the choir, make good the decorative order of the newly exposed paintwork, the removal of the existing pipe organ, the installation of a new digital organ with its speakers and associated electrics'.

- 2.2. The Diocesan Advisory Committee ("DAC") considered the proposals and gave a Notification of Advice on 29 January 2014. It recommended that the works be approved by the Commissary Court.
- 2.3. Evidently the Petitioners had been informed that the DAC response was going to be positive, because on 20 January, Mr Reynolds emailed the Archdeacon of Ashford in the following terms:

"The congregation at St Andrews were pleased to receive notice of the DAC support for the installation of

the digital organ, removal of the existing pipe organ and other associated works.

Whilst accepting that any work which materially changes the basic fabric of the building must wait until the completion of the Faculty process, might it be appropriate to install the digital organ before that process is complete. The other works, namely removal of the pipe organ and the creation of a store, would need to await the completion of the process because they do materially affect the fabric.

I seek your advice on this as we do have a number of services which should require the organ, amongst these is the Archbishop's visit in Holy Week and a number of weddings."

The Archdeacon accordingly contacted the Registry to ask whether it would be possible to 'fast-track' authorisation for the project. The Archdeacon advised that it was "*entirely uncontroversial and fully supported in the DAC*" and expressed his wish to facilitate a speedy decision, especially having regard to the imminent visit of the Archbishop of Canterbury.

- 2.4. I considered this request carefully and, on 24 January, gave the following ruling and directions:

"Whilst the matter would be within the Archdeacon's jurisdiction in principle, the interim nature of it means that I am obliged to deal with it instead (Rule 7.1(2)). If it is to be dealt with without a DAC certificate, then it will have to be processed by me as an interim because the Archdeacon and /or I would otherwise be obliged to await the DAC advice.

I am happy in principle to do this. Under Part 14, I must impose a condition requiring the submission of a faculty petition within a set period of time. Would you explain to the petitioners, please, that I am content in principle to dispense with public notice as I consider it expedient to do so in view of the need for a functioning instrument for the forthcoming visit of the Archbishop and grant an interim faculty. Nevertheless, I am required by law to impose the condition relating to submission of a final petition and I am minded to require this to be done within three months, unless they wish to argue for a longer period. If three months is not long enough, then please will they set out briefly in an email or letter why they need more time and the period sought.

Please will you also make clear to them that the grant of this interim faculty will in no way prejudice my consideration of the final faculty petition in due course.”

When considering whether or not to grant an interim faculty, I took into account and gave considerable weight to the advice of the DAC and the strong support of the Archdeacon. In particular, I had regard to his understanding and assurance that the proposals were “*entirely uncontroversial*”. Doubtless both the DAC and the Archdeacon (who is a member of that Committee) will have had regard in advising me to the Statement of Needs which, as I have set out above, contained reference to the unanimous resolution of the Parochial Church Council. Now that I have seen the actual extract from the Minutes, I see that it was further recorded that,

“In view of the relatively low attendance (60%), the Secretary was asked to consult absentees by email. The voting of these absentees was also unanimously in favour.”

2.5. Pursuant to the conditions imposed on the interim Faculty, the current Petition was submitted on 3 March, as I have said. Mr Higham had, by then, already written to the Diocesan Registry objecting to the proposed purchase in the following terms:

"I am writing in relation to the proposed replacement organ for St Andrews Church Shepherdswell. I am a member of the choir and music group and am a regular attender. I can see why some may want a new organ and do not fundamentally object to this, and a digital organ would seem on the face of it a sensible replacement to an ageing and expensive to maintain pipe organ, which only has one manual. What I do object to is the considerable expense which I believe could be much better spent. The church says each week that it proclaims the gospel of Christ. It supports and helps administer a food bank and provides street pastors to Dover as well as supporting churches abroad among other activities. It therefore recognises some fundamental needs. Surely these are more pressing? Also the hymn books for both the choir and congregation are well worn and tatty and becoming beyond use. Both the choir and music group would benefit from being able to purchase appropriate music for regular use. Both the music group and choir are accompanied on occasion by electronic keyboards which are far more flexible. I have some knowledge of these and what is available as well as sound systems. A portable keyboard – even a dual; manual – could be bought for considerably less money and even with a large pedal board and suitable sound system could be purchased for less than £5000. This would have the added advantage of being able to be used at other events. Even if a first class organ emulator and computer were purchased such as Hauptwerk, which is better than most sampled digital organs and more upgradeable, considerable savings could be made.

The congregation as in many churches is ageing. At most services you would be hard pressed to see anyone under the age of 60. I believe there is a need to attract younger members. I do not think this may necessarily be achieved by sticking to tradition e.g. using a fixed organ.

It is also very difficult to find a suitably skilled player. It is easier (but not easy) to find a good keyboard player who can play when required. Without a skilled player who is able to play at each service a fixed organ would be wasted, and gather dust. There is a history of the church using local musicians to accompany services, especially in the past when they could not afford the considerable expense of an organ. Indeed this is what many church galleries were used for before the installation of organs. I think this could be explored further and would be more attractive to a wider number of people in the community.

I believe there are mixed views in relation to the organ. I write this with respect to those who sincerely believe that a new fixed organ would meet the church's needs and have worked hard for this e.g. John Reynolds. However for the above reasons I think this should be reviewed and more flexible options considered, to meet future as well as present congregation's needs."

- 2.6. The Registrar replied, explaining that, as yet, no Faculty Petition had been received. Mr Higham then wrote to me (care of the Diocesan Registry) on 19 February, enclosing his earlier letter. The Registrar replied, stating that his letter would be sent to me when a Petition had been submitted and pointing out that I had made it clear that the interim grant would not prejudice my consideration of the Petition itself. Mr Higham replied by letter dated 24 February, as follows:

"In response to your previous letter, if I were being kind I would say I was a little confused but I don't think I am. You say interim permission has been granted for the installation of a digital organ. This I believe has now been ordered and will be installed very shortly ie. next week. Are you saying that I can not object to the installation of a digital organ? If the answer is no then the position is clear and no one has recourse to object (which of course is ridiculous and entirely devalues parishioners and their views without whom the church would not exist – or maybe it would?). If yes then why

was permission given without hearing any objections? My sole purpose in objecting was to review the use of the money spent on the organ and look at positive alternatives which I have suggested, not to distress those who sincerely believe that an organ would be the best step forward. Your reply has something of Kafka about it. What is the point of spending money on an organ, installing it and then having it removed to the hurt and chagrin of all concerned? It is pointless to pursue an objection to something which has been given permission and will be shortly accomplished unless to prevent future farces. I stand by my previous comment that this is a pantomime. I understand that one of the factors taken into account was the pending visit of the Archbishop? This I find absolutely outrageous. What if anything has the visit to do with organs? Was Jesus accompanied by Wurlitzers and Hammond organs on demand wherever he visited. Surely a decent hymn book which is not falling apart would be more useful and portable. I find your reply unhelpful. Due course is useless when installation is imminent.”

Upon receipt of the Petition, Mr Higham was informed of the option to become a formal party to the proceedings before the Court or simply to leave his letters to be taken into account when I consider the Petition. He has not replied to this invitation within the relevant 21 day period, so I shall take his existing letters to stand as his objection.

- 2.7. The new instrument, which, I assume, has now been purchased, is an electric organ known as a Viscount PHYSIS ENVOY 23S. It has two manuals, twenty three speaking stops and a full-sized pedal board. The console is in oak veneer to match the choir stalls as closely as possible. There are five speakers, four of which are fixed to the wall above the console, positioned behind ashlar posts so as to be invisible from below,

while the single bass speaker is placed on the floor. The organ occupies a space, previously devoted to cupboards, behind the choir stalls on the north side of the nave. It is proposed to remove the existing pipe organ.

2.8. I should add that there is, amongst the papers supporting the Petition, an email to Mr Reynolds from the Churches Conservation Adviser to the Victorian Society, regretting the loss of the pipe organ in terms of its visual interest, but accepting that removal is justified in this case.

3. PETITIONERS' RESPONSE TO OBJECTION

3.1. Mr Reynolds has responded to the Objection on behalf of the Petitioners. The material parts are set out below, adopting Mr Reynolds' helpful numbering scheme:

1. *"Traditional music forms an important part of the worship at St Andrews. Since the demise of our pipe organ we have relied upon CD's for most of our services which we found most unsatisfactory. We do have a valued music group but it is available for one Sunday only per month.*
2. *The choir's copies of our AMR hymn books do show signs of their considerable use, however those used by the congregation are in good order.*
3. *The PCC did consider all options regarding the replacement of the organ over an extended period of time. Throughout this process the congregation as a whole were regularly advised of our progress.*
4. *We have a skilled organist and choir leader.*
5. *Any form of keyboard offering the flexibility suggested would have presented us with serious security issues as the church remains open during daylight hours. Dismantling it and storing it securely would not*

be a sensible option as the instrument is used regularly by others for school and other occasional services.

6. *As far as mixed views in the congregation is concerned, I have no evidence of this. The decision to pursue the replacement of the pipe organ was fully supported by the Church Annual Meeting in both 2012 and 2013. On each occasion the process and estimated cost was explained and there were no dissenting voices.*
7. *Whilst the financing of the organ's purchase was from unrestricted PCC funds, it was specifically from a legacy. With the benefactor in mind, again, careful consideration was given to the project by the PCC."*

4. LEGAL PRINCIPLES

- 4.1. The FJR have made clear and coherent provision for the granting of interim faculties. Part 14 FJR provides as follows:

"14.1. (1) An interim faculty may be granted by the chancellor for any matter in respect of which a faculty might be granted following the final determination of a petition.

(2) Subject to the terms on which it is granted, an interim faculty constitutes authority to carry out the works or proposals in respect of which it is granted in the same way as a faculty that is granted following the final determination of a petition.

14.2. (1) *An application for an interim faculty may be made by any person who is entitled to submit a petition for a faculty under rule 4.2(2).*

(2) An application may be made—

(a) before or after faculty proceedings have been started in respect of the works or other proposals; and

(b) irrespective of whether the matter has been referred to the chancellor under rule 7.9.

(3) An application may be made in any manner the court allows.

14.3 (1) *An interim faculty may be granted on such terms as appear to the chancellor to be just.*

(2) *In particular, an interim faculty may be granted on terms as to—*

(a) *the giving of such notice of the works or other proposals as the court may direct;*

(b) *the cessation of works or other action pending further order of the court if any objection is raised;*

(c) *the giving by the applicants of undertakings to comply with any directions of the court, including any direction relating to reinstatement following the carrying out of any works authorised by the interim faculty.*

(3) *If an application for an interim faculty is made before faculty proceedings have been started the court must require the applicant to give an undertaking to submit a petition for a faculty in respect of the works or other proposals within a period of time specified by the chancellor.*

(4) *An interim faculty may be varied, extended or revoked by the court as it thinks fit.”*

4.2. These new provisions, however, reflect and formalise previous practice, as enunciated in the judgment of Re St. Mary’s Churchyard, White Waltham [2010] Fam 131. The Court of Arches confirmed the existence of a “*power in appropriate circumstances to make interim orders in respect of works or proposals pending the final determination of a petition for a final faculty.*” At paragraph 20, the Dean of the Arches rejected a submission to the effect that the public notice provisions of the then FJR applied to interim faculties, adding:

“Save where there is extreme urgency, the requirements of fairness will frequently require some form of notification, but the precise form of notification (if at all) in

the case of interim orders for works and proposals can be decided on a case by case basis by the chancellor.”

The 2013 FJR expressly provide at Rule 5.8 in “Part 5, Public Notice” that “*This Part is without prejudice to the court’s power at any time to grant an interim faculty under Part 14.*”

- 4.3. The Chancellor in the Consistory Court decision in the White Waltham case, reported at [2010] Fam 146, dealt with the question of consultation and the role of the Parochial Church Council. The facts of that case were very different since they concerned a longstanding proposal, requiring both a Faculty and a planning permission, to which there was considerable formal and informal opposition. Bursell Ch said: “*The parochial church council represents the body of the parishioners and, if any parishioner objects to the decisions it has taken, it is open to that parishioner to seek election to that body and to endeavour to overturn the support for the petition.*” These judicial remarks are not binding on me and were prompted by a very different set of facts, involving a major building project. They do, however, reflect the important principle that Church of England parishes are organised on democratic lines. As Prof. Hill says in ‘Ecclesiastical Law,’¹

“The Parochial church council is the central forum for decision-making and discussion in relation to parish affairs.”

¹ 3rd Edn. P.70

The FJR 2013 confer a broad discretion on ecclesiastical judges in relation to the consideration of interim Faculties. There is no provision governing the exercise of discretion in relation to a subsequent Petition for a Confirmatory Faculty. Generally speaking, Rule 6.2 requires the judge to seek the advice of the DAC and, in opposed proceedings, Rule 6.3(2) requires that judgment be given in written form, containing the reasons for grant or dismissal.

5. THE MERITS OF THE PETITION

- 5.1. I am approaching the determination of this Petition from first principles. As noted above, I made it clear to the Petitioners that, if they wished to proceed on the basis of the interim Faculty, they would do so 'at risk', as it were, of my withholding consent on a full consideration of the subsequent Petition.
- 5.2. It seems that there is no dispute about the redundancy of the pipe organ. Concern about its loss forms no part of Mr Higham's objection. The Victorian Society, whilst regretting the loss of its visual contribution to the church, recognises that it is functionally defunct. The DAC, which includes the well-respected Cathedral organist, Dr Flood, does not oppose its removal. Similarly, no objection has been raised to the loss of cupboards behind the choir stalls or the proposed making good in the affected parts of the church. I have no reason to doubt that the state of the organ has diminished the quality and experience of worship at St

Andrew's, with CDs being resorted to for the three Sundays per month when the music group is unavailable.

5.3. It is therefore clear to me, and I find, that some form of replacement is necessary. I have no reason to doubt that the nature of the replacement has been the subject of full discussion in the Parochial Church Council and in the wider congregation. Care was clearly taken to ensure that the whole Council was consulted in relation to the crucial vote and the Petitioners explain that the matter was discussed at the Annual Meeting in 2012 and 2013. Unanimity is not a prerequisite for the grant of a Faculty and it seems clear that there was plenty of opportunity made for open discussion of the project within the church community.

5.4. Mr Higham's objections relate:

- (a) to the expense of the new organ (some £15,000); and
- (b) to the handling of the interim Faculty application.

5.5. I shall deal with the substantive objection (a) first. Mr Higham points to the needs of the world in which the church ministers and says that they are "*more pressing*" than the need for a new organ. In one sense, of course, he is quite right. There is, however, a certain profligacy inherent in worship, as in many other expressions of love and devotion. Faced with an objection, on the ground of wastefulness, to a woman's pouring an expensive jar of ointment over His feet, the Lord defended her action as a

“beautiful thing”, adding *“you always have the poor with you, but you will not always have me”*.² By this saying, we should not take it that He was indifferent to the needs of the poor, rather that He approved an act of devotion for its own sake, as well as pointing out that there would continue to be opportunities to relieve poverty. The principle can, I think, be applied to the problem before me.

- 5.6. The objection appears to proceed upon an *“either/or”* assumption; the church *either* continues its support for the poor and marginalised *or* it has a new organ. Similarly, the objection portrays musical options in exclusive terms: *either* a portable keyboard and music group *or* a new organ; *either* new hymn books *or* a new organ. I have no evidence to support the either/or dichotomy and I do not accept it. The Petitioners’ response acknowledges at 7 that whilst the financing of the organ was made from unrestricted funds, it was specifically from a legacy and the benefactor was fully considered in relation to the project. There is no evidential basis for finding that the church’s valuable work with the food bank or provision of street pastors will be hampered by this purchase – worship and social action can and should co-exist, as the incident from the Gospel referred to above shows. Similarly there is no information before me to suggest that the music group will no longer be allowed to assist in leading worship; rather, it seems to me that the advantages of portability, flexibility and ability to perform off church premises which Mr

² St. Matthew 26, 6-13 (RSV.)]]

Higham highlights mean that the music group has a distinctive and valuable contribution to make. It may well be that, now or in the future, somebody will offer to bring and play a keyboard at worship events in or outside the church in the same way that others doubtless already bring and play other portable instruments and offer their voices in worship and mission. I have no reason to doubt the Petitioners' evidence to the effect that a suitably skilled organ player is available such that the instrument will be used for the foreseeable future. Finally, the Petitioners, whilst recognising that the choir's Ancient and Modern Revised hymn books are worn, say that those used by the congregation "*are in good order*". I do not regard worn hymn books as a reason for not replacing the organ; on the contrary, they speak of the vibrant practice of traditional hymn singing to which the Statement of Needs refers.

- 5.7. Turning to the procedural aspect of the objection, Mr Higham refers to the "*Kafkaesque*" nature of considering the petition for a confirmatory Faculty and finds the Archbishop's visit an unconvincing and trivial reason for treating the matter as urgent. I can see force in both of his points, although I have made it clear throughout that the parish could only purchase the organ at their own risk. Moreover, whilst I have no doubt that the Archbishop does not expect his visits to "*be accompanied by Wurlitzers and Hammond organs*", the timing of the parish's longstanding aspiration was clearly given focus by the visit. Such occasions, as well as meaning a great deal to regular congregations, are opportunities for

parishes to welcome a wider circle of people who will inevitably be drawn to see the visiting dignitary. In deciding to grant an interim Faculty, I was influenced by the assurance of the Archdeacon that the proposal was uncontroversial, by the DAC's support and by what I saw as the importance of having the new organ in place for the Archiepiscopal visit because of the opportunities occasioned by that visit for publicising the church as a place of local mission, vitality and excellence. It may well be that Mr Higham does not share my understanding of mission opportunity in that particular context, but the law has entrusted the judgment about these matters to me, assisted by the proper officers of the church, to whose views I gave considerable weight.

6. CONCLUSIONS

6.1. For reasons which I have explained, I consider that the need for a new instrument is established and that the Petition proposes a fitting solution. I have considered Mr Higham's objections very carefully and do not find them persuasive. Given the clear view which I have formed on the substantive merits, it follows that the outcome would have been the same even if the petition had been dealt with in the normal way.

6.2. I direct that a Faculty be issued authorising the works in the Petition. There shall be a time limit of twelve months in relation to the remaining works and standard conditions shall be imposed to protect bats and to ensure proper insurance. A further condition which I shall impose relates

to the disposal of the pipe organ. I wish the parish to explore whether or not it has any disposal value, either as a complete instrument or for spare parts, and therefore impose a condition requiring the Petitioners to use their best endeavours to dispose of it for value for a period of three months from the date of this Faculty, before any works to remove it are commenced. Thereafter, they shall be at liberty to dispose of it for no price, preferably to some person or body who will be able to make use of it in whole or in part. In the event that there is any income raised by its sale, then perhaps the parish might consider putting it towards new hymn books for the choir, but I impose no condition to that effect.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line extending to the right.

MORAG ELLIS QC

19 May 2014