

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

WARWICK: ST. NICHOLAS

JUDGMENT

- 1) By a petition lodged on 1st November 2009 Andrea Perkins and Fiona Trewick, the churchwardens of St. Nicholas, Warwick, seek a faculty for the removal of existing organ and its replacement with a combination or hybrid organ.
- 2) The existing organ was originally built by J.J. Binns for Farsley Baptist Church in Leeds in 1919/1920. It was brought to St. Nicholas in 1970 and is located in a case in a gallery at the west end of the church. The proposal is for the removal of the existing organ and its replacement with a combination organ built by Rodgers Instruments.
- 3) The Petitioners propose installing the new organ in the existing organ case but for the new console to be located on the floor of the church a little to the north side of the altar and in close proximity to the choir stalls (which form a semi-circle to the east side of the altar). The proposed organ would be a combination organ utilising some of the existing pipework (following work on that by MPOS Ltd) and would cost £76,525 (the papers before me include various different figures for the cost this is the VAT inclusive sum given in the Petition though there is some suggestion that VAT might be avoided).
- 4) There were no formal objections to the Petition and the Diocesan Advisory Committee certified that the proposed work was not likely to affect the church's character as a building of special architectural or historic interest; its archaeological importance; or any archaeological remains existing within the church. However, the Diocesan Advisory Committee did certify that it did not recommend the undertaking of the proposed works giving reasons which I will consider below. In addition the Church Buildings Council wrote a letter dated 26th October 2009 indicating that its "*strongly*

preferred option” was the replacement of the current organ with a further pipe organ.

- 5) In the light of those representations I decided to hear evidence in open court. I directed that Mr. Nigel Allcoat, the Diocesan Organ adviser, be called as a witness and that the Church Buildings Council be invited to consider whether it wished to give evidence. Accordingly, a hearing was held on 29th March 2010.
- 6) At that hearing the Petitioners’ case was presented by Mr. Robert Perkins who chairs the Organ Committee of the Parochial Church Council. I heard the evidence of various witnesses and considered a number of documents as I will set out below. I am grateful to Mr. Perkins for the care and skill with which he presented the Petitioners’ case and to all the witnesses for the care and thought which they had clearly given to this matter. Radically different views were given as to the merits of the Petitioners’ proposal but it was apparent that every witness appreciated that this was not a straightforward matter and was doing his or her best to assist me in determining the appropriate course.

The Dispute in Essence.

- 7) It was common ground that the existing organ should be removed. In his report of 14th September 2004 Ian Bell analysed its failings at some length and said that repair was not practicable. Rachel Jefferies, the current organist, described the organ thus *“it is a dreadful instrument; very little of it functions; and that which does function is ugly in terms of sound”*. The Church Buildings Council’s letter of 26th October 2009 saw *“no reason to retain any of this ensemble in the building”* and said of the current organ that it is *“not reliable, is tonally bland, ...[it] is no longer a meaningful example of any builder’s work”*.
- 8) It was also common ground that with unlimited resources a replacement pipe organ would be the best solution in terms both of durability and of musical quality. The dispute turned on the questions of whether that ideal was achievable and of what should be done if it were not. The Petitioners

say that the acquisition of a new pipe organ (whether by new construction or a purchase from elsewhere) would not be practicable and would not necessarily be the best use of the Parish's limited funds. They say that the proposed combination organ is the best alternative in the particular circumstances. The contrary view is that the proposed course is risky, expensive, and musically unsound. It is suggested that for the Parish to take the course advocated by the Petitioners could be a costly blunder which it would be difficult to remedy.

Pipe Organs and Combination Organs

- 9) At the risk of considerable over-simplification I must summarise my understanding of the difference between a pipe organ and a combination or hybrid organ.
- 10) The music of a pipe organ is produced by the passage of air through the organ pipes. In the hands of a skilled organist a pipe organ is capable of producing music of the very highest quality and of considerable range. Moreover, because the music of such an organ is produced by the combination of air and the organ pipes there is a variability and variation in the sound produced from the same organ at different times. Not only can a pipe organ produce music of high quality but a properly maintained pipe organ is capable of lasting for generations.
- 11) Until recently the only alternative to a pipe organ would have been an electronic or digital organ. A good digital organ can, of course, be used to produce music of high quality. However, such organs are inherently less likely to be durable than pipe organs. In addition there is a real difference in the quality of the sound produced by them. The reproduction of a particular note by a digital organ will be effected digitally and so will always be the same.
- 12) The combination or hybrid organ is a more recent development. Such an organ combines sound produced by digital technology with that produced by the passage of air through pipes. The proportion of digital to pipe sound will vary from organ to organ. The advocates of such organs (who would

typically refer to them as combination organs) would say that they combine the best of both traditions enabling the retention of pipe sound at an achievable cost. Those who doubt their value (and who would be more likely to refer to them as hybrid organs) question the artistic integrity of such an exercise and challenge the claims for the quality of the sound produced. They also question the durability and cost-effectiveness of such organs making the point that there is a risk that at various times different repairs will be needed on the different (namely digital and pipe) elements.

13) I was provided with evidence of combination organs being installed in prestigious locations overseas (in particular in the Far East) with reference being made to Singapore Cathedral, Beijing Conservatoire, and elsewhere. However, it is undoubtedly the case that the use of such combination organs is only in its early stages in the United Kingdom. There are currently only three such organs in use in English churches and all are recent installations. Thus a combination organ was installed at St. Mary's Church in Higham Ferrers in the summer of 2009 and in St. Peter's, Nottingham in the last few months. There has also been a recent installation in the Chelmsford diocese. It will be apparent that there is no established track record with regard to the use of such organs in English parish churches. Their durability, musical quality, and cost-effectiveness have yet to be established. Indeed, the evidence before me was that the combination organ recently installed at St. Peter's in Nottingham was now undergoing repairs having failed during a service. The installation of a combination organ can be seen either as the adoption of a new and exciting solution to the need for high quality church music or as a risky and potentially expensive experiment.

The Approach to be taken.

14) As Chancellor I have a wide discretion to be exercised in considering petitions for faculties. However, that discretion has to be exercised in the light of the need for petitioners to establish a proper basis for the granting of a faculty and in the light of the approach taken by other chancellors as

indicating the collective wisdom and experience of those dealing with faculty petitions.

- 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. This approach was laid down by my predecessor Ch. Gage in **Re St. Nicholas, Nuneaton** (2009) 11 Ecc L J 360.
- 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 (see **Re SS. Mary & Andrew, Pitminster** (2000) 5 Ecc L J 494). Indeed the cost of repairing an existing pipe organ is not likely to be a sufficient justification for its removal (see **Re St. Stephen, Acomb** (1995) 3 Ecc L J 348 and **Re Church of the Holy Rood, Holybourne** (1995) 3 Ecc L J 429). Similarly, in **Re St. Martin's, Ashton upon Mersey** [1981] 1 WLR 1288 Ch Lomas held that where a pipe organ was capable of restoration it should be retained even though this would impose a substantial burden on the parish. However, in an appropriate case a pipe organ can be removed and replaced by a digital instrument (as in fact happened in **Re St. Stephen Acomb**). The presumption in favour of the retention of a pipe organ can be overcome in such a case.
- 17) I have been assisted by the enunciation of the relevant considerations by Ch Edwards in **Re St. Mary's, Lancaster** [1980] 1 WLR 657. He was considering a petition for the replacement of a pipe organ by an electrostatic organ. He made it clear that 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. In that case Ch Edwards gave a faculty for the replacement of a pipe organ by an

electrostatic organ. However, I note the point made to me by Dr. Knight (giving evidence on behalf of the Church Buildings Council) that in fact the replacement electrostatic instrument installed in St. Mary's has proved problematic and has itself had to be replaced. This is, indeed, a powerful point to the effect that 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.

The Evidence and the Competing Contentions.

21) As I have already said it is common ground that the current organ is inadequate; that restoration is not practicable; and that its removal is appropriate.

22) The Petitioners' core contentions can be summarised thus. A new pipe organ is not practicable on grounds of cost. A combination organ achieves much of the benefit of a pipe organ but does so at an affordable cost. They say that account has to be taken of the other demands on the resources of the parish and that even if it were affordable the purchase of a new pipe organ would not be justifiable in the light of those other demands. In addition it is said that the retention of the existing organ case means that there will be no material impact on the appearance of the church with the

location of the console and the consequent positioning of the organist being a matter of taste rather than substance.

23) The Petitioners provided evidence setting out the process which had led up to the lodging of the Petition. There had been detailed consideration of the organ problem. A substantial report had been obtained from Ian Bell in September 2004. Little seems to have been done in relation to that until March 2006 when Mr. Perkins and Mr. Holroyde were charged with investigating the matter. They clearly put considerable thought and energy into the matter and a detailed report was prepared by Mr. Perkins in March 2008. This annexed a quantity of documentation and set out a number of potential options. These were costed and the arguments for and against each summarised. It appears that a new top of the range pipe organ would have cost in excess of £250,000. Consideration was given to the possibility of acquiring various other pipe organs and costings were set out. Some consideration was given to acquiring a redundant pipe organ but it is apparent that this was unlikely to be the favoured option because of the parish's history of difficulties with the present organ. It was felt, with some justification, that the current problems resulted from the acquisition of a redundant organ combined with inadequate expenditure on installing and modifying it. The decision to seek a faculty for a combination organ was made in November 2008.

24) Fiona Trewick gave evidence as to the life of the parish explaining that although music was important in that life it was not the "be all and end all". Mrs. Trewick expressed the view that the additional benefits of having a pipe organ would not justify the time and energy which would be required to raise the necessary funds. She explained to me the other calls on the parish's resources in particular the demands of outreach and of other structural repairs. Mrs. Trewick's view was that the combination organ would provide a good balance between resources and quality.

25) Rachel Jefferies and Geoffrey Holroyde are skilled (albeit amateur) organists familiar with the church. They both accepted that a pipe organ would be the ideal solution but did not believe that it was a practicable or

achievable solution. It was clear that they had both become enthusiasts for the proposed combination organ and that they believed that it could provide high quality music in the setting of St. Nicholas.

26) I also considered a letter from Mr. Paul Hale. Mr. Hale is a well-known and distinguished organist who is the Diocesan Organ Adviser to the diocese of Southwell and Nottingham. He was instrumental in the arrangements leading up to the installation of a combination organ at St. Peter's Nottingham. As did almost every witness Mr. Hale accepted that a new pipe organ would be the ideal replacement. However, he indicated that he believed that combination organs would become more common and that such an organ was acceptable in terms of quality. He also expressed the view that a combination organ was likely to prove more cost effective than a pipe organ even over a period of one hundred years and even when account was taken of the need for upgrading.

27) I also heard from Mark Underwood, the Product Manager of Rodgers Instruments, and Paul Mortier, a director of MPOS Ltd. Clearly both those gentlemen have an interest in the granting of the faculty sought. I do not doubt that they were seeking to give me honest evidence but inevitably they were approaching the case from a particular viewpoint. I have to discount their evidence to a considerable extent as a consequence. They are enthusiasts for combination organs. However, even when all due caution is exercised in assessing their evidence it is clear that serious thought has been given to what is needed at St. Nicholas and that those who would construct and install the proposed combination organ would be committed to ensuring that the best possible job was done. This is perhaps not surprising. If a faculty is granted then the combination organ at St. Nicholas will become one of a small number in the Country. If it is a success this will be a significant marketing argument in favour of combination organs. If it is a failure then the prospects for further combination organs being installed will be reduced.

28) The arguments operating against the Petition can be summarised thus. A pipe organ would be a tried and tested replacement which would have a

long life and which could be relied upon to provide quality music. The installation of a combination organ at the proposed cost would for practical purposes preclude the installation of a pipe organ for the foreseeable future. Combination organs are a novel and untested concept and the installation of one in St. Nicholas might turn out to be a very costly mistake. In addition reservations were expressed about the music quality of combination organs in general and of the arrangement proposed for St. Nicholas in particular.

- 29) Dr. Claire Strachan is the DAC Secretary and the Diocesan Church Buildings Development Officer. She gave helpful evidence as to the procedure and the reasoning underlying the DAC's decision in this matter. However, that evidence was understandably peripheral to the matters in dispute.
- 30) Mr. Nigel Allcoat is the Diocesan Organ Adviser. He is a distinguished and learned church musician. In addition to Mr. Allcoat's oral evidence I had the benefit of reading his report and the addenda thereto. It was apparent that Mr. Allcoat had given considerable thought to this matter. He expressed his views in strong (indeed passionate) terms. On behalf of the Petitioners Mr. Perkins has suggested that the opposition to the Petition (and in particular the reservations expressed by Mr. Allcoat) is influenced by some form of prejudice against combination organs. I make it clear that I entirely reject that suggestion. It is apparent that Mr. Allcoat is not a supporter of combination organs but it is also apparent that his comments result from a careful consideration of the issues both as to combination organs generally and as to the particular proposal. Others may take a different view on the merits of combination organs and there is doubtless room for debate but Mr. Allcoat's position was based on rational and learned thought and analysis. Mr. Allcoat was critical of certain aspects of combination organs in general and also set out particular detailed criticisms of the current proposal. He regarded the proposal as lacking in artistic integrity and as lacking that striving for excellence which should characterise all that is done in relation to church buildings.

- 31) In short Mr. Allcoat regarded the current proposal as misconceived and as unlikely to address the true needs of St. Nicholas. He suggested that similar expenditure could achieve a better solution by way of the purchase of a decent digital device together with a 3 stop organ for concert and choir use possibly with the addition of a harpsichord.
- 32) Dr. David Knight is a Conservation Assistant with the Church Buildings Council and has very considerable knowledge and experience of organs and church music. He explained that the Church Buildings Council does not have a fixed policy either for or against combination organs but addresses each case (of which this is only the fourth to be considered by the Church Buildings Council) on its merits.
- 33) The letter of 26th October 2009 from the Church Buildings Council was firm in its condemnation of the current organ. It said that the Council understood the parish's reluctance to go once more down the road of seeking out a redundant pipe organ. However, it believed that such an organ could be obtained and installed for a similar cost to that of the proposed combination organ. Further consideration has led to a hardening of that view both in the further letter of 3rd February 2010 and in Dr. Knight's evidence to me. On behalf of the Church Buildings Council Dr. Knight expressed the firm view that the proposed combination organ would not bring sufficient benefit to justify its substantial cost. Dr. Knight said that the parish should either seek the relocation of a redundant pipe organ or an extension organ or a high quality digital instrument. In addition Dr. Knight expressed doubts about aspects of the combination organ proposed for St. Nicholas. In particular he was doubtful about the benefits of the proposed re-use of some of the existing pipes.
- 34) The Ven. Ian Watson, the Archdeacon of Coventry, provided helpful and thoughtful evidence. He commented on his personal experience of the difficulties encountered with the new combination organ at St. Peter's Nottingham. The Archdeacon acknowledged the need for a faithful Church to take risks but questioned whether the proposed combination organ posed too great a risk. He expressed concern about an expensive

commitment to a relatively untested technology when there were available tried and tested alternatives which could go a long way to meeting the needs of the parish. It was apparent that he would have been inclined to favour a proposal along the lines put forward by Mr. Allcoat.

Analysis.

35) The current organ is inadequate; it is not practicable for it to be restored; and so it needs to be removed. Should I permit its replacement by a combination organ?

36) As the current organ is a fixture in a listed church I have to consider the ***Bishopgate*** questions.

a) I find that a necessity for the removal of the existing organ has been shown. I have already set out the undisputed inadequacies of that organ and the desirability, indeed the need, for its replacement.

b) The Petitioners propose retaining the current organ case. It follows that there will be no material alteration in the appearance of the church save for the presence of the console and the organist on the floor of the church. That alteration will not adversely affect the character of the church as a building of special architectural and historic interest.

c) It follows that I need not address the third ***Bishopgate*** question and that those provisions do not operate to prevent the grant of a faculty.

37) I have set out above the approach which should govern my exercise of my discretion in respect of a petition seeking to replace a pipe organ in circumstances where removal of the existing organ is indisputably appropriate. There is a presumption that a pipe organ will be replaced with another pipe organ but that presumption can be overcome. Has it been displaced here?

38) The Petitioners have put forward a reasoned proposal which is the result of careful and detailed consideration on behalf of the parish. There was lengthy investigation of the alternatives and a proper acknowledgement of the benefits of pipe organs. However, I must note that it is very regrettable

that the parish failed to seek the advice of either the Diocesan Advisory Committee or the Diocesan Organ Adviser until a late stage. The decision to seek a faculty for a combination organ was based on a rational and considered assessment of the merits of the respective organs and of the calls upon the parish's resources. I am concerned that the parish might be taking too optimistic a view of the merits of combination organs. However, there is a clear acceptance that there is a degree of risk and an acknowledgement that the step proposed is an innovation. So there has been a careful and reasoned decision by the parish. The proposed course involves an element of risk but that is not of itself a determining factor against granting the faculty. Similarly it involves an element of innovation but considered innovation is not to be stifled.

- 39) The case is finely balanced but I have concluded that it is appropriate in the particular circumstances here and for the reasons just given to grant the faculty as sought by the Petitioners and I do so subject to the conditions set out below.
- 40) I must emphasise the very particular circumstances of this case in that all involved were agreed that it was appropriate to replace the current organ rather than to attempt its restoration and where the parish had reached its conclusion as to the preferred course after a lengthy balanced and detailed investigation. It is those particular circumstances which have enabled me on balance to conclude that the presumption against removal of a pipe organ has been displaced and that the expectation that a pipe organ will be replaced by a pipe organ has also been displaced.

Conditions.

- 41) The first condition I impose is that the Petitioners cause details of the works performed to be entered in the Log Book within one month of the completion of the works.
- 42) The second condition I impose is that the works be completed within 12 months of the grant of the faculty or such further period as shall be ordered.

43) The third condition I impose is a consequence of the element of risk and innovation involved here. It is appropriate that the Petitioners assist others to learn from the success or failure of the experiment which is being conducted at St. Nicholas. Accordingly, I impose a condition that 12 months after the completion of the installation of the combination organ the Petitioners or their successors as churchwardens shall engage a suitably qualified and independent expert to report on the performance of the combination organ from its installation to the date of the report. That expert shall consider the musical qualities and performance of the organ together with the need for repairs to the same and the cost of such repairs. That expert shall be provided with such access to the church and to the records of the PCC as is required to enable him or her to prepare such a report. The report shall be completed within three months of the engagement of the said expert and copies of the same shall be provided to the Diocesan Advisory Committee Secretary; to the Church Buildings Council; and to the Registrar. For the avoidance of doubt the cost of engaging that expert and of producing such report shall be borne by the PCC.

Costs.

44) I order that there be no order as to costs save that the Petitioners are to pay the court fees attributable to the Petition to include the costs of the hearing on 29th March 2010 and of the preparation of this judgment.

STEPHEN EYRE
CHANCELLOR
20th April 2010