

DIOCESE OF SHEFFIELD
In the Consistory Court

Her Honour Judge Sarah Singleton QC
Chancellor

Judgment

Concerning the Petition of the Incumbent and Churchwardens of Christchurch Fulwood for various works including the creation of a courtyard area in the churchyard and removal and replacement of the pipe organ

1. By a Petition dated 17th March 2017 the incumbent and the church wardens of Christ Church Fulwood sought permission to carry out 3 items of work at Christ Church Fulwood namely:-
 - i. External works to the church yard;
 - ii. Removal of the pipe organ from the upper gallery of the church;
 - iii. Installation of a lift in the parish centre.

This petition was first considered by me on the papers in August 2017 and I gave interim directions which were issued on 23rd August.

2. On 23rd August a faculty was duly issued to permit the installation of a lift in the parish building. Those works were uncontroversial and recommended by the DAC. They did not impinge upon the listed part of the site at all. It was right to let these works proceed immediately.
3. The works to the church yard involve the flattening and burial of a number of memorial stones to create a courtyard at the point of access and entrance to the church from Canterbury Avenue. This would improve access to the church and is also a precursor to a second stage of extensive works of re-ordering which are to be the subject of a further petition.
The proposal for the removal of the pipe organ and its replacement with an electronic instrument is self-explanatory.
4. The churchyard works are resisted by Mr and Mrs Barrett who have ancestors buried in the churchyard whose memorial stones are affected by the proposals. They have set out the grounds of their opposition in correspondence. They have elected not to become parties opponent but remain interested and wish to be informed of the outcome.
5. The 20th Century Society, The Victorian Society, Historic England and the Church Building Council have been involved and consulted during the development of the plans for this church which are supported, not opposed or opposed to varying degrees by each of them. I did not know whether they sought to

become parties opponent to this petition and I therefore adjourned consideration of the proposals for the churchyard and organ in order for the position of the amenity societies to be clarified. I also wished the petitioners and any body or person who was to become a formal opponent to confirm that they were content for me to deal with matters in writing and not at a hearing.

Each has now said that they do not wish to become party opponents to this petition but request that I consider their opinions in coming to my conclusions.

Incidentally the 20th Century Society is clear that it will seek to oppose formally some parts of the anticipated second stage of the works proposed by the church.

The petitioners have agreed to my considerations being by way of perusal of the filed documents and not by way of oral hearing.

The Church

6. Christ Church Fulwood is a Grade 2 listed church and is therefore a nationally important building of special architectural and historic interest. It is the 6th largest parish church in the country with 676 adults on the electoral roll. It is located in a suburb in the South Western fringes of the city of Sheffield where the population is generally professional and affluent.

The triangular plot occupied by the church buildings forms the north western extension of the Fulwood conservation area. The church is a prominent land mark in this part of the city.

The church building was constructed in 1837 and extended in 1953 with the addition of a south aisle and east end designed by George Pace. In 1983 the North aisle was added with a balcony above designed by R. G. Sims who was Pace's assistant. The church is described in its listing as a major work of George Pace.

The parish centre was originally a church school but has been used by the church since the 1970s.

7. The average Sunday attendance over four services (8am, 9.15am, 11am and 6.30pm) is of 887 adults together with more than 200 youths and children.

There are a very large number of activities, meetings and events during the week at the church and parish centre. There are nearly 2000 visits to the site each week. Most of these events are in the parish centre which is used intensively. The church itself is less well used except for Sunday services.

The Parish benefits from generous giving and has a large budget. Close to one million pounds was spent during the year which ended in 2015.

Over £2million has been pledged or given so far to finance the works which are the subject of this petition and the anticipated second petition.

8. The church is firmly set, for the foreseeable future, within the conservative evangelical tradition. The stated vision of the parish is to "plant Churches, Train Leaders and Grow Fulwood."

9. The petitioners consider that there is an urgent need to adapt the interior to provide a more practical building. During the last few decades development has been piecemeal and there is a wish to take a holistic approach. Furthermore the QI inspection of 2015 revealed the need for repairs and maintenance, particularly to the north aisle gallery roof. An extensive and careful survey of the church users supports the planned works. Sheffield City Council's Planning Officer has been informed and consulted and does not oppose the works proposed.

10. The DAC considered the present petition at their meeting of 17th April and unusually their decision in respect of it is set out and accompanied by a narrative of their reasons.

They recommend the external works to the churchyard subject to four provisos which the petitioners have since agreed, namely:-

- i. That all work below ground is monitored and recorded by a contractor approved by the DAC archaeologist from the list available from South Yorkshire Archaeological Service in accordance with the supplied model for a watching archaeological brief;
- ii. To locate the proposed bike stores to the north within the existing car park;
- iii. To clearly define the boundary between the curtilage of the churchyard and Canterbury Avenue to ensure utility services do not transgress into an area contains burials; and
- iv. To provide assurance that the design for the courtyard will protect buried headstones from vehicular traffic during and post development.

With regard to these external works the DAC balanced the harm done by these works to a small area of the Victorian Churchyard against the benefit of and need for creating a better, safer and more accessible entrance to the church building from the road.

11. The DAC recommend the proposal for the removal and replacement of the organ subject to six provisos, which the petitioners have since agreed, namely:-

- i. The organ is to be placed on the institute of British Organ Building's Reference of Pipe Organs Available for Relocation.
- ii. The parish is to actively pursue sourcing a new home to receive the organ as a working instrument.
- iii. The church is to insure and maintain the instrument until such time as it may be relocated.
- iv. Prior to dismantling, confirmation of its relocation by faculty or other documents is to be provided to the Registrar
- v. All dismantling and reassembling is to be undertaken by professional organ contractors.
- vi. Whilst the organ remains in situ any scheme of work within the church must take full consideration for its protection from damage and dust.

The DAC reasoning in respect of their decision as to the organ was rather more finely balanced than that in respect of the churchyard works. The balance appears to have been tipped by this consideration set out in their reasons:-

There is concern that were it to be compelled to retain the organ the church may not make the best use of it and may not consider the cost for its upkeep an expense they would choose to meet.

12. The external works proposed involve the creation of a court yard between Canterbury Avenue and the church. This would ease access in and out of the church. It would create a milling and gathering area and improve crowd flow.

The area affected contains 166 graves. The petitioners have followed the advice of the DAC advisor Mr Phil Sidebottom and have set up a full database including photographic records of each of the graves together with written records including transcriptions of the engraved words and detailed descriptions. In turn those facts and records have been cross referenced to the Sexton's records.

Those careful steps have established that of the 166 graves 90 have been used or visited during the last 100 years. 66 of the 90 have not been visited since 1970. The petitioners have some contact details for the remaining 24 which have been used or visited. Sensitive letters explaining the plans have been sent to those who have been traced although there is a possibility that the contact details which are held are not up to date. In addition to the letters sent to those whose contact details have been found, public notices have been displayed at the entrances to the site, on its website and in the local press.

13. The petitioners have surveyed and catalogued the whole of the churchyard and not simply the small affected area. The cataloguing and survey work has been overseen by two DAC recommended companies who approve of what has been done. Each would be able to provide the necessary archeological watching brief which would be required were these works to be permitted.

14. The plan, if the work is permitted, would be to record the names of those commemorated upon the interred headstones either on the surface of the courtyard or on a plaque. This would be done using local materials and workmanship consistent with the heritage of Sheffield.

15. The petitioners make the following points in favour of this work being permitted:

- J The changes affect a small area of the churchyard relative to the whole.
- J There is no intention for any other part of the churchyard to be changed.
- J The church has developed a churchyard management plan in conjunction with this proposal to support maintenance and conservation into the future.
- J The social history revealed by the church yard has now been permanently recorded permanently. This has never happened before.

- J The memorials in the affected area are both densely packed and poorly maintained and at present this makes access to the church very difficult. There is congestion and queueing at busy times and an identified need to improve access.
- J Without these works the plans for a glazed link between the parish centre and the church would not be possible.
- J The plans will create an aesthetically pleasing and welcoming "interface" with the road in contrast to the present aesthetics of the access, which the parish considers might be experienced as daunting and forbidding (both words are my interpretation)

16. I have considered what should be the right approach to the fact that the works subject to this first petition are each part of a whole plan not all of which is yet under consideration by the Court. I have decided that it would be wrong to ignore this. Throughout the documents submitted by the Petitioners there is repeated the theme of their need and wish to take a holistic approach to the church buildings to create simple useable buildings which welcome the stranger and advance their mission. The fact that these works are necessary and integral to an overall scheme cannot be properly ignored. It is a fact in favour of the works being permitted but if and only if my considerations otherwise determine that the each part of the works should be permitted upon their own merits in accordance with the applicable law. Some parts of the documents submitted, particularly the Statement of Needs set out arguments in favour of works that I am not yet considering. I have set those considerations to one side in looking at the churchyard and the organ.

17. I have visited this church, not in connection with this petition, but during a tour of some of the key churches in the diocese with the DAC secretary when I was first appointed Deputy Chancellor; key in this sense simply meaning of architectural or historical significance. My observation of the churchyard was of a beautifully atmospheric space crowded by imposing but occasionally crumbling Victorian memorial stones which surround and loom over a narrow pathway from Canterbury Avenue to the church door and the parish centre door. Thus the space seemed to me at that time to be beautiful but impractical and perhaps even potentially unsafe given the apparent lack of maintenance of large and sometimes leaning memorial stones.

18. The Petitioners wish to remove the pipe organ in the church and to replace it with an electric organ. This would create more space for the congregation seated in the gallery and make the seating in the gallery more useable. At present those sitting there are overwhelmed by the organ; both by its size and by its sound. Some of the Sunday services at the church are packed out and all the seating around the existing organ in its present location is used. Since the papers were last before me I have learnt from the DAC secretary that the possibility of the Fulwood organ moving to the church of St John the Baptist Ellington is being actively investigated by both churches with the assistance of the DAC organ adviser and the organists at both churches.

Father Stephen Edmonds, the incumbent at St John the Baptist Ellington has written to the DAC secretary expressing his enthusiasm for such a plan. However his letter also explains that his church is located in a troubled area beset by poverty and he points out the obvious financial pressures for such a church. The petitioners have also now provided evidence that they have identified a suitable replacement electronic organ.

Removal of the Organ

19. Permission to remove the organ and replace it with an electrical instrument is firmly set by the Petitioners in the context of their overall plans for the church and the style of worship at this church. Christ Church Fulwood is a highly successful church in the conservative evangelical tradition. They wish their buildings to reflect that and they wish my decision to take both their tradition and their success into account. They have a "vision for music" into which the instrument they wish to remove no longer easily sits.

20. The DAC organ adviser has set out (in November 2016) the following history and description of the organ:-

"The organ (at Fulwood) is inextricably linked with the life and times of their onetime organist and choirmaster Dr George Linstead. Linstead was a composer, critic and musician whose locally themed compositions were performed by the Centre and BBC Northern orchestras. By 1950 his name was in every major musical directory in Europe. He also lectured in music at the University of Sheffield and was organist at Fulwood from 1953 until his death in 1974. The organ at Fulwood is very much George's vision and was designed in collaboration with Messrs Peter Conacher, Huddersfield. It is a large and comprehensive instrument -one of the best in the city with the likes of St Mark's Broomhill and St John Ranmoor. Today it would cost in the region of half a million pounds to install.

The instrument is of 34 speaking stops plus the usual couplers. It is tonally versatile and is easily capable of supporting the congregations of 800 or so people. Although this is a large organ its physical presence on the west gallery is mitigated by a quite narrow frontal profile in a case probably by Albert Keats. The Conacher rebuild (job 1875) was carried out in 1960-61 and was supervised by George Farrow (an ex Compton man). What we see today is essentially a new organ by Peter Conacher of 1960s vintage, and very good it is too. Although now fifty years old, so good was the work that the organ is still in excellent playing order..."

The DAC organ adviser goes on to set out his understanding that the organ was still played and valued. At that point it was his view that the relatively small gains of seating capacity could not justify the loss of a "fine and valuable instrument"

The organ also features on the National Pipe Organ Register.

21. The Petitioners' reasons for wishing the organ to be removed can be set out in summary as follows:-

- J The next stage of the works as planned and hoped for would not be possible unless it is removed.
- J The instrument might suffer damage during the next stage of works which could be prevented if its early removal is permitted.
- J The instrument was built for another building which has long since gone.
- J The instrument makes an excessive noise which leaves a negative impression on visitors.
- J The space occupied by the organ could accommodate 30 people.
- J The 60 people who sit around the organ on the gallery at present are "negatively impacted" by the organ.
- J Those on the balcony with the Organ experience sound pressure at 8 times higher than those on the lower level.
- J This imbalance of the produced sound is a source of disunity.
- J Some of the sightlines to the pulpit from seats in the gallery are partially or completely blocked by the organ casing.
- J The organ is costly to maintain.
- J The parish has only three people who play the organ none of whom are trained organists. Two of them work full time and the other is in failing health. The parish fears being left with "an unstable monument to a former musical age"
- J The electronic instrument proposed to replace the pipe organ could be well played by pianists.
- J Dr George Linstead's memory would continue to be honoured by the presence of a plaque on the balcony.
- J The compromise proposal made by the DAC adviser of retaining the organ but using a music console compounds the space issues.
- J The petitioners are not aware of anyone attending the church to benefit from the organ music alone. Were there such people their needs could be accommodated at nearby St John Ranmoor or St Mark's Broomhill where there are also high quality organs.
- J Their congregations are not 800 but a maximum of 584 and they therefore do not need a pipe organ capable of accompanying 800 people
- J In 1998 the DAC permitted the replacement of a pipe organ with an electronic alternative at a neighbouring church namely Ecclesall Parish Church during a reordering and the musical life of that church was enhanced.

The petitioner's narrative is accompanied by emails from two parishioners who describe how sitting near the organ in the gallery had been uncomfortable and difficult. In each case, by reason of the volume of the organ, they were unable to hear and thereby join in the singing of the Carols and hymns.

The Opinions of the Historical Amenity Societies

22. Historic England, by their letter of 1st November 2016 said this of the church.

The church is a nationally important example of a nineteenth century church with later alterations and significant work by George Pace. It is also a living building, used by a very active church community who commendably wish to increase their use of the building and incorporate it into their wider activities on the site. There are certainly opportunities for change within the building subject to the impacts on what is special about its architectural form and composition being minimised and any harmful impacts having a very clear justification and benefits which outweigh this harm.

Historic England go on to set out their emphatic opposition to plans to partition off the chancel and the east end which are in the proposals for the next scheme of works and do not fall for my consideration. They invite the parish to advance clear justification for the other parts of the scheme. They indicate that they are persuaded of the need for change to the buildings.

23. The Victorian Society, by their letter of 10th October 2016, express their disapproval of the planned link between church and parish centre. This item of work is not subject to my determination under this petition. It forms part of stage 2 of the planned works.

The Victorian Society say this of the outdoor works I am considering:-

The proposals would also require significant alterations to the churchyard. This is a space defined by tightly packed grave markers, and these proposals would see a significant reduction in these markers in order to create a paved area in front of the church. This would cause serious harm to the character of this church with little resulting benefit beyond the creation of an outdoor gathering space.....the graveyard provides a dramatic and important setting to the listed building, and we would not support a proposal to level or otherwise clear gravestones from the north side of the building.

24. The 20th Century Society explain in their letter of 12th November 2014 that they are not opposed in principle to the scheme of alterations put to them for consideration at that time. However they urged the church to think again about the works which would affect the Pace interventions.

25. The Church Building Council, in its letter of 19th November 2014, expressed strong reservations about the reordering of the east end of the nave and said of the proposal to remove the organ: It is also uncomfortable with the proposal to remove the pipe organ to replace it with an electronic instrument.

And in the same letter:

If its removal is pursued it is of sufficient quality for a new home to be found for it before it is dismantled.

This letter suggests the church consider a mobile console for the present organ (instead of removal)

26. Since my directions of 23rd August each of the relevant bodies have replied to the Registrar's enquiries confirming that they have no further comment to make. I have set out and take into account their earlier comments.

The objections of Mr and Mrs Barratt

27. Mr Stuart Barratt and Mrs Anne Barratt originate from Sheffield but now live in Warwickshire. They visit Sheffield several times a year. They have a family connection to the Creswick family who are said to have lived in the Sheffield area since the 16th Century. The Barratts emailed the Registrar on 12th June in response to the public notices of the proposed works to oppose them in order to preserve the graves as they are and for their "historic value". They are passionately opposed to the proposals but do not wish to become a party to the Court proceedings. They have pursued their interest with enquiries since August. They explain that the external works affect five graves of members of their family including those of great grandparents and great aunts and uncles. They say that the graves are of importance to them and that their upkeep occupies some of the time during their various visits to Sheffield.

28. The petitioners are aware of Mr and Mrs Barratt's interest in the graves in the churchyard and have assisted them in their assiduous search of their family tree in locating graves and supplying details of burial registers. There is a family grave where close relatives of Mrs Barratt have been buried or ashes interred in a different, unaffected part of the churchyard. Of the five within or affected by the proposed courtyard area four of the connected graves and memorial stones are in a poor state of repair and are considered to be unsafe. I understand that the church intends to carry out works to these four memorial stones, at the church's expense, in order to make them safe. The fifth is the grave of Mrs Barratt's great Aunt Ellen Rowland. Her next of kin was Mrs Barratt's paternal grandmother. The grave and its memorial are in the middle of the proposed courtyard area. Photographic evidence shows the grave to have been neglected and overgrown during the summer of 2016 but the vegetation has since been cleared and some rather bright white chippings have been distributed over the concrete slab on top of the grave site.

The Law

29. The law which I must apply in considering petitions for permission to carry out works to listed buildings has been extensively considered and now settled by the requirement that any such works be considered through the filter of what have become known as the Duffield Questions derived from paragraph 87 of the Court of Arches decision in Duffield, St Alkmund [2013] Fam 158.

The questions are these:-

1. Would the proposals if implemented result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is not, the ordinary presumption in faculty proceedings in favour of things as they stand is applicable and can be rebutted, more or less readily, depending on the particular nature of the proposals.
3. If the answer to question (1) is yes, how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral mission, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5) the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted.

This will be particularly the case if the harm is to a building which is listed Grade 1 or 2* where serious harm should only exceptionally be allowed.

External works to the Churchyard

Decision and reasoning

30. The listing of this church sets out a detailed description of the interior of the building but little or nothing is said of the exterior or the churchyard. It is reasonable to conclude that the listed status (accorded in 1973) arises because the interior re-ordering is a major work of George Pace. This does not mean that I can or should ignore the historical significance of the atmospheric churchyard which I have described in an earlier paragraph. The creation of the courtyard milling area does affect and arguably harm the church as a building of special architectural or historical significance. However, I would measure such harm as relatively small. Only part of the churchyard will be affected although radically affected. The rest of the churchyard will retain its present appearance and I consider that the overall visual impact will remain the same. It is arguable that the visual impact will be enhanced by the fact that people coming to and from the church and the parish centre would have a better space from which the rest of the churchyard can be seen and appreciated. I therefore disagree with the Victorian Society's assessment of the quantum of harm arising from these proposals.

31. To the extent that the courtyard proposals do result in Duffield type harm; I have come to a firm conclusion that there are clear and convincing reasons which enable me (subject to my consideration of the opposition of Mr and Mrs Barratt) to permit them. This is a church and parish centre which is busy all

the time with a large number of people coming and going every day. Their access is impaired by the existing arrangements and would be considerably enhanced by the creation of a space to ease congestion and allow people to pause and converse. The space would also reduce pedestrian congestion going in and out of the site on the adjoining roads and serve to enhance relationships with neighbours. The harm arguably caused is considerably mitigated by the fact that the rest of the churchyard would maintain its existing character and atmosphere.

32. I have set out in an earlier paragraph my approach to the fact that these works are integral to an overall scheme not all of which is yet being considered by me. That fact does enhance the arguments for permitting the works although I consider that I would have permitted them whether or not that was the case.

33. The graves which are set to lie underneath the courtyard are to be treated reverently and respectfully despite the loss of their markers by way of memorial stones. Careful records of who lies there have already been prepared and an appropriate public memorial either on the ground or by way of memorial plaque will be a permanent record of the identities of those whose remains are buried there.

34. I have considered carefully the opposition of Mr and Mrs Barratt to the flattening/clearing of the memorial stone marking the late Mrs Rowland's grave as part of the churchyard works. Whilst I entirely understand their desire for this not to happen I have come to the clear conclusion that I should not accede to their objection. The fact of their ancestor's remains being buried in this area will continue to be recorded respectfully and reverently despite the removal of the memorial stone as a marker. Careful records have been prepared and will be retained. The proposals of the Petitioners for this courtyard area are fully justified for the reasons I have explained and would not be possible were the Barratts' objections to be successful. This would also impede the overall scheme yet to be considered by this court. Although the memorial stone will be removed, the Barratts and indeed other descendants of those who are buried in the affected graves are aware of the whereabouts of this grave. In addition the Barratts have other ancestors whose remains are buried and marked in the unaffected part of the churchyard which they will be able to continue to visit.

The Removal of the Organ

Decision and Reasoning

35. The listing description of this church refers to the organ gallery but not the organ itself. Undoubtedly, however, the organ itself has had significance in the life and history of the church particularly given its connection with a prominent Sheffield musician and one time member of the congregation, Dr George Linstead. Now, however, this apparently fine instrument, far from being revered and appreciated, is seen as a divisive obstacle. The musical contribution it once made to the worship and life of the church is no longer wanted. Some might consider this to be a sad state of affairs. That consideration does not form part of the legal test I am to apply and in directing my mind to that test

I have come to the conclusion that the organ's removal would cause minimal harm to the significance of the church as a building of special architectural or historic interest. Whilst the installation of the organ was undertaken during the heyday of the Pace and R.G. Sims reordering and the instrument seen as part of that era, I do not consider that it (unlike the gallery which houses it) is integral to the essential character of that major work by Pace. I consider that removal would not damage the essential character of the church created by that reordering. Even without the organ that character is left intact. A musical instrument should not become a memorial monument but should be played and appreciated. The Petitioners propose an appropriate memorial plaque to the memory of Dr Linstead in the organ gallery to preserve the historical link of the church to this respected musician. In all the circumstances the application of the Duffield questions to the removal of the organ does not prevent me from exercising my discretion to permit it.

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). I would not consider it appropriate to permit its removal from its present location unless or until it could be removed to another church in the Diocese of Sheffield where it will be played, appreciated and maintained. There are the beginnings of a real prospect that this could happen with the possibility that the organ be moved and installed into St John's Edlington. That church is not as well resourced financially as the petitioning church and it may be therefore that the petitioners would need to bear the majority of the costs of such a move for the instrument.

37. I therefore propose to make this or a similar transfer within the Diocese a condition of the permission that the organ be removed. I do not impose any particular financial arrangement on the respective parishes although no doubt note will be taken of my comments above. I do undertake to deal expeditiously with any application by a receiving church for permission to receive the Fulwood organ. I also grant liberty to the Petitioners to apply to vary or set aside this condition if circumstances change.

38. For all the foregoing reasons I propose to direct that a faculty be issued, subject to the provisos I have outlined to permit the petitioned works.

Sarah L Singleton QC

Chancellor of the Diocese of Sheffield

19th November 2017