

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

WARSLOW: ST. LAWRENCE

JUDGMENT

- 1) The Petitioners seek a faculty for the rebuilding and restoration of the organ in this nineteenth century Grade II listed church. There has been no objection following public notice of the petition. However, the Church Buildings Council has been consulted about the proposed works and on its behalf Dr Knight visited the church to inspect the organ. This visit resulted in his thoughtful letter of advice dated 23rd February 2012. In that letter Dr. Knight made a number of recommendations as to the way in which the works should be performed. I have decided not to impose conditions requiring compliance with all of Dr. Knight's recommendations and the purpose of this judgment is to explain briefly why I have decided not to do so.
- 2) All are agreed that the organ is a fine instrument with historic interest. However, little is known of its history save for the fact that it was moved to the church in 1908. We know neither who built the instrument nor when it was built.
- 3) All are also agreed that rebuilding and restoration are appropriate. Dr. Knight's helpful advice is generally supportive of the proposed works.
- 4) In addition all are agreed that there is potential for the creation of a new Mixture stop and the replacement of the Flute. Those are optional extras in the organ builder's proposal. Dr. Knight is supportive of these works but has made helpful comments about steps to be taken before the Mixture is installed and also about the potential effect of these works on access to the organ for tuning. This is one of those rare cases where it is appropriate to give Liberty to Apply in respect of those elements of the works. I will give such Liberty. If use is made of such Liberty I will require the Petitioners (through the organ builder) to demonstrate that the points raised by Dr. Knight in this regard have been addressed. Subject to any

further submissions it appears to me that I am likely to require Dr. Knight's advice in these regards to have been adopted.

- 5) In respect of the remainder of the proposed rebuilding and restoration there are four aspects where Dr. Knight has recommended additional measures and/or an approach to performing the work different from that currently proposed. Those are:
 - a) The recording of markings on the organ where Dr. Knight recommends that this be done.
 - b) The planing of pedal keys: Dr. Knight advises that this is not needed and that cleaning will suffice.
 - c) The replacement of ivories where Dr. Knight says that missing ivories should be replaced but that the existing ivories be retained.
 - d) The stripping of the display pipes: here Dr. Knight would support the repainting of the pipes but where he says that stripping them to bare metal before that repainting "*is not good conservation practice*".
- 6) Mr. Mike Thompson, the proposed organ builder, has given his response to Dr. Knight's recommendations. That response was given in a telephone conversation with the Registry Assistant. Although given over the telephone that response was detailed and reasoned and I have a note of that conversation. Mr. Thompson explained the reasons for his proposals in these regards. He does not believe that any markings will be covered in the works. As to the other aspects in essence he believes that the rebuilt organ will be better-looking if these works are done in the proposed manner. As to repainting of the pipes he suggests that repainting over unsightly paint work is unlikely to be practicable and/or will leave an unsightly effect. He says that the existing ivories are discoloured and worn and that the combination of some old and some reclaimed on the rebuilt organ would be unsightly.

- 7) The difference here is one of emphasis. Both Dr. Knight and Mr. Thompson agree that rebuilding and restoration is appropriate and both accept that there is a balance to be struck between the needs of rebuilding so as to create a properly functioning organ and the needs of conservation so as to retain a historic instrument. Not surprisingly they place that balance at different points. It may well be something of an over-simplification but the impression I have formed is that the difference can be summarised thus. Mr. Thompson's focus is on the quality of the end product of his works and how that will appear and function. The focus of Dr. Knight is on the conservation of this historic instrument and on ensuring that as much as possible of its appearance is retained. Neither is guilty of tunnel vision: Mr. Thompson accepts that conservation to the extent that it is possible is desirable and Dr. Knight accepts that there needs to be rebuilding and restoration.
- 8) The question for the court, therefore, is also one of balance. It arises in the context of determining the conditions to be imposed on the faculty which all are agreed should be granted. Should conditions be imposed requiring the works to be done in accord with the Church Buildings Council's recommendations as to the manner of the works and the requirements of conservation? I have concluded that this balancing exercise can only properly be carried out when account is taken of the overall approach to be taken to the replacement, removal, or restoration of pipe organs.
- 9) The principles applicable to removal or replacement of pipe organs were summarised in my decisions in the Coventry Consistory Court in the cases of ***Re St. Nicholas, Warwick*** (2010) 12 Ecc L J 407 and ***Re St Nicholas Radford Semele*** (unreported 2012). The approach set out therein is that which will be taken by this Court subject to argument or submissions in any particular case. Those principles can be summarised thus.
- 10) First, 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 (see **Re St. Nicholas, Nuneaton** (2009) 11 Ecc L J 360).

11) Second, 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 if the Petitioners discharge the burden explained below.

12) Assistance can be derived from 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.

13) The foregoing principles apply when the court is considering whether to allow the removal of a pipe organ in circumstances where there is doubt as to whether such removal was appropriate. What would be the position

where it is agreed that the existing pipe organ is inadequate and that replacement is appropriate? In such cases the issue is not whether the existing organ should be removed but with what it should be replaced. That was the position in **Re St. Nicholas, Warwick** (2010) 12 Ecc L J 407. As explained there in such cases account must still be taken of the musical quality and potential longevity of pipe organs. In that context it is to be noted 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 a comparison solely of the initial purchase cost might suggest. As I said at paragraph 19 of that judgment:

“... 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.”

- 14) In **Re St Nicholas Radford Semele** I explained that the benefits of pipe organs by way of musical quality and longevity are considerations which 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 (as it was in that case). 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.

- 15) When considering the arguments which might suffice to justify installing a digital organ in place of a pipe organ I wish to emphasise that neither a perceived difficulty in playing nor a perceived absence of suitable organists will justify such replacement. As I said in ***Re St Nicholas Radford Semele*** (at paragraph 16):

“... the assertion that the church has “no future young organists” and that a digital organ is an easier instrument to play is unimpressive. The proposals for the future of St. Nicholas show real enthusiasm and commitment to the continuing life of the church in ministering to the local community and in being a centre of outstanding worship. In that context it would be hoped that there could be a commensurate commitment to providing music of the highest quality. 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.”

- 16) The approach set out above applies to cases where petitioners seek to remove or to replace a pipe organ. It is not of itself applicable in cases of the rebuilding or restoration of a pipe organ. The principles underlying this approach and the reasons for adopting the approach do, however, give considerable assistance in determining the approach to be taken in cases of the restoration and rebuilding of pipe organs. The approach of giving primacy to the retention of pipe organs and to the replacement of such organs by other organs is an approach based on the twin considerations of the musical quality of such instruments and their potential longevity. It those considerations which have caused the courts to regard pipe organs

as making a particularly important contribution to the life of the Church. Those considerations relate to the current and future use of a particular organ. The contribution made by pipe organs is a contribution to the current worshipping life of the Church not solely as part of the Church's historic heritage. Thus the approach to the replacement of pipe organs does not derive primarily from the historic interest of such organs albeit in particular cases that historic interest will be significant.

- 17) I have concluded that the same considerations should influence the court's approach to the restoration and rebuilding of pipe organs. In such cases the focus must be on the musical quality to be achieved and on the likely longevity of the instrument. The primary objectives of restoration and rebuilding should be to enhance the quality of the music used in the worship of God and to ensure that the useful life of the instrument is prolonged. The aim is not the preservation of an interesting historic artefact as an object for study but the enhancement of an instrument to be used in the regular life of the worshipping community. That is not to say that conservation considerations are by any means irrelevant. There is a balance to be struck. Clearly in any case where work is being done on a historic organ account must be taken of its historic interest and justification provided for any work which will impact on the historic material. As is the case with any work on an item of historic interest proper effort must be made to ensure conservation of as much of the historic material as is compatible with the continuing use of the object in question. Moreover, there will be cases where the historic interest and importance of a particular organ will be such as to increase the importance of conservation and to impose a higher hurdle to be surmounted before alteration to the historic material can be justified. There may, indeed, be instances where the historic importance of a particular organ is such as to cause conservation to become the primary objective but such cases will be rare.
- 18) There is a further and important factor which is relevant when considering the conditions to be imposed on petitioners seeking to rebuild or to restore an existing pipe organ. It is that such petitioners will represent a parish

which is fulfilling its obligations and which is providing for the future musical and worshipping life of the church. It is doing so in a climate where there is temptation to take the short-term view influenced by perceived cost benefits and to seek to replace pipe organs with less satisfactory substitutes. In such circumstances it is incumbent on the court to facilitate the work of such a parish. For the court to impose conditions which unnecessarily increase the cost of restoring pipe organs or which unnecessarily detract from the attractiveness or utility of the organ after such restoration would harm the case for pipe organs. Such a course would run the risk of adding to the perception that a historic pipe organ is a burden on a church rather than a benefit. It follows that real weight must be attached to the views and wishes of those seeking to restore and rebuild organs when determining how such works are to be performed. Such wishes cannot, of course, be given unfettered play and proper account must be taken of the input from experts with wider experience.

- 19) What conditions should be imposed in this case in the light of those considerations? I take account of the facts that although this is a fine and historic organ neither its maker nor provenance are known. This weakens the force of what might be described as a purist conservation approach. This is a fine and historic instrument but it does not have a historic importance such that conservation should become the primary objective.
- 20) The aim of Mr. Thompson and of the Petitioners is to rebuild and restore the organ at St. Lawrence so that both in its appearance and in the quality of the sound produced it glorifies God and is a source of joy to those worshipping in that church. It is a legitimate view to say that the appearance of the organ will be enhanced by the stripping of the display pipes before repainting and by the replacement of the ivories. Opinions might differ as to that appearance but it is at least legitimate to say that it is a preferable appearance. The conservation considerations are not such as to justify preventing the Petitioners from having the benefit of that enhanced appearance. The same reasoning applies to the question of the planing of the pedal keys. Accordingly, I do not intend to impose conditions

preventing the planing of the pedal keys; the replacement of the ivories; or the stripping of the pipes before their repainting. However, the conservation objective of recording the markings on the organ can be achieved without detracting from the organ's final appearance or quality and I will impose a condition requiring such recording.

STEPHEN EYRE
CHANCELLOR
14th April 2012