

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

C036/2008

RADFORD SEMELE: ST. NICHOLAS

JUDGMENT

- 1) The church of St. Nicholas in Radford Semele has a Grade II listing. Although mediaeval in origin the church as it stood on Palm Sunday 2008 was predominantly Victorian. On that day the church was virtually destroyed by fire leaving just a stone shell. The PCC have produced plans for the reconstruction of the church and a petition seeking a faculty for those works has been presented. As I said in the preamble to my order of 4th December 2011 those plans are detailed and imaginative. They are clearly the fruit of very real effort and of prayerful reflection on the needs of the Church and community in Radford Semele and on how a rebuilt St. Nicholas can meet those needs. In addition it is right that I should pay tribute to the prayerful perseverance which has been displayed by the people of St. Nicholas in the time since their church was destroyed.
- 2) On 4th December 2011 I directed the grant of a faculty for the performance of the works having considered the representations made by English Heritage and the Church Buildings Council (both of which were in respect of matters of detail) and advice from the Diocesan Advisory Committee. The conditions which I directed should be imposed on the faculty operated in large part by way of requiring the provision of more detailed information about particular aspects of the works. There was to be consultation between the Petitioners and the Diocesan Advisory Committee as to those matters of detail (with provision for matters to be referred back to this Court in the event of disagreement) before work on those particular aspects was begun.
- 3) I have been provided with further information from the Petitioners and it is apparent that those conditions have been fulfilled and the works can commence subject to the points considered below. There remains a need for consultation between the Petitioners and the Diocesan Advisory

Committee as to the chairs and furniture to be installed and as to the war memorial window but that discussion need not delay the start of the works.

- 4) There remain two outstanding matters of substance: first, whether the Petitioners should be permitted to install a digital organ by way of replacing the former pipe organ and, second, whether the installation of a moveable font should be permitted.
- 5) Before I turn to those matters I will deal with the timing of the works. The faculty as issued was subject to a time limit of 12 months requiring the works to be completed by 12th December 2012. Rev Martin Green is the Priest in Charge of St. Nicholas and he explains that it is anticipated that performance of the works will take fourteen months from the date when the contractor is appointed (which was expected to have been by the end of January 2012). The works in question amount to the virtual rebuilding of the church and it is not surprising that such a time scale is envisaged. In those circumstances I grant an extension of time for the performance of the authorised works. Those works are to be completed and the certificate of completion sent to the Diocesan Registrar on or before 4.00pm on 12th September 2013 or such further period as is allowed after further application.

The Installation of a Digital Organ.

- 6) The organ which was in the church before the fire was built in 1891 by Forster and Andrews. The Statement of Significance records it as having been “*unique*” and “*a fine instrument*”. In its place the Petitioners seek to install a digital organ.
- 7) In the order I made on 4th December 2011 I noted that there had been exchanges between the Petitioners and the Diocesan Advisory Committee about the replacement organ and that the Petitioners had expressed in somewhat bald terms the intention of the PCC to install a digital organ rather than a replacement pipe organ. I pointed out that the matter could not be dismissed as simply as that and required further justification of the application to install a digital organ.

- 8) The Petitioners have now addressed this question rather more fully. I will turn to the points they make shortly. Before that I should say that the Diocesan Advisory Committee has stated that it does not object to the proposal to install a digital organ though it does believe that careful consideration needs to be given to the appearance and positioning of the speakers for the proposed organ. In addition the Archdeacon of Coventry has written confirming his support for the installation of a digital organ. However, he does recommend experimentation with different instruments after the completion of the construction work to see which best suits the acoustics of the church in its rebuilt form.
- 9) The Petitioners emphasise that the exercise in which they are engaged is not just the replacement of an existing organ in an existing building. Rather there is nothing left for them to replace and they have to provide “*a new instrument in a completely new redesigned interior*”. The Petitioners also set out the detail of the investigations which led to the decision to seek to install a digital organ. A working party consisting of the two organists and a churchwarden considered a number of possibilities over a period of five months. This consideration involved assessing the performance of different organs in different locations and undertaking discussions with advisers. That working party reported back to the PCC which decided to seek to install a digital organ at a meeting some eleven months after the start of the working party’s work. That initial decision was reviewed and reaffirmed at a further meeting of the PCC. In those circumstances I am satisfied that the decision to seek to install a digital organ has not been made lightly and that it is the result of a proper analysis. In that regard the approach taken is in line with the thoughtful and considered approach which has been taken to the reconstruction as a whole.
- 10) In that context the Petitioners point to a number of factors in support of their desire to install a digital organ. In summary those factors are as follows.
- a) It is said that “*a primary consideration was to maximise space and flexibility in the new church*”. The aim of the Petitioners is to create an

open light area for worship which retains many of the key features of the old church while creating space for new facilities (such as an office, a kitchen, and a toilet). Moreover, the aim is to have a building which can be used flexibly and in different configurations. The position occupied by the former organ will no longer be available for that use and any new pipe organ would have to be in a different location. Moreover, the space which such an organ would require would reduce the scope for flexible use of the church. Conversely, a digital organ would take the form of a modestly sized console with concealed speakers mounted in the façade of the balcony.

b) The Petitioners refer to cost as an issue which is “*secondary ... but very real*”. The former organ was valued at £110,000 at an early stage of the PCC’s negotiations with the insurers. However, the Petitioners explain that the final total sum which was provided by the insurers fell well short of the amount sought by the parish. Accordingly, the Petitioners say that it would be an over-simplification to regard them as having received £110,000 (or a sum approaching that) for replacement of the organ. The Petitioners say that both the capital and maintenance costs of a digital organ will be lower than those for a replacement pipe organ (even for a second hand pipe organ).

c) The Petitioners say that they “*have no young future organists in our congregation and our present organists will not always be around.*” This is said to be a justification for the installation of a digital organ because such an instrument will be more readily played than a pipe organ by a pianist who is turning his or her hands to playing the organ to assist the church. Moreover, the digital organ has a facility for the playing of a CD if no one is available to play the machine.

11) I reviewed the relevant authorities and explained the approach which I regarded as applicable to the replacement of pipe organs in my judgment in the case of *Re St. Nicholas, Warwick* (2010) 12 Ecc L J 407. I referred there to the heavy burden to be discharged by those seeking to remove an existing pipe organ and replace it with something other than a pipe organ.

In *Re St. Nicholas, Warwick* I was addressing the case of a pipe organ which was admittedly defective and where replacement was inevitable with the issue being of the form which that replacement should take. The approach to be taken in such cases was set out thus at paragraph 19 of my judgment where I said that even in the case of replacing 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.”

12) The current case concerns a situation which has some similarity to that in *Re St. Nicholas, Warwick* in that installation of a new organ is inevitable. However, it is not a case of replacement in that there is no longer any organ to replace. The question to be considered is the approach which should be taken when an organ has been destroyed or irreparably damaged. In the current case there is the additional element to be taken into account namely the destruction not just of the organ but of the church in which it was housed. It is that destruction of the church which makes consideration of the **Bishopgate** questions otiose.

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

- 14) I have decided that in the circumstances here it is appropriate to grant a faculty for the installation of a digital organ. In giving that authority I must make it clear that some of the factors on which the Petitioners relied would not suffice to justify the installation of a digital organ.
- 15) Thus the argument based on the comparative costs has little weight. As already stated there real scope for saying that over time pipe organs are rather better value for money than replacements of other kinds which have a more limited life span. Moreover the duty to ensure that there is excellence in worship means that the consistory court cannot be sympathetic to an argument that it is justifiable to install something of lesser quality simply because it is thought to be cheaper.
- 16) Similarly, 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.
- 17) This is a borderline case in respect of which I have some reservations. However, there are particular factors which on balance make it appropriate to authorise the installation of a digital organ in this church.
- 18) First, the PCC has engaged in serious consideration of the way forward and in particular of the type of instrument which they would wish to be installed in the reconstructed church. As explained above that is a necessary but not a sufficient condition for the installation of an instrument other than a pipe organ.

19) Second, and rather more significant is the impact which a pipe organ would have the intended use of the space in the reconstructed church. The fire on Palm Sunday destroyed much that was of value but it has also given opportunities. The people of St. Nicholas have chosen to use those opportunities to create a new church interior fit for the Twenty-First Century with an emphasis on space and openness and with real provision for flexible use of the interior of the building. The location previously occupied by the organ is no longer available in the new design and the installation of a new pipe organ would impinge to some extent on the space otherwise available and on the scope for using that space flexibly. This is a factor which carries great weight in the circumstances here. There is a risk that if I were to insist on the installation of a replacement pipe organ I would hinder the moves to create an open and flexible building. There is a real prospect that such openness and flexibility will mean that the rebuilt church of St. Nicholas will be fitted for worship in ways which were just not possible in the old (and much-loved) church. The creation of such an open and flexible environment for worship is a good reason for the grant of a faculty certainly in a case, such as the present, where the Petitioners have striven for excellence in the new arrangements. If those moves to create an open and flexible building were to be hindered there would be a risk that the parish would be condemned to suffer the loss of the former church but would not be able to enjoy the full benefits which could flow from the opportunities inherent in reconstruction. Enabling the parish to enjoy the benefits of space and flexibility to the full is, on balance, a sufficient reason for this Court to permit the installation of a digital organ rather than insisting on a replacement pipe organ.

20) Accordingly, I **direct** that a faculty be issued for the installation of a Makin Westmoreland Jubilee II organ. However, it is apparent that there remains scope for further consideration of the type of organ to be installed and of the arrangements for that installation. In this regard there is considerable wisdom in the recommendation of the Archdeacon of Coventry that there be further consideration once the structural work has been performed. Accordingly, I impose the following **condition** namely that before the

installation of the organ and after the completion of substance of the structural works the Petitioners shall cause the PCC (a) in consultation with the Diocesan Advisory Committee Organ Adviser to review the assessment as to the suitability of the Makin Westmoreland Jubilee II organ and as to the arrangements for location of the speakers and (b) to apply for an amendment of this faculty if following such review it is thought appropriate to install a different instrument.

The Installation of a Moveable Font.

- 21) The Petitioners seek a faculty for the installation of a moveable font. They put forward two arguments in support of this proposal.

- 22) The first argument is based on the symbolism of the positioning of the font combined with the theology of mission and the practice of this worshipping community. I hope I do justice to those arguments by summarising them in the following terms. It is intended that baptisms should take place not near the entrance to the church and behind the congregation but in the midst of the congregation. This symbolises the welcome being given to the newly baptised and the intention that they should be taken to the heart of the worshipping community. In addition in the case of infant baptism it is contended that this accords with Our Lord's command that the little children should be brought to him.

- 23) The second argument returns to the desirability of flexibility in the use of the reconstructed church. There are two aspects to this argument. First, It is intended that most baptisms will occur in the midst of the congregation. However, the former chancel and sanctuary are to be screened from the body of the church. They will form what amounts to a separate chapel in which smaller services will be held. The provision of a moveable font will enable baptisms to take place in this quieter and more intimate setting when that is appropriate. Second, the existence of a substantial fixed font particularly if that were to be fixed in a position close to the main door would run the risk of impeding the scope for flexible use of the space provided by the reconstructed building. I will not repeat here the analysis set out above as to the importance of preserving the benefits of flexibility in

the use of the new building. It suffices to say that that analysis applies to the reduction of flexibility which would result from the installation of a fixed font in a similar manner to the reduction of flexibility which would result from the installation of a pipe organ.

24) The Archdeacon of Coventry has expressed his view that “*pastorally and liturgically*” the proposal “*makes sense*”

25) What are the applicable principles? The starting point is Canon F1 which provides that:

*“1. In every church and chapel where baptism is to be administered, there shall be provided a decent font with a cover for the keeping clean thereof.
2. The font shall stand as near to the principal entrance as conveniently may be, except there be a custom to the contrary or the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible.”*

26) In addition I am able to take account of the approaches adopted by other chancellors and the *Response by the House of Bishops to questions raised by Diocesan Chancellors* (1992). The following principles emerge:

a) In an appropriate case a font can be located in a position away from the main entrance to a church and the practices of a particular church community for baptism to take place in the body of a congregation can be a good reason for so locating the font (see ***Re St James, Shirley*** [1994] Fam 134).

b) A moveable font is not impermissible per se and can be authorised in a suitable case (see ***Re St. Andrew, Cheadle Hume*** (1994) 3 Ecc L J 254).

c) However, even if a moveable font is installed it has to be substantial both physically and symbolically. It has to be such as to make a point to those entering the church building about the significance of baptism (see ***Re St. Margaret, Brightside*** (1997) 4 Ecc L J 765 and (***Re St. Andrew, Cheadle Hume***). In this regard I take account of the views expressed by Bishop David Stancliffe in “**Baptism and Fonts**” ((1994) 3 Ecc L J 141) making the point that “*what the font says by its style,*

size, and position tells the regular worshipper and the casual visitor alike a good deal about the life of the church, the company of the baptised.”

27) In the light of those principles and in the circumstances of the reconstructed St. Nicholas it is clear that the installation of a moveable font in the new church is justifiable. The practice of conducting baptisms in the midst of the congregation is appropriate in terms of mission and theology. That practice could be accommodated by a fixed font but the benefits of enabling flexible use of the church space and in providing for baptisms to take place in the former chancel are such as that it is appropriate to authorise the installation of a moveable font. Accordingly, I intend to authorise the grant of a faculty permitting the installation of such a font. However, before I do so I need to be satisfied that the moveable font when installed will be substantial both physically and symbolically and that when not in use it will be placed in an appropriate location. Accordingly, I **direct** that the Petitioners on or before 4.00pm on 16th March 2012 the Petitioners provide to the Diocesan Registrar details of:

- a) The design, scale, appearance, and material of the proposed moveable font so as to ensure that it is substantial both physically and symbolically.
- b) The intended location where the font will be located when not in use so as to ensure that it is readily visible to those entering the church and sends a message as to the significance of baptism as the entrance to the Christian life.

STEPHEN EYRE
CHANCELLOR
6th February 2012