

Neutral Citation Number: [2021] ECC Liv 2

IN THE CONSISTORY COURT

of the DIOCESE OF LIVERPOOL

Application OFS 2020-056534

In the matter of St Dunstan's Parish Church Edge Hill

Judgment on faculty petition for organ removal and sale

Introduction

1. This court is concerned with a petition for the removal and sale of a magnificent Henry Willis pipe organ that has been installed in the church of St Dunstan's in Liverpool since the building was constructed over 120 years ago. The petitioners would like to sell the organ, which is in a deteriorating condition of repair and has not been played for many years, to an interested buyer, the Bethany Presbyterian Church in New York state who would like to restore it, without modification from its original design, and to use it for performances and worship. It is said that the funds raised by this sale would secure the future of St Dunstan's for many years.

2. The responsibility of this court exercising the faculty jurisdiction vested in it, is to ensure that the PCC is not profiteering by removing a heritage asset which is of substantial interest not only from an historic, aesthetic or architectural point of view, but also as a splendid example of a rare musical instrument which is deserving of preservation and enhancement, if at all possible, in the location in which it was intended to remain for as long as the building was standing.

3. Although this is not a formally opposed petition with parties opponent, following consultation and statutory notification to various heritage bodies, the British Institute of Organ Studies (BIOS) have raised objections to the removal, contending that it would be far more efficacious and sensible to keep it in situ and to raise funds for its restoration. There has also been objection by Historic England, who do not support the proposal, and have identified a number of potential sources of grant aid funding for repair.

4. The Churches Buildings Council (CBC) does not object and has provided some observations which are referred to below.

Background

5. The parish church of St Dunstan's on the edge of the Liverpool city centre is a substantial grade II* listed church building constructed of red Ruabon brick at the end of the 19th century. It was designed by architects Aldridge and Deacon under the patronage of a local industrialist and benefactor, Thomas Earle, whose family name is attributed to the street on which it was built. These architects were responsible for several other similar neo-Gothic style church buildings in the same materials and to the same general style comprising a signature fleche with copper clad spire. The design was to a simple plan of nave and side aisles to a chancel, with a chapel to the north-east. There is a marble reredos to the chancel, which is separated from the nave by an ornate cast-iron screen, but the significant internal feature is the vast open space created by the internal structure to the vaulted ceilings in an area intended, when first constructed, to seat up to 800 local parishioners. In fact whilst the church building became a prominent landmark in the area in which it was built adjacent to the rows of red bricked terraced properties, the inherency in the design was more than a nod to the environment. This was a church built in an industrial area for an industrial people, designed without significant frills or ornament, but as a focus for a worshipping congregation.

6. The organ was built at the London factory of Henry Willis, a prominent and well-known organ manufacturer which has continued in various incarnations to the present date, now having a base on Merseyside. It was not installed immediately after the construction of the church building, but seemingly several years later, and fitted into the space intended for an organ. However, this was not purpose-built as such, and it is said that the fit is far from perfect, although there is no doubt that this magnificent instrument is a prominent focal point within the church. The pipework and mechanism is standard Willis design, and the lower casing is constructed from Honduran mahogany.



Fig 1 Organ in situ at St Dunstan's

7. There is no doubt that when this was a fully functioning instrument it was capable of providing the expected tonal quality and volume for worship with a large congregation in the vast open space which exists. However, the organ has not been functioning since 1985, that is for almost 37 years, and in the meantime significant deterioration has set in. A number of the pipes and fittings have been damaged by rust, and there is efflorescence in the brickwork surrounding the opening. One of the organ pipes, the Choir Corno di Bassetto, was removed in 2008 and is now part of the organ in St Anne's Aigburth, although on the basis of the faculty provision, this is temporary, and intended to be a loan. It is to be returned if and when the organ is ever removed or restored.

8. As might be expected with an organ of this quality, which was no longer in use, there had been enquiries over the years as to its possible acquisition and removal. At some point, an Australian church had expressed an interest, but this was not proceeded with. More recently a church in New York became interested, and after preliminary enquiries a detailed inspection was carried out with proposals made for the purchase of the organ and its relocation in the USA. An offer was made in the sum of £100,000 with all costs of removal being borne by the purchaser, and the petitioners understandably have seen this as a significant way forward, with the possibility of raising substantial funds for the future of the church. The present faculty petition was therefore filed and the offer remains open.

Why the petitioners wish to remove the pipe organ

9. In the original statement of significance the plan for the proposed relocation is set out in these terms:

"The proposed purchasers, Bethany Presbyterian Church, wish to remove the organ wholesale and relocate it to their church in Rochester, New York, and have it fully restored. It would be used both for worship within the church, and for recitals, and also for organ tuition within the context of Rochester developing a teaching collection of organs at different locations around the city for the use in teaching and demonstration by an organ specialist university department. The church has a space into which the organ would exactly fit, so it would not need building alterations."

10. A more substantial and detailed statement of significance, with input provided by the diocesan organ adviser, Stephen Derringer, was subsequently submitted. In addition to a careful description of the historic aspects of the building generally, and the circumstances in which the organ came to be installed, noting that it was not a "synchronous event" with the original construction of the church building, the following assessment is provided:

"The organ has for some considerable time been an ornament rather than a working instrument, and as its functionality has now gone, this dilutes its significance. Given its purpose was the creation of music, its condition means that this is no longer possible. Similarly, its role in the earlier religious ceremonies has also disappeared, as changes to the way in which the church is used, its congregation and the form of

worship have all led to its redundancy. The organ has been an unused asset for a generation, and, like the pews and other aspects of reordering which have been approved in the past, it is no longer required for liturgical purposes.”

11. As part of the consultation process, notice was given to the CBC, who responded that whilst preferring that this historic organ remains in situ and is repaired, acknowledged the impracticability. In respect of the sale to the American buyer, this observation was made:

“The Council was assured by the proposed organ builder that the organ will be carefully restored without alteration by a workshop sympathetic to Willis’s work. It also noted that the organ would be curated by the Eastman Rochester Organ Initiative (EROI), based in the University of Rochester. The EROI programme is fastidious about appropriate care and use of historic organs and maintains a network of organs representing different organ building traditions. The Willis organ makes a meaningful contribution to the instruments available to EROI.”

12. In the course of providing advice, the Diocesan Advisory Committee drew up a list of requirements which it was said would have to be satisfied before positive support for the proposal would be given. This was in a tabular form, and one of the requirements was evidence that grant funding or financial assistance investigation had been pursued for the repair of the organ in situ. The PCC, with the assistance of the DAC, upon the completion of the form, provided a response to this specific requirement in these terms:

“DAC chair has looked into this and confirms this is the case. Organ Advisor has confirmed only small grants would be available and these would need to be matched by PCC. Rector and archdeacon affirm that the PCC are unable to achieve the requisite match funding.”

13. Therefore, it was clearly stated that the aspiration of both the BIOS and Historic England (see below) that the organ could be repaired and put back into some use at minimal cost, could not be met. It was plain that the parish simply does not have the resources. Apart from the fact that the congregation has dwindled in numbers, and is now represented by a mere handful of dedicated worshippers who normally meet in the small enclosed chapel and have no need for organ music, the cost of restoring the organ, which is said to be close to £500,000, is so far beyond the means of the parish as to be unattainable unless substantial grant aid or gift donation was provided. Further, it is clear that the area in which the parish situated, in demographic terms, has changed significantly from the time of the original church construction. The terraced streets no longer exist, and there is a diverse mix of ethnic communities in social and privately rented housing with the local population unlikely to have any real interest in future organ recitals, even if a congregation where organ led music is central cannot be sustained.

14. As indicated above, the petitioners and the DAC have worked closely with the diocesan organ adviser. In his principle response to BIOS, Mr Derringer said this:

“However, what is proposed is that the organ be moved and relocated in such a way that no change to the action or layout will be required, and the organ will be completely restored to original condition: its pneumatic lever machine, the hand blowing plant and its wind system, all soundboards and actions, as well as the complete case and console fittings will be retained, and the pipework will be completely restored with no tonal changes whatsoever. Tonal finishing within the new location will be an absolute minimum to carefully preserve all original tonal balances. No new tongues will be used in the reeds, as only original tongues and curves will remain. The organ will be restored using existing published organ conservation guidelines recognised internationally -- as a minimum. Traditional methods of work will be used and original materials will be preserved even where doing so requires more effort than replacement would. Original finishes within the organ will remain. Original case and console finishes will be retained.”

15. A computer-generated image was provided of the organ in its new location in Bethany church.

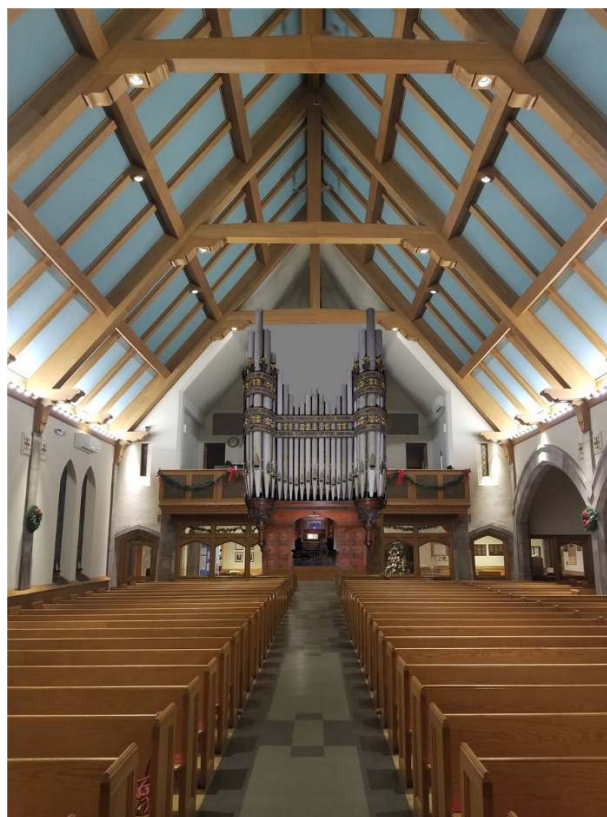


Fig 2 Bethany church proposed organ location

16. The petitioners in their statement of need have encapsulated the benefits which would be achieved by the removal and sale of the pipe organ in a succinct focused manner:

- It would ensure the future of the organ itself. Left where it is, it will continue to deteriorate and be unheard, as we are unable to envisage a future in which we will be in a position to spend the large amounts that would be required to restore it – and even if it were restored, the church is not in a location or context that would make choral worship and organ recitals a viable proposition. Bethany Presbyterian Church intend to fully restore it and use it in worship and also in organ education. We

are excited to be able to hear it again via livestream, and to have its future secured and heritage safeguarded.

- The income from the sale would safeguard the future of St Dunstan's for the next ten years, allowing space for the developing mission plans to bear fruit and giving time for the newly regenerating community around St Dunstan's in the £1 houses to develop. The offer price is sufficient to pay for the making good of the void, the purchase of a new electric organ as recommended by Stephen Derringer, and give us the financial stability to develop our building and mission for growth.
- The void left by the removal of the organ would both increase the size of the existing Community Room, making it more useful for meetings and small groups, and provide additional first floor level accommodation for either another rentable room or for storage.

17. Although it is not part of the current petition, there has been consultation with the quinquennial architect, Ms Mullan, who has proposed the potential use for the space which will become available. This will be of a multipurpose nature.

The nature of the objection

18. There have been various communications from the British Institute of Organ Studies (BIOS) in relation to the pipe organ. Dr Andrew Hayden, who is described as the casework & conservation officer, wrote to Dr Threlfall Holmes in 1 October 2020, before he was aware of any pending sale, following what appears to have been an initial contact by the parish, when he made it clear that the organ was to be placed on the "at risk" register because of continuing deterioration to an instrument which was of considerable historic interest. Apparently this register provides a reference point for future fundraising by the public and other interested parties in much the same way as Historic England identify heritage assets which are in urgent need of protection.

"The organ was declared at risk because the chancel in which it is situated is damp and disused and the instrument is now unplayable. Some pipework has been removed."

19. Dr Hayden became aware at the end of December last year of the proposed sale, and he wrote to the secretary of the DAC:

"I'm sure you are aware that the organ is a Willis masterpiece with a very specialised operating mechanism, the Willis floating lever action. This alone makes it a rarity quite apart from its peerless tonal qualities. I sincerely hope matters have not progressed so far as to render a campaign for the organ's retention here in the United Kingdom a waste of time."

20. Historic England have also been in communication with the petitioners through the consultation process. It was emphasised that the historic interest and significance of the church building was derived from its complete composition and make-up, and not merely from the structure itself, and the conclusion of Daniel Jones, the inspector of historic buildings, was that the removal of the organ would cause detriment. He expressed the impact in these terms:

"We find that the removal of the Henry Willis organ will have a detrimental impact on the significance of the Grade II* listed St Dunstan's Church leading to a moderate level of less than substantial harm and as

such we do not support the proposals. St Dunstan's draws significance from it once being a showcase of high quality features and fixtures such as the stained glass windows, reredos, tympanum and organ all by prominent figures in their particular fields. To remove the original organ would unfortunately be to remove an important element of this significance and composition by losing an original feature. The removal and sale would also have the unfortunate impact of removing parts from the organ at St Anne's which is using part of the Willis organ on loan. Considering the organ itself, as well as being an important contributor to the composition of the listed building it is also regarded as being highly significant in its own right. Comments from BIOS have described it as a "Willis masterpiece with a very specialised operating mechanism [which] alone makes it a rarity" and in the description on their website as being "a unique survival"

21. Mr Jones recommended a number of grant schemes that were available with links provided. However, it is to be noted that he acknowledged the benefit which would be served by the scheme, effectively the restoration of a highly significant and unique Henry Willis organ.

22. It is to be noted that in February of this year Dr Threlfall Holmes and Steven Derringer, the diocesan organ adviser responded jointly to the objections of Historic England, as I have indicated above and Steven Derringer responded to BIOS.

Discussion and determination

23. It is evident that the DAC in the provision of advice to the petitioners have been careful to ensure that alternatives to the removal and sale of the organ were fully explored by the PCC of St Dunstan's, and that this matter was not allowed to proceed simply on the basis of an assertion of substantial benefit for a small church community which was struggling with its financial resources. I have reviewed the list of steps which were set out in the direction provided by the DAC, and the response which was provided by the petitioners. It is clear that all the requirements were addressed. In particular, in relation to the request for details as to how the organ was to be dismantled and removed, information was given by the petitioners, presumably with the assistance of the diocesan organ adviser, that the process would be undertaken by Buzard Organ Builders (presumably an American company) under the supervision of Henry Willis, with a full photographic and video record provided. I make mention of this, because it is relevant that in considering whether to grant a faculty for such a substantial alteration to the interior of the church, albeit not to the fabric, but involving a unique musical instrument which has been part of the make-up of the church for most of its life, the court will need to be satisfied that the proposal is not whimsical, but has been treated with integrity and respect for the heritage which is entrusted to the PCC.

24. I remind myself of the correct test to be applied whenever a change is planned to the interior of a listed church building, including alterations to the fixed or movable furnishings, if they are to be authorised by the grant of faculty, following the so called "Duffield" questions as set out by the Court of Arches in **Re St Alkmund, Duffield [2013] Fam 158**.

- (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 “no”, 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 (see **Peek v Trower [1881] 7PD 21 26-8**, and the review of the case law by Chancellor Bussell QC in **In re St Mary’s White Waltham (no2) [2010] PTSR 1689** at para 11). Questions 3, 4 and 5 below do not then arise.*
- (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 well-being, 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 particularly be the case if the harm is to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed.*

25. I have no difficulty in coming to the conclusion that the removal of this organ will result in harm to the significance of the building in terms of its historical and architectural interest. The heritage asset has been an integral part of St Dunstan’s throughout its history and would have played a central role in worship and congregational gatherings for almost a hundred years. Although the organ housing was not specifically designed for the Henry Willis organ which was later installed, this is immaterial, in the sense that it is a unique instrument which has been in that location throughout, and I accept the evidence that it is a fine example of its type.

26. In my judgment, the harm which is caused by the removal is more than modest and relatively serious in the sense that it amounts to a substantial alteration in terms of the visual aspect and the tradition which has been associated with this church building. While the value of this heritage asset is intrinsic in the sense that it lies within the instrument itself, it is relevant in assessing the seriousness that what is being proposed in terms of alteration is actually the preservation and restoration of the organ rather than its removal and disposal. In a sense it is the opening up of the space left behind which creates the harm, because one of the purposes of this application is to ensure that the Henry Willis organ is not lost to future generations, even if they may not be within the United Kingdom.

27. Applying the fourth and the fifth of the Duffield questions above, equally I have no difficulty in concluding that the benefit of the “alteration” and the removal of the organ from St

Dunstan's to allow it to be installed in a church overseas is substantial, and far outweighs the harm created by the fact that this will now be a church without a pipe organ. In fact, I am satisfied on the evidence presented that without such a removal, the future for this instrument is bleak. There is no prospect of funds being available, despite the best hopes of both Historic England and BIOS, and it is clear that the instrument will continue to deteriorate. It is unlikely, absent any benefactor coming forward (which is highly speculative) that it will ever be played again in St Dunstan's. On the other hand, it is clearly established that the proposed purchasers have every intention of fully restoring the organ, and having it in place at an entirely suitable location for the purposes of worship and performance/recital.

28. In these circumstances, I can see no basis for the objections which have been put forward by the amenity bodies consulted. The only alternative is the loss of the organ, as it crumbles and deteriorates in its present location, even if it does provide a historic reminder of a British organ manufacturer. Thus clear and convincing justification has been established.

29. The additional benefit cannot be ignored, and in my judgment is also very significant. This fine church building cannot be maintained without funds, and the present PCC and congregation is close to impecunious. The injection of a substantial sum of money for ongoing maintenance and improvement of the fabric represents a very great benefit indeed. Although the nature of the works to the organ loft for the present is unclear, and will have to be the subject of a separate application, they are relatively modest and unlikely to involve substantial expenditure.

30. I am therefore prepared to grant the faculty sought and to allow the removal of the Henry Willis organ from the organ space within St Dunstan's for sale and relocation at the Bethany Church in Rochester, NY. Clearly there are important conditions to be attached to the grant of this faculty.

- (a) The first is that the petitioners undertake to petition for a faculty in relation to refurbishment works of the organ space, once the organ is removed, and in any event within 12 months of the date of this faculty grant.
- (b) The second is that a full photographic and video record is taken of the removal of the organ.
- (c) The third, is that in conjunction with such a record, a display of suitably placed boards is provided within the church as a reminder to future generations of the Henry Willis organ which was the centre of worship for almost a hundred years; the petitioners should liaise with the DAC as to the preservation of digital records as a permanent reminder, with suitable electronic storage at an identified location.

32. I do not make it a requirement that a temporary or permanent stream is established with the Bethany church to enable a visual/audio connection with the organ once installed and playing, but clearly it would be a sensible discharge of the petitioner's heritage responsibilities as the former custodian of the organ to do so.

His Honour Judge Graham Wood QC
Chancellor of the Diocese of Liverpool

13th October 2021