

**In the matter of Heckmondwike : St James**

Faculty Reference 19-19DC

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**JUDGMENT**

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1. The church of St James in Heckmondwike, in the Halifax Archdeaconry, is described as being in the Early English style with a Grade II listing. The designing architect (from the original build in 1830-1831) was Peter Atkinson, but there have been several subsequent additions to the building. The vicar (Revd Karen Young), a churchwarden (Martin Firth) and a Parochial Church Council member (Keith Wilson) petition seeking a faculty for the following works :-

*Removal of the existing organ console without making any changes to the oak organ casing or decorative pipes, and installation of a Viscount Envoy 350FV electronic organ in the same location with speakers mounted behind the organ display pipes ;*

*Creation of a clergy vestry and store in the space freed up by the removal of the organ works.*

The proposal is supported by an unanimous vote of the Parochial Church Council.

**The Purpose of the Proposed Works.**

2. In a Statement of Needs the Petitioners point out that the current pipe organ has been effectively out of use for 25 years, with hymn music for the modest congregation (just over 55 attending for a Sunday Eucharist) provided by recorded music, which is in itself inadequate to meet the needs of the congregation and often fails, I am informed. There has been no choir for many years, only an occasional singing group, and visiting organists (for example, for

Weddings or funerals) have reported the organ to be very difficult to play. The cost of restoring the organ is prohibitive (somewhere between £70,000 and £100,000 is the conservative estimate) and the Church members have no enthusiasm for such a large fundraising effort when other missional objectives are considered of much greater relevance. The space taken up by the pipes and workings of the organ could be utilised by providing a much needed clergy vestry that could be used also as a private meeting place, ideal for pastoral conversations, with space above for storage of larger objects used only seasonally.

### **Report by Diocesan Advisory Committee Organ Adviser**

3. The Parochial Church Council specifically sought advice from the Diocesan Advisory Committee Organ adviser, Edward Scott, who prepared a short report on the organ. He describes the instrument as a three manual and pedal pipe organ built in 1878 by Brindley & Foster and was “Restored” in 1906 by JJ Binns. He also notes that the organ case (that the Petitioners wish to retain) was added in 1924 in memory of a former organist and was paid for by public subscription. Mr Scott found that *‘the tracker action when the manuals are coupled is very heavy and makes playing exceptionally difficult’*. However, he also noted that there were no real faults with the instrument. It needs restoration after not being maintained for several years. He stated *“The organ contains some good quality pipe work and is solidly built. If restored it would . . . serve the Parish well for a good number of years. The question is, at what cost?”*
  
4. Mr Scott advised the Parish to seek a quotation for the restoration works (hence the estimate mentioned above). Also, he suggested to the Parish that if they did intend to use an electronic replacement they should have a demonstration of the instrument in the Church itself. This was apparently achieved when Viscount provided an Envoy electronic organ for use over a period of just over a week in July 2018, including during a Songs of Praise event. The feedback received was positive.

### **Consideration by Diocesan Advisory Committee.**

5. At a meeting on 11<sup>th</sup> December 2018 the members of the Diocesan Advisory Committee recommended the proposed works, including disposal of the pipe organ and retention of the original organ case with decorative pipes. The general conclusion was that, with the case and pipes retained, the works would

not result in harm to the significance of the church as a building of special architectural or historic interest. It was noted that the organ does not have an historic organ certificate and although called good and solid, by Mr Scott, there was no indication that any notable significance attached to this instrument. There was no recommendation made for any of the amenity societies to be consulted and it was not thought appropriate to recommend that the Church Buildings Council be invited to comment on the proposals.

### **Public notice and notice of objection**

6. The public notice was duly displayed at the Church from 17<sup>th</sup> December 2018 to 16<sup>th</sup> January 2019. There has been no response to the public notice itself. However, as a result of the organ being advertised for disposal (prematurely, or somewhat presumptuously at the very least) on at least one website, an emailed objection was sent to ‘the Bishop’s Office and Diocesan Office’ on 15<sup>th</sup> January 2019 from Simon Walker, Chair of the Historic Organs Committee of the Royal Canadian College of Organists.
  
7. Mr Walker asked that the diocese ‘*reconsider ruling that the instrument must stay in-situ, intact*’. His communication arose because he had seen messages on Facebook that were ‘*causing many in the organist community cause for serious concern*’. He referred to one particular message on Facebook that reported (incorrectly) that ‘*Faculty approval*’ had been granted to replace the pipe organ with a new electronic organ. He indicated he had seen photographs of the organ at St James’ and described it as ‘*a very handsome looking pipe organ, with an excellent specification*’. He made reference to the comments made by the Diocesan Advisory Committee Organ adviser and to the National Pipe Organ Register entry for the instrument. He averred “clearly this is an instrument of fine pedigree (Brindley and Foster were and (*sic*) exemplary and prolific local organ building firm) and the instrument looks to be in essentially solid, original condition. He added, in parentheses, an intolerably heavy action is often due to it being badly out of adjustment.
  
8. Mr Walker then went on : “It will appall (*sic*) many to know that a Faculty has been granted for this instruments removal, especially with the suggestion that the instrument must be removed, yet the pipe façade must stay. Such an act is likely to be considered by many as one of vandalism and destruction of heritage.” He also added : “I’ve regularly heard of situations where electronic organs replace pipe organs, or an old pipe organ have (*sic*) been replaced with a

new or used pipe instrument. Generally this is the existing instrument is not of fine pedigree and the replacement solution is a desirable improvement. In this case, I would suggest from my experience and expertise in the field, that this is most unlikely. Original 19<sup>th</sup> Century 3 manual organs aren't terribly common, and an instrument such as this really deserves preservation. If an electronic organ must be purchased for the musical needs of the Parish, there is still no reason why this organ should not stay in-situ. If it does, it will likely be rediscovered and reawakened at a future time."

9. Mr Walker, in a second email, stated that the organ would be an excellent candidate for a restoration project where it could function optimally for the next 50-to-100 years. He also stated, having now perused the documentation in support of the faculty petition, "*It certainly looks to me as though the reason for wanting to get rid of this instrument is more to do with the creation of meeting space and storage space than the condition of the instrument or the musical needs of the Parish*". However, in none of his communications did he make explanation why it would be better for this particular organ to remain in-situ rather than being relocated to a different church or building (other than his comments about leaving the façade in place but removing the remainder of the organ), as would clearly seem the intention of the petitioners. It is also clear that Mr Walker has not personally seen, inspected or played this particular organ, nor does he appear to have spoken with anyone who has seen, inspected or played the organ. Although parts of Mr Scott's report are quoted it is unclear whether by the time of his original objection he had seen the entire report or only some cherry-picked highlights. By his second email, however, he had been provided with a copy of Mr Scott's report by staff of the diocesan registry, for he chose to criticise Mr Scott's recommendations concerning the organ. It is also unclear whether Mr Walker was aware that the façade/organ case was added in 1924/1925, almost 50 years after the original installation of the organ (and nearly two decades after Binns made a number of changes to the Brindley and Foster organ).

### **Response from the Parish to Mr Walker's Objection**

10. Following receipt of Mr Walker's letter the Incumbent of St James was asked to respond. She chose first to understand where Mr Walker had obtained his information, so logged on to the Facebook organist community pages to which reference was made. She was somewhat disconcerted to note, as later too were members of the Diocesan Advisory Committee, that the elected representatives

of the Parish were being referred to in various derogatory terms by people who clearly had not seen the documentation in this matter and were reacting purely to reports about the disposal of this organ. Fortunately this is not the appropriate venue for expressing opinion or raising concern about accepting as correct matters reported on the internet or on social media.

11. In her response Revd Karen Young stated *‘I am attaching for you the Diocesan Advisory Committee organ adviser’s report, which describes the drawbacks of the organ design and its current condition. Our last organist retired in 1994 and the organ has not been maintained or restored since. It is tuned annually and the tuner was consulted about the costs of a full restoration’* (she then re-quoted an extract from the statement of needs). Thereafter Revd Young made the point that the organ case was a much later addition to the instrument and added *“The heritage of each is . . .entirely different. The design and quality of the case has intrinsic architectural merit and the PCC are very keen to keep in situ. To describe the separation of organ and case as ‘vandalism’ is unhelpful”*
  
12. Revd Young further stated *“I agree with Simon Walker that historic instruments and other church artefacts should be preserved where possible. Like many church leaders, I try to hold the balance between maintaining an historic building and creating a space which meets current worshipping needs. Inevitably this will meet with disapprobation from other interest groups with a different focus, such as the Facebook organist community to which Mr Walker refers. St James uses formal Eucharistic liturgy and favours a traditional but liberal style. We do not recognise the terms ‘Nuts’, ‘Dumwits’ or even ‘Evangelical loons’ as mentioned on the organists Facebook page. As a PCC, we rely on the Faculty system and DAC advice to ensure a sense of proportion in these matters!”*

#### **Further objection - British Institute of Organ Studies**

13. On 16<sup>th</sup> January 2019, also in response to social media commentary on the proposal, Andrew Hayden, on behalf of the BIOS, wrote to the incumbent of St James demanding of her what advice she had sought, whether the Church Buildings Council had been consulted and whether an independent report had been sought from, for example, the Association of Independent Organ Advisers, albeit the suggestion put was (again) that the organ was to be discarded. (Quaere - had the Parish simply sought to discard the organ then

why were they advertising it for sale?) Thereafter the letter states “*Though BIOS has not had the opportunity to inspect this organ, it would appear to be of a provenance and quality that might make it eligible for a historic restoration grant from the Church Buildings Council . . . (contact details for CBC Organs adviser were given) . . . From our knowledge of the work of Brindley & Foster of the time, their organs almost invariably belong in the category of instruments of historical and musical significance . . .*”

14. Following the matters mentioned above, the letter from BIOS becomes a formal objection to any proposal that would include the removal of the organ but the retention of the carved façade/case and the pipes contained therein. The letter specifically stated “*BIOS believes that the organ case framework and decoration is an integral part of the heritage significance of the instrument*” and requested that, if the Faculty for removal is granted, the Diocesan Chancellor “*make a proviso that the parish research and locate a suitable alternative home for the instrument, including the case. BIOS would wish to make formal objection to any faculty application that involved the breaking up of the original ensemble and the retention in the Church of just the façade of the instrument*”.
  
15. As with the objection from Mr Walker, it does not appear that BIOS had seen the report from Mr Scott, nor was the writer apparently aware of the history of the façade to this organ (the façade cannot, it seems to me, be accurately described as ‘part of the original ensemble’ of the organ). It is acknowledged that no-one on behalf of BIOS had seen, inspected or played the organ, nor - apparently - spoken with anyone who had seen, inspected or played the organ.

### **Parish response to objections from BIOS**

16. Once again Revd Karen Young was asked to respond to a written objection. She made the point that in the objections raised significant weight had been given to the NPOR entry for the organ, an entry that had not been updated since the 1959-1961 changes (thus missing entirely the various changes to the organ made in the 1980s). There is then a description of the liturgy and musical accompaniment enjoyed at St James, a Parish set in an area of ‘*significant deprivation and local poverty*’, with the objectors seemingly unconcerned that spending up to £100,000 to repair an unused organ would be entirely outside the financial means or impetus of the elected representatives of the parish. She

then explained the wish to retain the façade of the organ: *“The PCC wished to keep the organ case for its beauty and as an important part of the Church decoration. It was given in 1924 after a public fundraising campaign, in honour of a former organist. It is a fine piece of work in its own right and has a very different heritage from the organ itself. For more than a third of its existence, the organ had no case. Paint can be seen on some of the pipes now in the organ loft, where they were once the visible façade. The pipes of the case are decorative. For Mr Hayden to state that ‘they are the bass notes of some of the most important ranks of the instrument’ is quite extraordinary - and wrong. Tellingly the case is not mentioned in the NPOR entry, unlike the entries of other Churches. . . .Having taken appropriate expert advice from those who have inspected the instrument, the PCC thus felt justified in applying . . . for a faculty to remove the pipe organ and replace it with an electronic model. We were confident that we were not removing an important part of the church’s heritage . . .”*

17. As regards ‘disposal’ of the organ, Revd Young explained : *“The sole purpose in advertising the pipe organ on two internet sites was to ascertain whether there might be anyone interested in removing it for use elsewhere, should permission be granted. Two people have expressed an interest in removing the whole organ (without the case) for restoration and installation in a suitable Church . . .”*

### **Church Buildings Council**

18. Upon receipt of the papers in this matter I used my discretionary powers to formally request advice from Church Buildings Council (rules 9.7 and 9.8). I should state for the record how grateful I am to the representatives of Church Buildings Council for how swiftly they dealt with matters, arranging a formal viewing and inspection of the organ and preparing a concise but informative report on the organ in question and the proposal made by the Parish.
19. The Church Buildings Council report noted that the ‘fine organ case’ was in fact installed in 1925 by Herbert Read, who had already installed ‘fine carved chancel panelling and lady chapel screens and panelling from 1909 to 1912. The carved woodwork by Herbert Read, including the organ case, was described as making ‘a fine ensemble’.

20. As regards the organ itself, the following description was given:  
*“The organ contains the work of at least two organ builders, Brindley and Foster, 1878, and Binns, 1906. In 1986 the organ had some restoration work. At this date the pedal pneumatic action was retubed in modern materials and releathered. Some of the actions were restored and the original leather buttons replaced with plastic. A new concave pedal board has also been installed”*  
*“The organ is very definitely the work of two builders, and not a particularly good example of either the work of Foster and Andrews or of Binns. There are some attractive sounds in the organ but also some surprises. For example, the Swell is set back in a spacious organ chamber with poor tonal egress to the nave with no realistic access for tuning it. The Great has a fine Large Open Diapson and a rather less good second Diapson that is not well considered in the tonal scheme. Even with the nave clear of furniture, egress of sound around the building was not good, and it had a disappointing lack of clarity. As the instrument has not been in regular use for 25 years it will not be giving the best account of itself . . . . The Council did not consider the organ was of such significance that it would advise against its removal, but hoped it could be removed by an organ builder for further use.”*
21. Specifically about the proposal to remove the organ but to retain the case/façade the Church Buildings Council representatives stated:  
*“In this case the organ case makes both a distinctive and positive architectural contribution to the chancel and has a named carver whose work is represented throughout the chancel where it stands. For these reasons, specific to this church, the Council agreed that it would not object to the case remaining in the church were permission granted to remove the organ.”*  
*“The Council did not consider that this was a reason to make an exception to its policy that a pipe organ case was not an appropriate location for the speakers for the electronic organ. Likewise, it did not consider that the organ case was the right location for a digital organ console and strongly hoped that an arrangement would be made to keep it separate from the organ case.”*
22. The remainder of the Church Buildings Council report contains some justifiable criticism that the statement of significance and the statement of needs did not adequately address issues of importance to this faculty application. I do not believe it is necessary to repeat those matters here, but I have taken them all into consideration when reviewing this matter. I have,



however, the advantage of seeing the additional documentation/responses from Revd Karen Young that to an extent clarify a number of the significant issues.

### **The Relevant Legal Principles.**

23. I am informed - perhaps apocryphally - that several decades ago one Chancellor decreed that as organs “sing to heaven” no pipe organ should be removed from a church without exceptional reason. That is not the test I must apply. I must consider whether the proposed works will lead to an alteration in the appearance of a listed church having an impact on its character as a building of special architectural and historic interest. Therefore, in respect of each aspect of the work and overall I must ask myself a series of questions derived from *In re St Alkmund, Duffield [2013] Fam 158 (Arches Ct)* The questions to be asked in such circumstances (see paragraph 87 of the reported judgment) are as follows:-

(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 listing 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 rôle 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 I or II\* where serious harm should only exceptionally be allowed.

24. The *Duffield* questions have subsequently been considered on an appeal in the case of *Re St. John the Baptist, Penshurst (2015) 17 Ecc LJ 393 Court of*

*Arches*) where some guidance in how to interpret the *Duffield* questions was given at paragraph 22:

(a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church ... noting that there had been a material error in failing to identify what was the special character and historic interest of the church as a whole ... and then to consider whether there would be an overall adverse effect by reason of the proposed change.

(b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned.

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of 'need or necessity' .... it is not confined to needs strictly so-called.

(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.

25. The specific Architectural and/or historic significance of the Church is perhaps best considered by looking to the information given in the description of the listing for the building :-

*Commissioners' church in Early English style. 1830-1 by Peter Atkinson (Jnr.). New chancel and Lady Chapel added 1905. Dressed stone with ashlar dressings and buttresses. Slate roof. West tower with broach spire. 7-bay buttressed nave, 2 bay chancel and 3-bay later chancel. Steeply pitched south porch with similar baptistry to north. Plain lancets to nave and chancel. Paired arched windows to later chancel. 5-light untracied, stained glass east window. 2-tier square tower with clasping and angle buttresses. Heavily moulded doorway on south side. West lancet window. Clock to 3 elevations. Bell chamber has triple group of arched, louvred openings to each elevation. Hexagonal, stone broach spire, ribbed and with gargoyles.*

*Interior: Plain aisle-less nave. Heavily moulded arch to original chancel on clustered colonnettes, with very steeply pointed flanking arches. New chancel has well carved organ case to left with 4 carved angels. To right is Lady Chapel with stained glass of 1907 and 1912, and well carved parclose screen. Colourful reredos with well carved panelling to each side and carved canopied figures of St Paul and St Aidan. To rear of nave is First World War Memorial of carved oak panels.*

It is particularly of note in the circumstances of this petition that no mention is made of the organ but specific reference is made to the 'well carved organ case'.

**Will some or all of the works harm the character of the church as a building of special architectural and historic interest?**

26. In addressing this most important issue I am particularly assisted by the two expert reports that have been prepared, by the representatives of Church Buildings Council and by the Diocesan Advisory Committee organ adviser.

Will removal of the pipe organ harm the significance of the Church?

27. It is clear that the DAC Organ Adviser did not consider the existing pipe organ to be of particular historical or musical merit. He has seen, inspected and played the organ. The representatives of Church Buildings Council did not consider the existing pipe organ to be of particular historical or musical merit. They also had seen, inspected and played the organ. The assertions of both Mr Walker and Mr Hayden are each based upon supposition that the organ is of historical significance because it was made by Brindley and Foster, whose work is usually very fine. However, this particular organ was changed by Binns and later altered by an unnamed work in the 1980s. I am particularly assisted by the opinion expressed by the experts from Church Buildings Council, who took the time to visit the Church in order to assess the organ. Noting the absence of any mention of the organ in the historic listing of the Church, and the opinion expressed on behalf of Church Buildings Council, I conclude that removal of this pipe organ will not cause harm to the character of this building. However, I support the contention of both BIOS and Church Buildings Council that an alternative location for the pipe organ must be sought.

Should retention of the organ case following removal of the organ be permitted?

28. On this point I can be absolutely clear, to remove the organ casing/façade so that it can remain with other parts of the organ would cause substantial harm to the character of the church as a building of special architectural and historic interest. The organ case/façade is not a part of the original installation of the instrument. However, the organ case/façade does match very closely the other fine carved woodwork in this church and was commissioned of the same artist. The organ case/façade is specifically mentioned in the listing statement of this church. I am not convinced by the argument that to separate the organ

case/façade from the pipes and workings of this organ would amount to ‘vandalism’ or destruction of heritage. Once again, I must acknowledge my gratitude to the representatives of Church Buildings Council who took the time to visit this Church and consider the scheme. I support their contention that the organ case makes both a distinctive and positive architectural contribution to the chancel. Accordingly I reject the argument that removal of the organ should only be permitted if the organ case/façade is removed too.

### Summary of decision

28. To summarise - the conclusion that I have reached, based upon the written material before me, is that the proposed scheme does not cause harm to the significance of the church as a building of special architectural or historic interest. I have gone on to consider whether the status quo should be maintained. I am satisfied that the proposals and the alternatives have been discussed at length within the Parish, with the aim of providing the church with facilities suitable for a modern church community and within financial restraints faced by so many parishes. Albeit on this point - the creation of a vestry and storage space - the Church Buildings Council do not favour the Parish I have seen additional documents and argument beyond the statement of significance and the statement of needs. I conclude that this is a case where justification has been shown to why the status quo should not be maintained. Accordingly I find in favour of the Parish proposal to create a vestry with storage space above. To create the requested vestry it is inevitable that the pipes and workings of the organ be removed from what is currently referred to as the organ chamber.
  
29. Although, I recognise that the removal of any pipe organ is likely to raise strong opinions, I see no particular merit in retaining this particular organ in situ, where it will inevitably deteriorate further from lack of restoration. Equally its removal will be necessary to allow the proposed vestry and storage space to be constructed and I have found there is a good case for creation of that additional useful space. However, the permission to remove the pipe organ will be conditional upon the Parish seeking and finding a suitable recipient for this organ and that all works of removal must be supervised by a professional organ contractor.

- 30 Further permission was also sought for the introduction of an electronic organ and console, with the speakers located behind the current organ case/façade. I do find that the Parish has established a sufficient case for such permission to be granted. I do not ignore the comments made by those acting for the Church Buildings Council and would hope the Parish representatives will also have regard to the comments expressed about seeking an alternative location for the speakers. Permission will be granted for the faculty as requested with liberty to vary if the Parish representatives, in consultation with the Diocesan Advisory Committee organ adviser, devise a suitable alternative location for the speakers.
31. I direct the grant of the faculty as sought in the light of the reasons set out above. Several conditions will be applied to the faculty.

#### **Duration**

32. To permit the identification of a suitable new location for the organ and for the vestry construction works to be undertaken and completed the faculty will endure for a period of three (3) years from issue, with liberty to apply for an extension, should that be required.

#### **Costs**

33. The Parish shall pay the costs of this matter, subject to a separate costs judgment.

#### **Further directions**

34. The Petitioners have liberty to apply in writing for further directions as to implementation, if so required.

#### **Conditions to be applied to this faculty**

1. Relocation of the Organ:
  - i. The petitioners shall ensure the organ remains mentioned on the institute of British Organ Building's Reference of Pipe Organs Available for Relocation until an alternative home for the organ is identified.
  - ii. The parish is to actively pursue sourcing a new home to receive the organ as a working instrument.

iii. Prior to dismantling, confirmation of its relocation by faculty or other documents is to be provided to the Registrar

iv. All dismantling and reassembling is to be undertaken by professional organ contractors

2. Installation of electronic organ

The petitioners may install the proposed electronic organ with console and speakers as requested. Should the Parish representatives, in consultation with the Diocesan Advisory Committee organ adviser, devise a suitable alternative location for the speakers then liberty to seek variance of the faculty is given.

Glyn Samuel  
Deputy Chancellor  
29<sup>th</sup> March 2019.