



**Neutral Citation Number: [2020] ECC Oxf 6**

*Faculty – Large Grade I listed church – West Oxfordshire – Renovation of existing pipe organ – Addition of digital stops - Faculty granted*

**Application Ref: 2018-028862**

**IN THE CONSISTORY COURT**  
**OF THE DIOCESE OF OXFORD**

Date: 29 March 2020

**Before:**

**THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR**

**In the matter of:**

**ST MARY, BAMPTON PROPER**

**THE PETITION OF DOUGLAS CLARE, DR ROGER PRESTON (Churchwardens)  
and THE REVEREND JANICE COLLIER (Vicar)**

Determined on the papers and without a hearing

The following cases are referred to in the Judgment:

*Re St Alkmund, Duffield* [2013] Fam 158

*Re St. John, Out Ramcliffe* [2017] ECC Bla 11

*Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393

*Re Saint Mary's, Balham* [1978] 1 All ER 993  
*Re St. Nicholas Guisborough* [2018] ECC Yor 6  
*Re St Nicholas, Radford Semele* (2012) 14 Ecc LJ 457  
*Re St Nicholas, Warwick* (2010) 12 Ecc LJ 407  
*Re St Peter & St Paul, Aston Rowant* [2019] Oxf 3  
*Re St Peter, Shipton Bellinger* [2016] Fam 193

## JUDGMENT

1 This is an online faculty petition dated 3 February 2020 submitted by the vicar and churchwardens of this Grade I listed medieval church (extensively restored in 1868-1870) for Cousans Organs Ltd (**Cousans**) of Coalville to renovate, repair and update the church's existing pipe organ, to include the addition of digital stops, and to reintroduce the organ into the church in its previous position against the east wall of the south transept. Bampton is a small former market town and the church of St Mary, which was first listed on 12 September 1955, is one of the largest churches in West Oxfordshire (together with Burford and Witney).

2 In *Re St. John, Out Rawcliffe* [2017] ECC Bla 11 Chancellor Bullimore (in the Blackburn Consistory Court) noted (at paragraph 25) that “all applications for stained glass windows are in my view difficult, and often very sensitive”. The same can be said of faculty applications concerning pipe organs.

### Background facts

3 A helpful memorandum dated 3 February 2020 from Ms Liz Kitch, the Diocese of Oxford's highly experienced Senior Church Buildings Officer, summarises the “long and difficult history” of the present organ proposal. A faculty was already in place when Ms Kitch arrived in the Diocese in July 2016. This faculty permitted the restoration of the organ by Peter Collins Ltd. There would appear to have been no consultation with the Church Buildings Council (**CBC**) or the British Institute of Organ Studies (**BIOS**) over the works. The organ was removed from the church and works began but shortly after this Peter Collins sadly passed away and his firm went into administration. The organ was removed to Cousans for storage. Around this time a large number of complaints were received from members of the BIOS who had seen the works reported upon in the BIOS journal. The then Chancellor took the decision to set the faculty aside as the named contractor was no longer able to complete the work. This meant that the parish found themselves with the pipe organ in storage (incurring storage costs) but no contractor or faculty to undertake any works. A new contractor, Cousans, was found and the parish began to work with the Diocesan Advisory Committee (**DAC**) to obtain a new Notification of Advice (**NoA**) for the proposals. Initially these involved a like-for-like reproduction of the specification of works which had previously been granted faculty permission. However, the parish came to enjoy the enhanced flexibility of space within the south transept which had become available to them whilst the organ was in storage and so they began to explore ways in which this could be maintained following the future reintroduction of

the instrument. It was concluded that no other location in the church was suitable for the instrument and so the parish suggested the reintroduction of the organ to the south transept, but on a raised platform (or gallery) to enable them to make use of the space below. Initially, the DAC and the amenity societies all agreed to this proposal in principle. However, upon working with the organ builder, the architect and the structural engineer it became apparent that a structure sufficiently stable to support the restored instrument (itself a lot larger in order to increase its voice) would be much larger, and far more invasive to the historic fabric of the church, than had previously been thought. Again, alternative options were explored, including the disposal of the instrument, and its location elsewhere within the church at ground level. Due to the increased size of the instrument, this continued to create difficulties. However, it was established that the use of digital stops would mean that the instrument could be almost exactly the same size as it was when it was first removed – meaning that it could be reinstated in the south transept. The CBC and the BIOS have been extensively consulted during the development of the revised scheme, and neither are comfortable with the use of digital stops to create a hybrid instrument. A great deal of concern has, quite rightly, been directed at establishing what historic significance should be accorded to the parts of the organ which remained after Peter Collins had disposed of a good deal of the original instrument, and in relation to the philosophy and practicalities of a hybrid instrument. The parish appointed an independent organ advisor, Mr Paul Hale, to work with them in addressing these concerns. However, notwithstanding much discussion, some of these concerns still remain, and it would appear that little can be done to allay them. As far as Ms Kitch has been able to discern, every option to avoid the use of digital stops has been explored only to be discounted, with the church considering their use to be the only way of enabling the organ to be reintroduced into the church with, hopefully, sufficiently improved voice. Unusually, the DAC organ advisers were of the view that a totally electronic instrument would meet the musical needs of the parish, whilst releasing the former organ space for parish use. However, the parish are keen to retain their pipe organ. It is Ms Kitch's view that the parish have worked tirelessly to find a solution to the present problem and at each stage they have listened to the feedback given by the amenity societies and the DAC. As much information as possible has been provided on the remaining parts of the instrument, and the DAC have placed a proviso on their NoA requiring a full inventory of the existing pipework to be carried out, identifying each pipe, its condition, and its location in the new instrument.

4 The petitioners' **Statement of Needs** dated September 2018 explained that the organ at St Mary's church was made by William Gray in 1812. It was subsequently enlarged by Gray & Davison Ltd in 1870 and more recently it was repaired by J W Walker in 1991. It had a mechanical action and facilitated manual operation of its pedals and stops; it had no electrical action or, indeed, electrical supply. Since the organ had deteriorated somewhat over the years, renovation was authorised and removal for restoration was effected in 2016. The original Faculty, granted in July 2015, permitted the effectiveness of the instrument to be enhanced in order to improve its sound performance throughout the nave. St Mary's is a large and imposing church and it is a proven and effective place of worship with an average congregation of around eighty people in attendance, rising at times to three figures for its regular Sunday services. An organ is said to be symbolic of St Mary's church as the congregation enjoy a full choir led by the organist, Mr David New, as the choirmaster. The choir has a full octave range and is thoroughly supportive of church services, regularly singing community anthems with solo singers. The organ also accompanies suitable community-led concerts when they are performed in the church.

The temporary electronic organ which is in use while the main organ is being restored is said not to be in keeping with the ambience and medieval character of the building. The organ at St Mary's should have presence and possess an appropriate range of power to match the building's size and aisle layout. It should give appropriate musical support to the choir and generally enhance the look and character of a fine church building. When the future of the organ was originally reviewed by the Community Church Council (CCC) in 2011 four options were considered for the organ, namely: (1) Historic renovation of the existing organ instrument. (2) Electrification and enhancement of the existing organ instrument. (3) Purchase of a second-hand pipe organ instrument. (4) Purchase of an electronic organ instrument. In October 2015 the CCC determined to go ahead with the second of these four options.

5 In November 2018 Mr Paul Hale MA (Oxon), FRCO, ARCM, FGCM, FRSCM FRSA, an accredited member of the Association of Independent Organ Advisers, prepared a **Statement of Significance and Recommendations** as to how to proceed. This followed a site visit to the church on 23 October 2018 and a visit to inspect the pipes and casework at Cousans on 9 November. Mr Hale records that the organ at St Mary's church was made in around 1812 by William Gray (c.1757-1821); it was altered and modernised in around 1870 by Gray & Davison (the console was later remade); and it was partially restored in 1991, after a stonework fall, by J. W. Walker. The gilding on the case pipes dates from 1991, as do repairs to the Great pipes, which include some new pipes to replace damaged ones. The organ originally stood in a small chapel immediately to the west of the south transept, and then was moved to the south transept itself, standing against the east wall, at the north end, facing west. Mr Hale explained the background to the situation as it was in November 2018 as follows:

“The parish had long felt that the organ was so gentle in tone that it made insufficient impact in the nave. When the time for further restoration work arrived, advice was obtained from one of the two Oxford Diocesan Organ Advisers and the proposals of Peter Collins (organ-builder) were eventually accepted.

Collins noted that though much of the pipework was by Gray, the organ had been greatly altered over the decades, with odd chests and pieces of mechanism everywhere, with access so difficult as to be dangerous, and with the mechanisms (some original, reworked) functioning poorly. He noted that many pipes had been moved around, transposed and placed in different positions/stops from their apparent origin. Much of the very soft, thin pipework was in a fragile condition, and he considered it of ‘poor quality’ in the first place. The layout placed the swell box (added 1870) above the Great, where visually it ruined the appearance of the very fine original casework. Pedal pipes stood behind and also flanked the main soundboards, behind the side towers.

The advice, quoting and permissions process took from 2011 to 2015, when a Faculty was granted for the Collins scheme. This scheme was to make a new building frame and soundboards, to remake the Swell box, to plant both manual departments in such a manner to prevent the Swell box from being seen, to add open basses to the tenor C Swell stops, to provide additional manual stops (larger Mixtures and a Swell 16ft reed) to make the organ's flue and reed choruses more complete, to rescale small-scaled ranks larger (by cutting down pipes and introducing one, two or three additional pipes in the tenor), to fit direct electric action to the new soundboards and a detached console. As nowhere else had been found to situate the organ, it was to stay in the same position, though extending 0.8 metres further west and 0.5 metres further south.

The organ was dismantled in February 2016 and the casework and pipework was removed to the Melton Mowbray factory of Peter Collins Ltd. Work on the pipework began immediately, in line with the contract (cleaning, repairing, and the re-scaling of some ranks). Work ceased when the firm closed at the start of January 2017 following the untimely death of Peter Collins. The Bampton materials were removed to the workshops of Cousans Organs, in Coalville, whose Principal, Mr Ian Carter, had been in charge of the Collins team which dismantled the Bampton organ. The two senior Collins employees then moved to work for Cousans Organs, where they remain. One is a cabinet maker/organ-builder and the other is a pipe maker/voicer, both with many years' experience.

The Faculty lapsed and there was in any case criticism of the proposed scheme, from Church Care and from the British Institute of Organ Studies. They objected to the loss of the main structure of the organ and its actions and soundboards, felt it should be reconstructed as it had been, and queried whether Cousans organs were the best firm for the work; they noted that Cousans is not IBO accredited."

Mr Hale indicated that:

"The purpose of this paper is to establish what remains of the organ and in what condition those materials are. I have also been asked to address the question of whether the organ as it was can be re-created, whether the current scheme is wise and will achieve the desired ends, whether the purchase of a second-hand instrument might be recommended or whether the purchase of an entirely digital organ might be recommended."

As a preliminary to proposing any new scheme, Mr Hale recognised that:

"It needs to be accepted that 'we are where we are' – the old organ structure has gone and we are left with the (altered) pipes and the casework. The church needs to have a care for them but also to ensure that its organ adequately fulfils its role.

Were there no casework, but simply a collection of old pipes, I would recommend that the church seeks to find a worthy home for the pipes appropriately and either commissions an entirely new organ or seeks out an appropriate redundant organ. But this is not the position: the striking and beautiful case does indeed survive and has been for the whole of its life the dominant visual fitting in the church. It seems to me that the case must remain, and therefore, with it, its ranks of pipes.

However, this raises two questions: (1) what sort of organ can be sensitively made out of this material that will serve its purpose now and for many decades to come, and (2) where should the organ stand if it is not once again to block up the south transept and yet speak clearly down the nave? Let us look at the second point first ..."

Mr Hale's proposed solution was the creation of an organ gallery:

"... precisely above where the organ has been standing in the south transept, elevating the instrument above head-height. This would keep the floor space empty except for four load-bearing posts, which could be oak-clad to match the new kitchen woodwork close by, and the beautiful Mediæval stone tabernacle and piscina on the wall previously hidden by the organ would be left revealed, along with the vestry door."

6 This solution found favour with the amenity societies apart from Society for the Protection of Ancient Buildings (**SPAB**). In a letter dated 4 March 2019 Mr Richard Peats, an Inspector of Historic Buildings and Areas for Historic England, stated:

“Historic England is content with the principle of relocating the organ. In its previous position it obscured evidence of the use of the south transept as a chapel and being able to see the medieval features would be a positive move. An elevated position would also allow the organ to speak better and ensure that this area continued to be available for informal use by the congregation and the community.

While it is intended to reuse the organ case the way in which this is mounted need careful thought. An elegant frame will need to be designed to support it and the case will need to be modified as the keyboard will need to be removed and housed in a separate console. This requires the attention of a skilled architect and in the first instance I suggest that the quinquennial architect is consulted. Detailed plans and elevations are needed to move this project forward. I defer to the CBC and DAC organ advisor on the issue of whether the pipework or the existing organ should be retained or replaced as this issue is outside my area of expertise.”

In an email dated 6 September 2019 Mr Peats remained “of the view that the south transept remains the only suitable location for the organ”.

7 In a letter dated 21 March 2019 Mr David Knight of the CBC accepted that “an elevated position in the south transept was the only place that offered a possibility of a solution that would work architecturally and aurally”. His letter included the following:

“The Council was grateful to the church for the report on the organ from its accredited organ adviser, Paul Hale. This report is helpful as it provides a clear basis on which to consider the future of the instrument. The Council is pleased that the parish has shown commitment to continuing to use its pipe organ and its historic organ case, despite the significant architectural challenge that this presents.

The church has an organ case that dates to the work of William Gray, c.1812. The organ has been rebuilt several times since then, and includes work by Gray & Davison, 1870, along with some twentieth-century interventions. A project to rebuild the organ recently failed when the organ builder went into liquidation. As a result of this recent episode the church has only the case and pipework of its historic organ. All other elements are lost.

...

As so much of the historic character of the organ is lost the Council is content with the proposed new tonal scheme. It found that the report by Paul Hale did not make a strong case for the proposed digital pedal stops and noted that a good solution in pipes was available. It would strongly encourage an all-pipe solution without additional digital resources.”

8 In an email dated 2 September 2019 Dr Andrew Hayden, the Casework and Conservation Officer for the BIOS, stated:

“I spoke ... with David Knight and from the drawings sent it would appear that option 2 with the organ raised on a gallery in the south transept but facing west much as it did

originally is by far the best option. All others introduce various problems and, as indicated before, BIOS wouldn't countenance an electronic organ.

9 In letters dated 11 September and 14 October 2019 SPAB stated:

“... there is no question that the organ is very impressive and we fully support its restoration and bringing it back into this Grade I listed church”; and

“We fully support the repair and reinstatement of this magnificent instrument back into the church, and we appreciate that it will need to be repositioned.”

Nevertheless, SPAB opposed raising the organ in a gallery in the south transept on the ground that it would be expensive and would cause considerable harm to the south transept both visually and physically and would entail considerable archaeological works to allow the insertion of a frame strong enough to support the eight ton organ.

10 By 30 September 2019, however, Mr Hale had produced a revised scheme as follows:

“The organ will revert to its former floor position and be no deeper than proposed by the late Peter Collins, as approved in the original Faculty. To achieve this smaller footprint, there will need to be a few digital stops in place of what would otherwise have been the largest pipes. The stops are vital to the organ's success and there is now no room to use pipes for them. The loudspeaker cabinets will be located out of sight within the organ. Similar digital samples were recently used in the Diocese with notable success for two 32ft stops and the 16ft Open Wood at St Mary's, Maidenhead.

...

This is essentially the same specification as we had previously planned. It will fulfil the church's needs well.”

The footprint of the new organ was less than the old one as the console was now to be located “more usefully” towards the front of the south of the nave.

11 The reason for this new proposal was explained by Ms Kitch in an email to (amongst others) the amenity societies dated 1 November 2019 as follows:

“After many twists and turns in this project I felt it would be helpful to give an update on the current position, as things have moved on in the few months since I last consulted you all.

In March 2019 the DAC, Historic England, CBC and BIOS supported the principle of the organ restoration as specified by Cousans, for an entirely mechanical instrument, which it was suggested would be installed against the east wall of the south aisle elevated on a steel frame to enable the parish to utilise the open space of the south transept.

The parish then instructed the organ builder, architect and structural engineer to work together to develop the design of the platform. When this detailed design had been completed it was realised that the instrument as then specified would be considerably larger than the instrument which was removed (in order to address the instrument's lack of voice within the church), and the platform structure to support the elevated instrument would be more substantial, causing more harm to the south transept, both

visually and in the interventions required to historic fabric. It was established that there was no other location for the instrument in the church.

Unfortunately the responses received on the detailed proposal from the amenity and DAC were conflicted: BIOS confirmed they were content with the platform proposal. The CBC was also content with the platform proposal but expressed concern that a safe access platform was not included around the organ and that the proposals should be amended accordingly. HE were also supportive of the platform proposal, considering it the least harmful method of reintroducing the larger organ. SPAB felt the platform option harmful and had various questions about alternative options. The DAC considered the proposals in September 2019 and the minute is copied as below:

‘After lengthy discussion of each available option the DAC felt that, despite giving in principle support to the positioning of the organ on a platform within the south transept in March 2019, the practicalities of the worked up proposal now made this option unsupportable. The in principle support was offered on the basis of an indicative sketch design by the churchwarden and subsequent work by the structural engineer, architect and organ builder has concluded that in order for all the organ mechanism to fit within the case the platform would have to be substantially larger, with no room for an access platform around the case for safe maintenance. The DAC considered:

- The visual impact of the reintroduced organ and platform (positive and negative)
- The physical impact on fabric by the large platform which will require substantial support by the floor and east wall. A physical investigation into the fabric in these areas is intended to be undertaken under an interim faculty permission and calculations will be obtained from the structural engineer.
- The presence of ledgers in the floor in the locations of the structural columns of the platform.
- The useable space beneath the organ.
- The lack of an access galley around the lifted organ – the parish intention is to introduce tower scaffold each time maintenance is required.

It was considered that the benefit of lifting the organ to create flexible space in the transept may be marginal given how much the columns will foul the space and the sense of enclosure created by the organ above. The significant impact on historic fabric caused by the heavier organ and larger structure (requiring 25mm bolts at 300mm centres along the east wall of the transept, and two columns which are likely to require a footing) was felt to be disproportionate to the benefit provided, and it was noted that the archaeological investigations alone may cause unnecessary harm to the fabric of the church. The lack of safe working platform achievable around the lifted organ was a concern to both the DAC and CBC.’

The parish held a public meeting to consider the way forward, whether to press ahead with the introduction of the instrument on the platform or to abandon the project

completely and seek permission to dispose of the pipe organ parts and introduce an electronic instrument.

Andrew Townsend and I attended this meeting and the strength of feeling towards the pipe organ within the parish was in little doubt.

Douglas Clare, project lead for the parish, had contacted the organ builder prior to the public meeting to discuss an alternative way forward. The size of the organ could be reduced if a number of digital stops were used. This reduction in size means that the organ can be put back in the south transept, on the floor, without fouling the door to the chapel or requiring any monuments to be moved, or any invasive work to the fabric of the church to be undertaken.

The CCC have resolved to progress with this option and a revised specification for the instrument, and explanation of its dimensions, are attached. Although the DAC organ advisors and CBC have both previously stated that digital stops would not be supported here the alternative (the organ on the platform) is felt to be unsupportable by the DAC. All locations within the church have been considered, and the parish have responded to all advice and feedback given to them during the course of this scheme.

The attached proposal will therefore go back to DAC, I hope for the final time, on the 11th November, where I will recommend that it is supported. The scheme as revised, to simply refurbish the organ and reintroduce it to the church in the location from which it was removed without affecting the character of the church, would no longer require consultation with HE and SPAB under Schedule 2 of the FJ Rules. I would be grateful for the comments of BIOS and CBC ...”

12 As referred to in Ms Kitch’s email, at a meeting of the CCC on 3 October 2019 there had been discussion of the three organ project options, namely: (1) the current pipe organ mounted upon an elevated platform; (2) the purchase and installation of an electronic organ; and (3) the current pipe organ incorporating digital stops and thereby reduced in size and floor-mounted. It was recorded that the majority of those present, both from the congregation and the community, at a public organ review meeting held at the church on the previous Sunday (29 September 2019) had given their clear support for the pipe organ hybrid option. The CCC had proceeded to vote together on each of the three options under consideration through stated motions and unanimous agreement had been reached upon the third of the options.

13 At a meeting of the DAC held on 11 November 2019 they recommended for approval by the court the proposal to return the existing pipe organ to the church, renovated and updated, and with the addition of digital stops, in its previous position against the east wall of the south transept (subject to the condition that a full inventory of the existing pipes was to be carried out, identifying each pipe, its condition, and its location in the new instrument).

14 In a letter dated 14 November 2019 David Knight of the CBC wrote:

“The Council previously noted that organ case dates to the work of William Gray, c.1812. The organ has been rebuilt several times since then, and includes work by Gray & Davison, 1870, along with some twentieth-century interventions. The church now has only the case and pipework of its historic organ.

The Council understands that it is now proposed to return the organ to its original, ground level, site. It accepts that this has been found the most realistic location bearing in mind all the responses received to the proposed gallery location.

The organ case and the surviving pipes contain some material of historic significance. The Council renewed its request that a careful inventory is made of the surviving historic pipework noting its destination in the new organ, along with its origin.

Many of the technical details of the proposal were accepted by the Council in its earlier advice. Although the new location may make it possible to use a traditional mechanical action, the Council did not choose to reopen the advice previously given.

The Council continues to advise that it is not convinced of the proposed addition of the digital stops on the Swell and Pedal. It strongly encourages an all-pipe solution without additional digital resources. It noted that the new stops proposed were unlikely to add greatly to the volume of sound produced and that several of them were not likely to be present in a pipe organ based around the historic pipework that survives.”

15 Dr Andrew Hayden expressed the thoughts of the BIOS on the latest organ proposals in an email dated 15 November 2019 as follows:

“We are not aware that a concise inventory of the pipework has been taken. Without the evidence provided by such an inventory, the presumption must be that a significant corpus of late-Georgian pipework by William Gray survives, as well as the 1812 case and some later ranks by G&D (1870). All this material, and the case, is potentially of historic importance. Our advice is that the surviving pipework should be allowed to dictate the musical style and physical scale of the to-be-reconstructed organ. Any additions must be in sympathy with the character of the earlier work, and it is therefore not appropriate in this instance to include digital registers which will not blend with the historic pipework. The provision of a small Pedal division using appropriately-scaled pipes will give the flexibility that the instrument needs to accompany today's liturgy.

I should add that there was surprise expressed that the Open Wood pedal stop didn't appear to feature in the proposal. Opinion received from J W Walker & Sons who had care of the organ back in the 1990's, was that it was a fine set of pipes and worthy of preservation.”

16 In response, Mr Hale prepared a **Further Advice** dated 6 January 2020 addressing: (1) the current and future needs of the church; (2) the position of the organ within the church; and (3) the historic pipework as follows:

“The church's needs

St Mary's needs an organ which can speak clearly and relatively boldly into the church, with enough stops at all pitches (low to high) to provide sufficient fullness, richness and brightness to lead congregational singing. It also needs sufficient softer stops for accompanying the church choir, and certain additional stops to enable it to play a reasonable amount of solo organ repertoire, for service and concert use. An additional benefit would be for the organ to be suitable for use as a teaching instrument, for without engaging youngsters with the organ, there will be no church organists in the future.

In designing a tonal scheme which embraces the above we face two challenges: (1) the old organ was well-known for being particularly ineffective in the church, which is why this rebuild was contemplated in the first place, (2) much of the old pipework is so small-scaled and gentle in tone that it cannot be made to 'speak' any louder, and in any case it is of sufficient historic significance that its voicing should not be altered.

### Position

It has been decided that the organ will be placed on the floor of the South transept where it was before, rather than being elevated on a gallery. Had it been on a gallery it could have taken up a greater area and thus could have had more ranks of pipes than its original position allowed, sufficient for a suitable specification. Standing on the floor impedes its tonal egress, which means that the organ basically has to be louder. The only way to achieve that, given the soft tone of the old pipes, is by supplying sufficient additional stops to energise the church with sound. However, given its constricted position, there is insufficient space for the addition of the stops necessary to add both brilliance at the top and sonority at the bottom. Small pipes (those that provide various levels of brightness/brilliance) can be added as they take up little space, but there is no room for the large pedal pipes to provide the richer sonorities; this includes the old 16ft Open Wood pipes which cannot be fitted into the space once the manual departments have been suitably enlarged and an improved swell box installed. The only way, therefore, to provide these rich lower pitches, is by using digital recordings of a suitable selection of such stops from other organs. Each 'sound card' in this system will have multiple examples of each of these stops, that which blends best with the rest of the organ being selected during the tonal finishing and then regulated note by note, just as will be done with the pipes. Without these deeper, richer pitches the organ will sound top-heavy and lacking in sonority – it will not be fit for purpose.

### Historic Pipes

The organ is based, as is well known, on some fourteen ranks of pipes dating from c.1812 and c.1870. These are, in themselves, of value in the history of the British organ, especially the earlier pipes – the work of William Gray (c.1757-1821). Their conservation and careful re-use has always been at the heart of this project, though the project aroused considerable controversy in the first place, when the original organ-builder, the late Peter Collins, scrapped the rest of the inside of the instrument. Although this still rankles in several quarters, it is a fait accompli which should not influence what happens now. Cool, calm logic is required. These old ranks of pipes have suffered much over the years, and have had odd replacement pipes inserted, have been re-voiced, re-pitched, moved around, cut down and fitted with tuning slides. The relative scaling of the ranks displays really small-scaled 8ft and 4ft stops with a gentle, singing tone – a sound which at close quarters is charming but has little of the inherent power required to project out of the transept, across the south aisle and into the nave. That is why additional stops at all pitches are necessary.

...

All this can be improved, but the retention of the old pipes can be on only historic grounds rather than design-led principles, for any new organ designed for such a position in this church would be differently scaled and boldly voiced. An inventory is planned of

all the old pipes, so that they are fully recorded. The wind pressure of the new organ will be set at the level at which the old pipes speak best, probably around 70mm, which is lower than an all-new organ might have had, with a consequential lesser power level, pipe for pipe.

#### Accomplishing the desired result

Accomplishing the desired result whilst (a) cherishing the old pipes, and (b) coping with the organ being on a restricted floor area in the south transept is a challenge, but it can be managed and must be managed, because pre-eminence should surely be the needs and reasonable aspirations of the church. If an organ based on the old pipes with only a few additions and no digital bass stops proves unfit for purpose, no-one benefits, but if the historic pipework is augmented by sufficient additional well-matched pipes plus digitally reproduced bass pipes, the project will be a success and the old pipes will not suffer in the slightest.

It is proposed to add ten ranks of pipes (approximately 560 pipes) to the existing c.770, almost all being ‘chorus-work’ to enhance and complete the original pipes, at much the same volume, pipe for pipe. The organ will gain in output, richness and brightness through having many more pipes. These small pipes need balancing by some large bass pipes, and here is the problem, for there is no room for them. As has been stated above, the organ would sound thin and ‘top heavy’ without these bass stops, so it is proposed to add six digitally sampled stops to the Pedal and one to the Swell. This would be the equivalent of 236 pipes, 180 of them on the Pedal, where they will be heard in single notes under combinations of manual pipes. The one manual stop (the Swell 16ft reed) will also be used beneath other stops, as it is the key element (currently missing in this organ) of the ‘Full Swell’ and as the only manual 16ft stop in the tutti.

More by accident than design I have over the past twenty-five years been involved with several organs enhanced by digital stops. Though never the ideal – only real pipes are that – occasionally they are deemed a necessity, and when they are, value judgements against their use should not stand in the way lest the organ fails to be fit for purpose. My experience makes me confident that perfectly acceptable and well-matched sample stops can be selected and balanced, note by note, to the pipes. The hardware/software for such stops is not inherently different to the computerised note-switching system and stop combination mechanism which a pipe organ such as this will contain, so it should last just as long. If a loudspeaker cone fails after twenty years or so, it is a small matter to replace it (four screws and two wires), a task which can easily be carried out by the pipe organ tuner, so it should not be thought that the digital stops will fail before the other electrical elements of the organ. They will of course need to be made to the same high standard as the rest of the installation.

#### Pragmatism rather than purism

No organ is made without compromise of one sort or another. Here, we should celebrate the retention of as much of the historic pipework as can be used (the huge 16ft open wooden pipes will have to find another home), we should rejoice in the retention and restoration of the magnificent casework, we can be relieved that the organ will take up much the same floor space as before, and we can be pleased that despite that limitation, room has been found for 560 additional pipes. The only compromise is that

some bass stops will be provided by digital recordings of pipes rather than the pipes themselves.

Surely that is a reasonable outcome for such a challenging project?”

17 In a later email Mr Hale provided Ms Kitch with details of some precedents with a view to demonstrating:

“... that pipe organs with some digital bass stops are being installed with DAC approval in parish churches around the country and are proving successful. All these are for the same reason – lack of space for large pipes, not a desire to have a larger organ than the building really merits.

I know of: Barcheston St Martin (Coventry Diocese), Market Deeping St Guthlac (Lincoln), Maidenhead St Mary (Oxford!), Market Bosworth (Leicester), Potters Bar (St Albans), Wolverhampton St Peter (Lichfield), Southwell Cathedral, Birmingham Cathedral, for a start. All of these have modest digital additions to a body of old pipework, so there is no question of the digital stops being aurally incompatible.”

Mr Hale supplied a copy of his Further Advice, outlining his current thinking, to Dr Hayden under cover of an email in which he added:

“The vintage pipes are taken extremely seriously and are at this moment in process of being catalogued and photographed, following conservation. They will be used without alteration to the voicing or wind pressure (which, as found, was around 75-80mm). The challenge is that all the 8fts and 4fts are really small scale – rather ‘chamber organ like’ and not at all suitable for energising this building with organ sound. Hence the need to add Mixtures etc to build up the choruses and get some sound down the nave.

Unfortunately, the position of the organ (now it has to go back on the floor again, between a pillar and the vestry door) leaves no room for bass pipes other than the original Bourdon, so to balance the upperwork necessarily added to make more of an impact in the church (a huge challenge here) the only way to provide more 16fts and other Pedal stops is with digital samples. So they remain in the spec. Without them the organ will be top-heavy and lacking in sonority. Had my idea of a gallery position found favour with the DAC (it did with the church), all would have been pipes. A shame – but the organ must be musically fit for purpose and I can think of no other way to achieve this, try as I might.

Please would you kindly read my paper (attached), which will be submitted to the Chancellor along with all correspondence from Church Care and from BIOS; it will be his decision whether or not to support the DAC’s recommendation to grant a Faculty; it’s not going back to the DAC. I have written a similar email to David Knight so that he is aware of where things stand. Do please call me if you’d like to discuss.”

18 Dr Hayden’s email response reads:

“I have taken the liberty of consulting other colleagues including Nicholas Thistlethwaite and John Rowntree. I have also written to Sebastian Meakin regarding the state of the organ immediately prior to and post the Walker refurbishment. This alone has given food for thought.

I regret that all this has not altered BIOS's stance about this instrument and it is our plea, collectively, that, even at this very late hour, this instrument's integrity and historicity is respected and that it doesn't just become another vehicle for parochial ambition. My greatest fear personally, is what will happen if the scheme is a failure and does not deliver what is promised. I note, in passing, that there was support from David Clark for the acquisition of a suitable redundant organ (e-mail David Clark to Liz Kitch 14/12/18).

Attached is your paper annotated by me and by John Rowntree which I hope can be opened for reading."

Amongst other points, the accompanying paper expresses the concern that to grant this faculty application would set an alarming precedent. It is said to be strongly reminiscent of Victorian attitudes to old instruments and the wholesale rebuilding which took place, often regardless of an organ's intrinsic value and its place in the national musical heritage, in attempting to make it "fit for purpose" and a vehicle for parochial ambition. It concludes by posing the question: "What happens if this reconstruction fails to live up to what is promised?"

19 In an email to Ms Kitch Mr Hale says that nothing Dr Hayden has said:

"... changes my mind, and to some extent I think BIOS shoot themselves in the foot when he writes that he hopes 'that it doesn't just become another vehicle for parochial ambition'. Parochial ambition [to meet defined needs] is precisely what should drive such projects, surely, as long as due respect is being given to historical materials – which in this case it currently is. And what's the alternative? Something far worse in BIOS eyes – a digital organ, with the historic pipes and that glorious casework looking (probably in vain) for a new home. Oddly, they seem conveniently to forget what the consequences of their intransigence would be, were their views to prevail."

20 An email to Ms Kitch from the lead petitioner dated 24 January 2020 states:

"In conversation with our accredited organ consultant Paul Hale I am advised that we have submitted the required information requested by BIOS and CBC that reveals the degree of originality retained in the organ restoration scheme.

The organ pipes have been identified and noted and records sent as photos to you to indicate the origins of individual pipes when practical. The outer casing is being retained with its finish refurbished and the visible organ pipes will be re-gilded to ensure the visible integrity of the organ is also maintained.

The degree of use of electronic stops has been kept to a practical minimum in order to retain the previous overall physical size of the now enhanced specification pipe organ in its unique location.

No increase in the overall size of the floor mounted organ is possible due to the restrictions of floor space, given its only possible location on the east wall of the south transept. These restrictions are the proximity of the Horde Chapel door in the east wall and the traditional access gate used by the choir for entry and exit to the choir stalls in the chancel.

The replacement of the bass sound reproduction boxes by electronic stops for example was vital to secure the sizing of the organ to meet the restrictions of the only practical

space available in the church. There is no other solution if this splendid pipe organ is to be re-installed at St Mary's.

I hope that the practical working solution we have submitted can be accepted by the historical traditional bodies concerned as a necessary compromise which gives the church a splendid restored organ retaining many of the components of the 'old' organ and providing our patient congregation with a sound accompaniment they will be proud of.

I look forward to a pragmatic decision to approve the restoration and bring to a satisfactory conclusion what has been a four year journey."

21 Both the CBC and the BIOS were approached to see whether they would wish to become a party opponent to the faculty proceedings. By email dated 17 March 2020 the BIOS stated that they did not wish to become a party opponent but they would wish their letter of 15 November 2019 to be treated as a formal objection. By email dated 18 March 2020 the CBC stated that they did not want to become a formal objector to the proceedings but were content for their advice to be taken into account by the Chancellor when he considered the petition. In reaching its decision on this faculty application, the court has taken full account of all that has been said by the CBC and the BIOS by way of objection to the petition and also the comments on their observations received from the petitioners. Since no interested person has become a party opponent to these faculty proceedings, the court proceeds without a hearing.

#### The proper approach

22 Since the church of St Mary, Bampton Proper is a Grade I listed building, this faculty application falls, in the first instance, to be addressed by reference to the series of questions identified by the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158 at paragraph 87 (as affirmed and clarified by that Court's later decisions in the cases of *Re St John the Baptist, Penshurst* (2015) 17 Ecc LJ 393 at paragraph 22 and *Re St Peter, Shipton Bellinger* [2016] Fam 193 at paragraph 39). These questions are:

- (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 not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?
- (3) If there would be harm to the significance of the church as a building of special architectural or historic interest, how serious would that harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) In the light of the 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?

23 The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the listed church as a whole and whether this would be adversely affected overall by the proposed works. The court needs to consider whether the proposed works will adversely affect the appearance, the character, and the setting of this Grade

I listed church, not in the abstract, but rather as “a building of special architectural or historic interest”. When considering the last of the *Duffield* questions, the court has to bear in mind that the more serious the harm, the greater the level of benefit that will be required before the proposed works can be permitted; and that serious harm to a church listed as Grade I or Grade II\* should only be permitted in exceptional cases. As this court recently observed in the case of *Re St Peter & St Paul, Aston Rowant* [2019] Oxf 3 (at paragraph 7), when applying the *Duffield* guidelines, the court has to consider whether the same, or substantially the same, benefit could be obtained from other works which would cause less harm to the character and special significance of the church building. If, because the intended benefit could be obtained from other, less harmful, works, the degree of harm to the special significance of the church building which would flow from the proposed works is not necessary to achieve the desired benefit, then that is highly relevant. In such circumstances, it may be unlikely that the petitioners could be said to have shown a clear and convincing justification for proposals which would, on this hypothesis, cause more harm than is necessary to achieve the desired benefit. At all stages when applying the *Duffield* guidelines, the court should bear firmly in mind that the desirability of preserving the listed church building, its setting, and all the features of special architectural or historic interest which it possesses, is a consideration of considerable importance and weight. The court has directed itself by reference to these expanded guidelines, which it has borne very much in mind. Naturally, the court had also paid due regard, as it is enjoined to do by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*, to the role of the church as a local centre of worship and mission.

24 Having identified the *Duffield* guidelines, and reviewed how they should be applied in practice, the court must go on to address any additional factors that may be relevant to the present faculty application. A comprehensive analysis of the issues raised by faculty applications involving the replacement of church organs is to be found in the decision of Chancellor Eyre (in the Coventry Consistory Court) in *Re St Nicholas, Warwick* (2010) 12 Ecc LJ 407 which concerned a faculty for the removal of the church’s existing pipe organ and its replacement with a hybrid/combination organ. It was common ground that: (1) the old organ was of very poor quality and in need of replacement and (2) a replacement pipe organ would be the ideal. Nevertheless, the petitioners submitted that the expense of a replacement pipe organ would not be an appropriate use of limited parish funds and resources and that the proposed hybrid/combination (part pipe, part digital) organ was a good balance between quality and resources. The DAC and the CBC both expressed strong reservations about the new and relatively untested technology of hybrid/combination organs and both preferred the option of a replacement pipe organ. The Chancellor held that there was a presumption that a pipe organ would be replaced with another pipe organ and that the burden lay on the petitioners to rebut that presumption. He emphasised that the petitioners had based their decision to seek a faculty for replacement with a hybrid/combination organ on a rational and considered assessment of the merits of the respective organs. The faculty was granted. Given the element of risk in using this relatively untested technology the Chancellor imposed a condition that the petitioners should commission an independent expert to report upon the performance of the new technology 12 months after its installation, in order that others might learn from the success or failure of the experiment.

25 Having summarised the relevant case law, at paragraph 19 Chancellor Eyre concluded:

“... that in petitions seeking to replace 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.”

In permitting the introduction of the combination organ, at paragraph 40 the Chancellor emphasised

“... the very particular circumstances of this case in that all involved were agreed that it was appropriate to replace the current organ rather than to attempt its restoration and where the parish had reached its conclusion as to the preferred course after a lengthy balanced and detailed investigation. It is those particular circumstances which have enabled me on balance to conclude that the presumption against removal of a pipe organ has been displaced and that the expectation that a pipe organ will be replaced by a pipe organ has also been displaced.”

26 In *Re St Nicholas, Radford Semele* (2012) 14 Ecc LJ 457 the church had been destroyed by fire in 2008. A faculty had been granted for its reconstruction and those works were ready to commence. One of the two outstanding matters concerned the proposal to install a digital organ. Chancellor Eyre (in the Coventry Consistory Court) referred to his earlier judgment in *Re St Nicholas, Warwick* in which he had held that those seeking to replace an existing pipe organ with something other than another pipe organ had to discharge a heavy burden, there being a presumption in favour of replacing pipe organs with pipe organs. This was still the case even where, as in the present case, the previous pipe organ had been destroyed, as the presumption in favour of pipe organs resulted from the musical quality and longevity of such instruments. The petitioners' argument that a digital organ would cost less in terms of both capital outlay and maintenance carried little weight. Over time pipe organs were better value for money than organs with a more limited lifespan and the court would not be sympathetic to arguments that it was justifiable to install something of lesser quality simply because it was cheaper. The court also discounted an argument that a digital organ was easier to play by a non-expert organist. Although the case was borderline, the following factors resulted in the court concluding that it was appropriate to authorise the installation of a digital organ: First, the PCC had given serious consideration to the issues relevant to the type of instrument they wished to install. This was a necessary, but not a sufficient, condition. Second, and more significantly, installing a pipe organ would have an adverse impact on space and openness, which were significant features of the

reconstructed church. The intention of creating an open and flexible building would be hindered if a pipe organ were installed and the parish would not enjoy the full benefits that would otherwise flow from the reconstruction. On balance, enabling the parish to enjoy those benefits was judged to be a sufficient reason for permitting the installation of a digital organ.

27 In *Re St. Nicholas Guisborough* [2018] ECC Yor 6 the petitioners proposed permanently to retain a Hauptwerk digital organ (belonging to Wakefield Cathedral), which had been introduced into the church under an archdeacon's licence for temporary minor re-ordering. The church already had a faculty in place for the removal and disposal of the pipe organ, with the proviso that it should have a suitable option for its replacement. Although the DAC did not recommend the proposal, Chancellor Collier QC (in the York Consistory Court) granted a faculty.

28 At paragraphs 26 and 27 Chancellor Collier QC noted that:

“Canon B20 is the canon that deals with ‘the musicians and music of the Church’. It provides for the appointment and termination of appointment of any organist, choirmaster (by whatever name called) or director of music; for the minister paying heed to their advice whilst having final responsibility for the choice of music; and for the appropriateness of all music chosen and performed. However there is no canonical requirement either that there be an organ in each church or more particularly that there be a pipe organ.

Customarily pipe organs have been the usual means of providing a lead and accompaniment to choral and congregational singing in church. But at some times and in some places other means have been used.”

At paragraph 28 Chancellor Collier QC noted the warning to be found at page 114 of *Newsom's Faculty Jurisdiction of the Church of England*:

"Chancellors who happen to know about organs or music should be aware of the insidious temptation to substitute their own opinions for those of the witnesses. Thus in *Re Saint Mary's, Balham* {[1978] 1 All ER 993} Garth More Ch said {at 997}: ‘Even though I am not completely ignorant of such matters, I know enough to know my own limitations.’ As in any other case, the decision should be made upon the evidence adduced. Conversely, a Chancellor who is not, of his own knowledge, equipped to form a personal opinion, should remember that it is not he, but the congregation, who will have to live with the organ in question, whether it be a new instrument or an old one undergoing repairs. It is not for the court, as such, to have a policy about organs, save to ensure that the best is done for the church and for the congregation.”

29 At paragraphs 33 to 35 the Chancellor referred to the recent analysis of the issues involved in relation to faculties concerning the replacing of organs to be found in the judgment of Chancellor Eyre in *Re St Nicholas, Warwick*. The starting point was said to be that the current organ was not fit for purpose. At paragraphs 37 and 38 the Chancellor said this:

“The next step is that there is no principle of law requiring that it be replaced like for like with a pipe-organ. However, there is a presumption that the starting point should be to replace a pipe-organ with a pipe-organ but that that is a presumption that can be rebutted.

If they are to rebut the presumption the petitioners will need not only to give an account of the ‘wishes, needs, and resources of the parish in question’ but will also need to show that they have considered the merits and demerits of any alternative proposals, including those suggested by the DAC, and taking account of the comparative costs involved. In particular they will need to show that their preference for an alternative to a traditional pipe-organ follows careful and reasoned consideration after detailed and informed research. In just the same way the Chancellor must have regard to the advice of the DAC but is not bound to accept it if there are good reasons for not doing so.”

At paragraphs 44 to 45 Chancellor Collier QC noted:

“... that when they came across the possibility of installing the Hauptwerk, they carried out widespread consultations including giving people the opportunity to see and hear it in operation. One particular open meeting was attended amongst others by Robert Webb a former organ scholar from the Church and by Steve Maltby the RSCM Area Officer. I am told and have no reason to doubt that ‘the verdict from these people as well as all who attended and those who have subsequently heard the organ both in regular worship and also during the many church funerals and weddings we hold, has been that the sound is vastly superior to our current pipe organ and they would like to see it installed permanently’.

Of course that is not the test, but it is indicative that both the public and some locals with significant and relevant experience support the proposal.”

At paragraph 46 the Chancellor said that he was satisfied that the petitioners had discharged the burden upon them of displacing the presumption that the existing Harrison and Harrison organ should be replaced with another pipe-organ. He was satisfied that they had considered the merits and demerits of alternatives to their preferred Hauptwerk solution, particularly the relative costs, and that their proposal was in all the circumstances a reasonable one in terms of their wishes, needs and resources. They had made out their case.

30 From these authorities the court derives the following propositions by way of non-exhaustive guidance when considering the issues raised by a faculty application involving the replacement of an existing church organ:

(1) Although not a principle of law, there is an expectation, amounting to a presumption, that the appropriate replacement for a pipe organ is another pipe organ and the burden lies on those who seek 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.

(2) That is still the case even where a previous pipe organ has been removed or destroyed as the presumption in favour of a pipe organ results from the musical quality and longevity of such instruments.

(3) Arguments that a digital organ will cost less in terms of either capital outlay or maintenance may carry little weight. Over time, pipe organs are better value for money than organs with a more limited lifespan and the court will not be sympathetic to arguments that it is justifiable to install something of lesser quality simply because it is cheaper.

(4) The court is also likely to discount arguments that a digital organ is easier to play by a non-expert organist on the footing that the church should be taking steps to find, nurture, and encourage future new organists.

(5) In deciding whether the burden has been discharged, account will need to be taken of: (a) the wishes, needs, and resources of the parish in question; (b) the comparative costs involved; (c) the merits and demerits of the proposed alternative; (d) the scope for other solutions; and (e) 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 lengthy, balanced, detailed, and informed investigation and 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 an existing pipe organ with another pipe organ.

(6) It is not the court, but the congregation, who will have to live with the organ in question, whether it be a new instrument or an old one undergoing renovation and repairs. It is not for the court, as such, to have a policy about organs, save to ensure that the best is done for the church and their congregation having due regard (as the court is enjoined to do by s.35 of the *Ecclesiastical Jurisdiction & Care of Churches Measure 2018*) to the role of the church as a local centre of worship and mission.

(7) The Chancellor must have regard to the advice of the DAC but is not bound to accept it if there are good reasons for not doing so.

31 In the instant case, the petitioners are not seeking to replace an existing pipe organ with a digital organ but rather the re-introduction of the church's historic pipe organ renovated, repaired and updated, with some of the bass stops being provided by digital recordings of pipes rather than the pipes themselves. Subject to appropriate modifications, the above propositions would seem to the court to apply to this slightly different factual scenario. There is a burden on the petitioners to justify the introduction of digital stops on a traditional pipe organ; and this burden is one which is not lightly discharged.

#### Findings, decision and reasons

32 The first of the *Duffield* questions cannot be answered without first considering the special architectural and historic interest of the listed church as a whole and whether this would be adversely affected overall by the proposed works. The historic church organ is not referred to in the statutory listing particulars for St Mary's. However, the relevant part of the entry at p 100 of *Pevsner's Buildings of England: Oxfordshire: North and West* (2017 edn by Alan Brooks and Jennifer Sherwood) reads:

“ORGAN CASE of 1812, by John Gray of London, altered c. 1870. Grandiose Gothic style, with ogee-arched centre and crocketed side pinnacles. (Foot-note: It hides another medieval stone reredos, with image niches.)”

The historic organ case and the surviving pipes are clearly features of historical significance for this Grade I listed medieval church.

33 Normally, any special considerations raised by a faculty application affecting an existing church organ will fall to be addressed in the course of applying the *Duffield* guidelines in the usual way. The present case is unusual in that the church's historic pipe organ has already been lawfully dismantled and removed from the church pursuant to an earlier faculty (now set aside) so that it no longer strictly forms part of the fabric of the church building. In the present case, however, the church still retains the historic organ case and pipework; and the proposal the court is required to consider is the renovation, repair and updating of the church's historic pipe organ and its reintroduction into the church in its previous position against the east wall of the south transept. None of this will result in any harm to the significance of the church as a building of special architectural or historic interest (as the DAC rightly recognised in their NoA). Rather, it will enhance that significance. Since, in large part, the proposal merely seeks to restore the position to what it was before the removal of the organ for restoration in 2016, the presumption against change is not meaningfully engaged. None of the amenity societies and consultees objects to this part of the proposal, which has been recommended for approval by the DAC. The only controversial feature of the proposal (described by Mr Hale as a "compromise") is that some of the bass stops will be provided by digital recordings of pipes rather than the pipes themselves. The existing historic organ case and pipework, and what Dr Hayden has succinctly characterised as the "instrument's integrity and historicity", are clearly of significance to this church as a building of special architectural or historic interest. The court considers that the addition of digital stops to the church's historic pipe organ will cause harm to that significance. Since much of the magnificent casework and the historic pipework of the historic organ will be retained and restored, and in the light of the evidence of Mr Hale, the court assesses such harm as moderate.

34 The court must therefore ask itself: (1) How clear and convincing is the justification for carrying out the proposals? (2) Will any resulting public benefit outweigh the moderate harm that will result from the addition of digital stops? In addressing those questions the court must have regard to the guidance set out at paragraph 30 above.

35 The court has already provided a detailed summary of the conflicting evidence. On the one hand, the CBC continues not to be:

"... convinced of the proposed addition of the digital stops on the Swell and Pedal. It strongly encourages an all-pipe solution without additional digital resources. It noted that the new stops proposed were unlikely to add greatly to the volume of sound produced and that several of them were not likely to be present in a pipe organ based around the historic pipework that survives."

The BIOS's advice continues to be:

"... that the surviving pipework should be allowed to dictate the musical style and physical scale of the to-be-reconstructed organ. Any additions must be in sympathy with the character of the earlier work, and it is therefore not appropriate in this instance to include digital registers which will not blend with the historic pipework. The provision of a small Pedal division using appropriately-scaled pipes will give the flexibility that the instrument needs to accompany today's liturgy."

On the other hand Mr Hale points to the fact that:

“... the organ must be musically fit for purpose and I can think of no other way to achieve this, try as I might”.

In reliance upon Mr Hale’s advice, the lead petitioner urges that:

“The replacement of the bass sound reproduction boxes by electronic stops for example was vital to secure the sizing of the organ to meet the restrictions of the only practical space available in the church. There is no other solution if this splendid pipe organ is to be re-installed at St Mary’s.”

The lead petitioner expresses the

“... hope that the practical working solution we have submitted can be accepted by the historical traditional bodies concerned as a necessary compromise which gives the church a splendid restored organ retaining many of the components of the ‘old’ organ and providing our patient congregation with a sound accompaniment they will be proud of.”

He looks forward

“... to a pragmatic decision to approve the restoration and bring to a satisfactory conclusion what has been a four year journey.”

Mr Hale asks:

“What’s the alternative? Something far worse in BIOS eyes – a digital organ, with the historic pipes and that glorious casework looking (probably in vain) for a new home. Oddly, they seem conveniently to forget what the consequences of their intransigence would be, were their views to prevail.”

36 The court recognises that one “side” or the other will be disappointed by the outcome of this “unopposed”, but nevertheless contentious, faculty application because it is clearly impossible to reconcile the conflicting positions of the petitioners and the objectors; there is no “half-way house”: the court must either grant or dismiss the application for a faculty. But one thing is clear: despite the expressed concerns of the BIOS, the outcome of this faculty application will not set any “precedent” for future cases, whether “alarming” or otherwise. Whilst the general guidelines the court has formulated may be of some assistance in future cases, the court’s actual decision will turn entirely on the evidence and also upon the court’s qualitative evaluation of that evidence.

37 Notwithstanding the reasoned objections expressed by the CBC and the BIOS, the court prefers the evidence and representations in support of the petition from the petitioners and their expert organ adviser. Whilst not bound to do so, the court accepts the recommendation of the DAC to approve the proposal. The court is satisfied that the petitioners have demonstrated a clear and convincing justification for the proposal, including the addition of digital stops in the renovated and restored historic pipe organ; and they have also demonstrated that the resulting public benefit will outweigh the moderate harm that will result from their addition. The court is also satisfied that there is no satisfactory alternative proposal realistically available: there is no scope for some other solution. On the evidence, and in the circumstances of this case, the petitioners have shown that the digital stops are required to secure the sizing of the organ needed to meet the restrictions of the only practical space available to accommodate it within the church and to render the organ “musically fit for purpose”; and that, in this case, these considerations

are sufficient to outweigh (or “trump”) the resulting harm to the “instrument’s integrity and historicity”. The court is further satisfied that the petitioners have discharged the heavy burden that rests upon them of justifying the introduction of digital stops on a traditional pipe organ. The court’s reasons are as follows:

38 First, the court is satisfied that the petitioners have considered all potential alternatives to the installation of digital stops on the church’s historic pipe organ. They have taken the advice of an expert organ adviser who has been engaged fully and actively with the entire faculty process and with the conflicting views of the CBC and the BIOS. He has taken full and proper account of the merits of an “all-pipe solution” and an unadulterated pipe organ; but he has concluded that, try as he might, he cannot produce an organ that would be “musically fit for purpose” in this large and significant church. The petitioners have clearly demonstrated that the present proposal results from careful and reasoned consideration following upon lengthy, balanced, detailed and informed investigation and research. They clearly understand their church and have a deep desire to see it used for mission, in its widest possible application, at the heart of their community. They have been living with, and actively (and patiently) addressing, the problem of securing suitable permanent organ accompaniment for their church worship for the past five years. Secondly, having sought and received appropriate expert advice, the petitioners have clearly consulted widely within the church and the local community and the present proposal has their strong support. The majority of those present, both from the congregation and the community, at a public organ review meeting held at the church on 29 September 2019 indicated their clear support for the pipe organ hybrid option; and this received the full and unanimous support of the CCC at its meeting on 3 October 2019. It is the informed view of the Diocese’s Senior Church Buildings Officer that “the parish have worked tirelessly to find a solution to the present problem and at each stage they have listened to the feedback given by the amenity societies and the DAC”. It is the church, and its congregation, who will have to live with the organ for many years to come and not the court. The court should seek to ensure that it does its best for the church and their congregation, having due regard to the role of the church as a local centre of worship and mission. Thirdly, there is really no other solution if this splendid pipe organ is to be re-installed in the church. The digital solution is a necessary compromise which gives the church a splendid restored organ, retaining many of the components of the ‘old’ organ which, hopefully, will provide the congregation with a sound accompaniment they can be proud of. Fourthly, the proposal is not driven by cost concerns or by the lack of a church organist capable not only of playing a pipe organ but maximising its potential. The church’s proficient and experienced existing organist is fully supportive of the present proposal. Fifthly, the present proposal has been recommended for approval by the DAC after what has clearly been sustained and anxious consultation and consideration.

39 To the BIOS’s final question: “What happens if this reconstruction fails to live up to what is promised?” the court would answer: The petitioners’ expert organ adviser does not think that it will fail; but even if his expert assessment proves to be wrong, at least the church community will have striven to achieve an organ that is musically fit for purpose; and it will still be left with a splendid restored organ retaining many of the components of the ‘old’ organ even if it falls short of providing the congregation with all the sound accompaniment they could have hoped for. The church community will no doubt be praying for a successful outcome.

40 For these reasons the court will grant the faculty as asked subject to the conditions that:

(1) A full inventory of the existing pipes is to be carried out, identifying each pipe, its condition, and its location in the new instrument.

(2) Any existing pipe not used in the renovated organ is to be retained in safe and secure storage (as directed by the DAC or the court) and is not to be disposed of without the written agreement of the DAC or further order of the court.

The period of the works will (in the first instance, and due to present Government restrictions) be 18 months from the date of the grant of the faculty.

The Worshipful Chancellor Hodge QC

The Fifth Sunday in Lent 2020