

Neutral Citation Number: [2022] ECC Der 1

In the Consistory Court of the Diocese of Derby

In the Matter of a Faculty Petition

The Church of St Lawrence in the Parish of Eyam

Application for a Faculty for Works to South Porch and Other Work

1. By a Petition dated 20 August 2021, the Reverend Michael Gilbert, Rector, Barbara Lynn Jackson, Churchwarden, and Mark Hynes, Re-ordering Co-ordinator, seek a faculty to authorise (1) works to the south porch of the Church of St Lawrence, Eyam to raise the ground level outside and within the porch to provide level access; (2) to shorten the outer doors of the south porch to accommodate the raised floor and replace the wooden inner porch doors with glazed doors; (3) to create a new doorway in the north wall as an additional fire escape route; (4) to install an internal ramp against the north wall to facilitate use of the new fire escape; and (5) to remove and dispose of the pipe organ.
2. The works were considered by the Diocesan Advisory Committee on 2 November 2020. The Committee does not recommend the works for approval by the court. The Notification of Advice states that “Whilst content to recommend the works to the south porch and doors and for the creation of the new north door and associated ramps, the Committee did not feel able to recommend disposal of the organ as it feels there are options for its relocation within the church.”
3. Planning consent, where required, has been obtained from the Peak District National Park Authority and is dated 24 August 2020.
4. Initial reservations expressed by the Victorian Society and Historic England have been addressed by changes to the proposed works and so there is now no opposition to the proposals from the amenity societies or Historic England.

5. Six letters of objection were received in response to the Public Notice, however none of the objectors wished to become a Party Opponent. I shall return to the subject matter of the objections in due course.
6. Notwithstanding these objections and the Diocesan Advisory Committee's decision not to recommend the disposal of the organ, the petitioners have presented their petition to the court. In those circumstances, I asked for a report from the Church Buildings Council on the organ and this was provided in a letter dated 24 February 2022. I was able to visit the church, unaccompanied, on 4 March 2022.
7. The Church of St Lawrence, Eyam is a listed building designated at Grade II*. It is therefore a particularly important building of more than special architectural and historic interest. The building is of mediaeval origin with significant phases of re-working and expansion through that period and into the sixteenth and seventeenth centuries. In the nineteenth century, substantial rebuilding work was carried out to the designs of G E Street and, later, Webster of Sheffield.
8. The Church and surrounding village are, of course, best known for their response to the arrival in the village of bubonic plague in 1665-6 when, under the leadership of the Reverend William Mompesson and Thomas Stanley, the villagers quarantined themselves, risking death, to avoid spreading the plague to neighbouring villages. This historical event brings many tourists to the village and to the church, which is open daily.
9. This history, together with notes relating to other significant features of the church and churchyard are set out in a Statement of Significance which runs to some 27 pages. It clearly sets out the motivation for the proposed works which is to provide equal access to all who wish to visit the church. It notes the major re-ordering work undertaken between August 1868 and April 1870 to the plans drawn up by G E Street which involved the demolition of the previous north aisle and the north and east walls of the chancel before their rebuilding. Works on the south side followed in 1882 when the south porch was added. No further works were then carried out until the 1960's when a small extension, which contains a boiler house and two toilets, was built to the north of the tower.

10. The Statement of Significance also records significant items within the church. Of these, only the organ, built by Brindley and Foster in 1879 is affected by the proposed works. The organ is described as being a tracker organ of moderate significance. It is significantly larger than appears to have been envisaged by Street in his drawings. The works to the south porch, north wall and organ all relate, therefore, to nineteenth century fabric or installations. Architectural plans are attached to the Statement of Significance showing details of the proposed works
11. The Statement of Needs runs to 46 pages, including appendices. It sets out details about Church Life, the Vision and Mission Action Plan, Church Finances, and the Church in the Village, before turning to the need for the proposed works. A substantial appendix relates to the organ, to which I shall return. Access for those with impaired mobility is seen as a priority. Finally, it is said that it has been of paramount importance in arriving at the proposals to ensure that there is minimal disruption to the significance of the building. It is said that “The decision to remove the organ and replace it with an electronic one has been the most difficult.” A faculty for the installation of an electronic organ has not, however, been sought and the removal of the existing organ is, of course, a proposal rather than a decision.
12. The provision of level access to the south porch brings with it the need to ensure that there are suitable emergency exits for those with restricted mobility. A letter from Derbyshire Fire and Rescue Service dated 19 November 2020 states that without a secondary means of escape, the safe capacity of the building is 100 people. The actual capacity of the building is double that number.
13. Following display of the Public Notice, six objections were received. None of the objectors wished to become a party opponent, however I will take the comments made into account when reaching my decision.
14. I propose only to summarise the contents of the objectors’ letters. In doing so, I do not seek to diminish what are clearly strong feelings. There is great deal of emphasis on the consultation process which took place, inevitably, in periods when there were restrictions on people’s activities due to the Covid-19 outbreak. “There seems to be no

intention to consider alternative plans. Other ideas have been put forward for consideration, but there is no willingness to change from the plan they want and have presented.” While the objectors feel that the consultation was flawed, the fact is that they have raised objections in response to the Public Notice. This is the point at which objections should properly be made.

15. Questions are also raised about the location of the new north door indicating, again, an unwillingness to consider alternatives. “We are told by the architect and the Re-Ordering Committee that there is no alternative way of creating a fire exit. There clearly are alternatives. To give just one example, an exit could be made by using one of the existing north aisle windows.” It is also suggested that the choice of the location of the exit is motivated by a desire to remove the organ. “I believe that they want to remove the church organ, and realising that will be controversial they felt it would be easier to get it through if they said that the only place for the fire door is at the back of the church, therefore making removing the organ a necessity and not optional.”
16. There is opposition to the removal of the organ. The following comments are made by the objectors: “The Reordering Committee/PCC argue in their paper that there is no alternative to the organ removal but that is simply because it does not fit with their closed thinking.” “Eyam Church and the village have a magnificent if not unique heritage which should be protected and I believe that should include the Victorian organ in our traditional village church.” “(The Reordering Committee/PCC) has upset many by claiming that removing the organ is an unavoidable consequence of deciding to create disabled access, rather than discussing the future of the organ in its own right.”
17. The parish response to the objections runs to eight pages. There is an acceptance that the consultation process could have been handled better, but it concludes that the PCC continues to believe that the proposed design represents the best way to achieve access for all.
18. Following my visit to the church and in light of the objectors’ comments, I asked for detailed reasons as to why the new north doorway could not be located where there is currently a clear glass window. By a response dated 14 March 2022, I was told that the proposed location of the new exit in the north wall was the only one which satisfied

Building Regulations, the Fire Inspector, the Structural Engineer, the Planning Authority and Historic England. The Peak District National Park Association had expressed the view, in an e-mail dated 21 January 2022 that “to create an accessible route via the vestry, or through the tracery windows, would result in an unacceptable level of harm to important elements of G E Street’s original design.”

19. In considering whether to permit the works, given that St Lawrence’s is a Grade II* listed building, I am to be guided by the framework set out in *Re St Alkmund, Duffield* [2013] Fam 158. The questions, set out in paragraph 87 of the judgment, to be addressed 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 the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals: see *Peek v Trower* (1881) 7 PD 21, 26-28, and the review of the case law by Bursell QC, Ch in *In re St Mary’s Churchyard, White Waltham (No 2)* [2010] Fam 146, para 11. Questions 3, 4 and 5 do not arise.

(3) If the answer to question (1) is “yes”, how serious would the harm be?

(4) How clear and convincing is the justification for carrying out the proposals?

(5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *In re St Luke the Evangelist, Maidstone* [1995] Fam 1, 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

20. In my judgment, it is undoubtedly the case that, taken as a whole, these proposals, if implemented, will result in harm to the significance of St Lawrence, Eyam, a grade II* listed building, as a building of special architectural and historic interest. That being so,

the question is how serious that harm would be. In my judgment, the nature of the works proposed is such that it would be wrong to consider that harm as a whole, but rather the different elements of the works should be considered separately. This is particularly so where, as here, an aspect of the works is not recommended by the Diocesan Advisory Committee.

21. In relation to the proposed works to the south porch, on the basis that the external doors are to be adapted and retained, it is my judgement that such harm as there will be, will be modest and will undoubtedly be outweighed by the substantial public benefit which permanent level access will provide. I will therefore grant a faculty for this part of the proposed works.
22. The proposed new north exit involves creating a new doorway in an existing wall. While this is major work, it has been designed so as to minimise the damage to the significance of the building. Removal of a window, while perhaps the more obvious location for a new doorway, would have done more damage to the significance of the building. I am satisfied that the works proposed, in themselves, cause only moderate damage to the significance of the building and that, on the basis of advice from the Fire Service, there is a real and substantial public benefit in terms of fire safety. I will also grant a faculty for this aspect of the proposed works.
23. The new north exit also requires an internal ramp. I am willing to grant a faculty for this since it will cause minimal harm to the significance of the building, should be reversible and is clearly of benefit to the public, however the design of the handrail shown in plan DL607 revC does not appear to reflect the other furnishings and railings within the church. It may be that it is only indicative. In any event, I will make it a condition of the faculty that the final design of the handrails is to be approved by the DAC.
24. The real issue in this case is the organ. It is said by the petitioners to be an unfortunate casualty of the need for a second fire exit. This is doubted by several of the objectors who believe that the petitioners want an excuse to dispose of the organ. Considerable effort has gone into demonstrating that it is not possible to re-locate the organ, however, that notwithstanding, the DAC does not recommend the removal of the organ.

25. What concerns me is that, because the removal of the organ is put forward as a necessary consequence of the other works, the focus has not been on justifying of the removal of organ in its own right. Additionally, the question of whether the organ should be replaced and, if so, by what manner of instrument is not part of this petition. It is indicated that the intention is to install an electronic instrument, but no faculty is sought for this, even though a temporary faculty was previously obtained for trial of such an instrument.
26. The Statement of Needs contains a lengthy appendix relating to the organ. Three options are considered in detail: Retain (move and recondition current organ): Replace (scrap current organ and replace with electronic church-type organ); and, Remove (remove current organ and don't replace). Those who prepared this document see no advantages in retaining the organ, although some of the unattributed justifications appear questionable such as, for example, "it's possible that the thought of traditional pipe organ music scares some folks away from church." By contrast, the recorded views of several professional musicians familiar with the instrument are very much in favour of its retention. One is quoted as saying "I think removal of the existing instrument would be a huge mistake in the long term." Another, referring to the replacement of a pipe organ with an electronic instrument, says, "Every church I play at which has gone down this route regrets it."
27. The organ itself, built by Brindley and Foster in 1879, is described as a good instrument. It is well looked after. It is not, however, a recital instrument. I do not have a report from the Diocesan Organ Advisor. Having received this petition, I asked for a report from the Church Buildings Council on the organ specifically. I am told, in the report dated 24 February 2022, that this organ dates from a period when Brindley and Foster were producing particularly good work. The Council felt that the parish had not produced a strong statement of needs to justify removal of the organ and that in the documents supporting the removal of the organ most of the ideas were not fully justified or consistently presented. The Council was of the view that if I am satisfied that the parish has made out its case to remove the organ from the building, that this should be conditional on a new home being found for the organ through the Institute of British

Organ Building (IBOB); that the organ should not be dismantled until a new home has been found and that works should only be undertaken by an accredited organ builder.

28. As I have previously observed, the Diocesan Advisory Committee does not recommend the removal of the organ. The reason given is that it felt that there are still options for relocation of the organ within the church. I have a document prepared by the parish which addresses two locations which the DAC consider to be feasible. One is the location of the former choir vestry, while the other is the west end of the north aisle. The parish disagrees, believing neither to be feasible or appropriate. While I can see that relocation to the former choir vestry might be problematic, the objections to the west end of the north aisle are harder to follow and appear to relate to very minor issues. It is said that three windows will be obscured; a brass plaque will be obscured and access to the ramp will be hindered. The plan attached, however, shows only one window fully obscured and the ramp at some distance from the organ. It is said that there will be significant deterioration of natural light and seating capacity. Given that a new glazed door is to be installed and the area currently occupied by the organ freed up, it is difficult to give credence to these submissions.

29. In my judgment, the question as to whether a faculty should be granted to remove the organ must be considered on its own merits and it cannot be the case that its disposal is simply a necessary consequence of the construction of a new fire exit. The *Duffield* test must still apply. This organ is an item of significance in its own right and its removal would, in my judgment, result in serious harm to the historical significance of this church. I do not consider it significant, unlike the parish, that this particular organ was not part of the design of G E Street. It was built for the church and has been in place for approaching 150 years. The justification for removing it is not particularly clear or convincing, based principally on it being in an inconvenient location. Neither is the public benefit of its removal, in my judgment, persuasively argued.

30. The correct approach to the removal of pipe organs has been much considered by the consistory courts. Helpfully, much of the learning was recently reviewed by Hodge QC, Ch in *St Peter & St Paul, Newport Pagnell* [2020] ECC Oxf8.

31. I consider and endorse the applicable principles as being those set out by Eyre Ch in *Re St Nicholas, Warwick* (2010) 12 EccLJ 407 at paragraph 19, namely

“19. I have 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.”

32. In this case, the statement of needs contains an analysis of three options and records a preference among PCC members for the removal of the pipe organ and its replacement with an electronic instrument. The petition does not, however, seek this. I am asked to authorise removal of the pipe organ without replacement. In my judgment, in those circumstances, there remains a burden on the parish to overcome the expectation that a well maintained and functioning pipe organ will be replaced by another pipe organ. Where the principal justification for removal is that the organ's location is inconvenient, it is right that consideration is first given to relocating the organ. I accept the advice of the Diocesan Advisory Committee that relocation does appear possible and the arguments to the contrary by the parish, when balanced against the harm which would result from removal of the organ, are not persuasive.

33. Although it is clear that some consideration has been given to an electronic instrument, that this is the preferred option of the PCC and, indeed, one has been trialled, no faculty

is sought for a replacement organ. I do not see that I can be satisfied, in those circumstances, that the parish has genuinely considered the alternatives and concluded that they do not wish to have an organ. Further, there is no evidence that there has been any consideration of a replacement pipe organ, which, as I have set out, is the expectation.

34. Considering all the evidence put before me, I am not satisfied that the parish has properly considered the replacement of the organ as a discrete question. As the objectors suggest, they have focussed on establishing equal access to the exclusion of all else. They have failed properly to recognise the serious harm which would be caused by the removal of the pipe organ and have not put forward compelling evidence of public benefit sufficient to outweigh that harm. The arguments advanced by the parish in response to the DAC indicate to me that they have not seriously considered relocation of the organ. Certainly, no consideration has been given to identifying a suitable, smaller, replacement pipe organ.

35. In the circumstances and for the reasons given, I will not, at this stage grant a faculty for the removal and disposal of the organ. I am willing to permit the relocation of the existing organ to the west end of the north aisle.

36. I will indicate that if, upon advice, relocation is genuinely found not to be a feasible proposition, I would, on application, consider varying my order and granting a faculty for the removal and disposal of the organ, but this will be conditional upon (i) it being replaced by a suitable smaller replacement pipe organ, the suitability to be approved by the Diocesan Organ Advisor; (ii) a new home being found for the existing organ, preferably within the faculty jurisdiction; (iii) the organ only being dismantled once the new home has been found and the replacement instrument identified or ordered; and, (iv) all works being undertaken by an organ builder accredited by the Institute of British Organ Building.

37. A faculty will issue, therefore, for the proposed work to the south porch, the creation of a new doorway in the north wall; the installation of an internal ramp (the precise design of the handrails of which is to be approved by the DAC); and the relocation of

the organ to the west end of the north choir aisle. All in accordance with the drawings provided and planning consents obtained.

38. For pastoral reasons, I waive my fee for this judgment, however I will order that an additional correspondence fee of £294.00, representing 2 hours' work, be paid to the Registry by 22 June 2022.

25th May 2022

Timothy Clarke
Chancellor.