

Pastoral Measure 1968

Kathleen Frances Forster and Others - - - - *Appellants*

v.

The Church Commissioners - - - - *Respondents*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 3RD APRIL 1974

Present at the Hearing :

LORD DIPLOCK

LORD CROSS OF CHELSEA

LORD KILBRANDON

[*Delivered by* LORD DIPLOCK]

The boundaries of the United Parish of St. Mary and St. John, Chatham, are in the shape of an irregular ellipse running from the dockyard and barracks area in the north across the town centre to a densely populated residential area in the south. It is over two miles long and in most parts less than half a mile in breadth. St. Mary's Church is on the edge of the dockyard and barracks area; St. John's Church is in the town centre and centre of the parish; and a Mission Chapel, St. Martin's, is in the middle of the residential area in the south. The total population of the united parish is about 9,500.

Although there has been a church on the site of St. Mary's since Anglo-Saxon times, the present building, which seats 600, was erected to the design of Sir Arthur Bloomfield at the end of the 19th century. It stands near the River Medway and, as a result of the way in which the town developed, the resident population in what until 1964 was still the separate Parish of St. Mary, had become very small. St. John's, which seats 1,100, was built in the neo-classical style to the design of Smirke in the early 19th century. The bulk of the residential population in the united parish lives to the south of it.

In 1954, the benefices of St. Mary and St. John were united and in 1964 the parishes were united, St. John's becoming the parish church of the united parish and St. Mary's a chapel of ease. Since that date, three services each Sunday have been held at St. John's and one each Sunday (either Matins or Sung Eucharist) at St. Mary's. The regular Sunday congregation at St. John's numbers about 100 and at St. Mary's some 30 to 40, the majority of whom come from outside the parish. Despite the paucity of numbers, St. Mary's has retained the loyalty of its congregation and maintained a strong musical tradition. The choir nearly all of whom live outside the parish form a substantial proportion of the congregation and occasionally out-number the rest. After the union of the

parishes, an informal arrangement was made whereby representation on the Parochial Church Council was allocated between worshippers at St. John's and worshippers at St. Mary's in roughly the proportions of 3 to 1 and until 1970 four churchwardens were elected, two for St. John's and two for St. Mary's. It was then discovered that this was contrary to Ecclesiastical Law and since that date so-called "Deputy Wardens" have been appointed for St. Mary's. This informal arrangement has, in their Lordships' view, had the unfortunate result of perpetuating two rival factions in a parish which should have been united in Christian fellowship as well as in law.

Unusually for a scheme of this kind, the initiative for declaring St. Mary's Church redundant came from the Parochial Church Council itself. In November 1969 there was passed by a majority of 19 votes to 10, a resolution expressing the opinion of the Council that two large church buildings were unnecessary for the life and work of the Church in the parish and that their maintenance imposed a burden that the parish could not continue to carry and made it impossible to fulfil its responsibilities to the Diocese and the whole Church. They requested that the matter should be considered by the Diocesan Pastoral Committee with the view to the possible acceptance of St. Mary's Church by the Redundant Churches Fund.

In May 1970 members of the Diocesan Pastoral Committee attended a meeting of the Parochial Church Council to ascertain the views of members about the future of St. Mary's Church. In March 1971 the Church Commissioners gave notice to the Council that they had received proposals from the Bishop that St. Mary's be declared redundant and in April 1971 the Church Commissioners sent to the Council, and advertised in the "Kent Messenger", copies of a draft Scheme declaring St. Mary's Church to be redundant. Each of the appellants made written representations to the Church Commissioners with respect to the draft Scheme and on 14th April 1971 the draft Scheme was approved by the Parochial Church Council by 23 votes to 9. In October 1971 there was an informal meeting between representatives of the Church Commissioners, members of the Parochial Church Council and members of the congregation of St. Mary's at which all were given an opportunity to express their views. The Scheme, against which this appeal is brought, declaring St. Mary's Church to be redundant, was finally made on 4th February 1972.

Their Lordships can deal briefly with the appellants' contention that the procedure prescribed by Part I of the Pastoral Measure 1968 was not observed in the making of the Scheme. The basis of this contention was that the Pastoral Committee had not complied with the requirements of section 3 (1) that, before making any recommendations to the Bishop, it should "ascertain the views of the interested parties", the relevant "interested parties" being the Parochial Church Council of the united parish: this was the only parish that would be affected by the implementing of the Scheme. It was submitted on behalf of the appellants that to comply with this requirement, it was necessary that the Pastoral Committee should not only listen to the views expressed by members of the Parochial Church Council but should themselves state, orally or in writing, the detailed arguments in support of the Scheme which they proposed to recommend. In their Lordships' view, there is no substance in this submission. "Ascertain the views of the interested parties" are simple English words which bear their ordinary meaning. They do not call for a debate between the Pastoral Committee and interested parties, whose views they are required to ascertain, upon the pros and cons of recommendations they may subsequently decide to make in the light of the views expressed.

In the instant case, the Parochial Church Council had itself asked for a declaration of redundancy and all its members knew perfectly well, though some of them did not agree with, the reasons why it had done so. In their Lordships' view, not only the Pastoral Committee but the Church Commissioners at a later stage amply fulfilled their obligations under the Pastoral Measure 1968 to give to the appellants the opportunity to make known their views about the Scheme and their reasons for objecting to it.

Before proceeding to a consideration of the appellants' objections on the merits, their Lordships think it desirable to make some general observations about the jurisdiction and practice on appeals to the Judicial Committee under section 8 (4) of the Pastoral Measure. In the *Parochial Church Council of Little Leigh v. The Church Commissioners*, [1960] 1 W.L.R. 567, their Lordships said, in relation to their comparable jurisdiction under section 10 (5) of the Union of Benefices Measure 1923, that the words were "plainly wide enough to empower their Lordships to consider any Scheme submitted to them on appeal *de novo* and on its merits." They added the warning, too often neglected by appellants: "This does not, however, mean that their Lordships should not be slow to dissent, save for the most cogent reasons, from the recommendations embodied in a Scheme regularly brought into existence with the concurrent approval of the Pastoral Committee, the Bishop and the Church Commissioners. . . ."

The Pastoral Committee, the Bishop of the diocese and the Church Commissioners are all in a much better position than their Lordships to know the particular circumstances of the parish and of the diocese as a whole and to reach an informed opinion as to the best way in which the limited resources of the Church in money and in man-power can be deployed so as to meet the spiritual needs of the diocese as a whole and of the individual parishes within it. Their Lordships are aware of the conscientious way in which those concerned approach this task, and desire to make it clear that the onus always lies upon appellants to satisfy their Lordships that a Scheme, that has been regularly made, is nevertheless open to objections on the merits that justify an Order that it should be of no effect or returned to the Commissioners for re-consideration.

For the guidance of those who have the responsibility for settling Petitions and Answers in future cases of this kind, their Lordships would however draw attention to the desirability that the Answer should not be limited to formal denials of allegations made in the Petition as if the Answer were a Defence in an ordinary civil action. It ought to set out candidly the reasons why allegations in the Petition are denied. The present case affords an instance of the need to do this. The appellants expressed in the Petition their fears that the furnishings and memorials in St. Mary's Church, some of which are of considerable historic or artistic merit, would be lost or damaged during the waiting period under section 49 of the Pastoral Measure between the declaration of redundancy and the preparation of a Redundancy Scheme when the church will stand empty. They alleged that the diocese of Rochester had no facilities for the removal or storage of the contents of St. Mary's. In their Answer, the Commissioners limited themselves to a simple traverse of this allegation. It was only in the course of the hearing that their Lordships, and the appellants, learnt for the first time, that it was intended to store the removable fittings and memorials from St. Mary's in the Cathedral at Rochester and in the Diocesan Offices. Had this information been disclosed in the Answer or, better still, at an even earlier stage, the natural anxieties of the appellants upon this score might well have been allayed.

It is inevitable that Schemes made under the Pastoral Measure, particularly where they involve a declaration of redundancy, will cause grief to those who have been accustomed, maybe all their lives, to worship in

the redundant church. If they are to become reconciled to the sacrifice of their own familiar place of worship in the interests of the wider needs of the Church, a full and candid disclosure of the intentions of those responsible for the making of the Scheme is, in their Lordships' view, the best way of promoting this reconciliation.

Turning now to the merits, the basic justification for the scheme remains that which was stated by the Parochial Church Council in November 1969, viz. (1) that two large church buildings are unnecessary for the life and work of the Church in the parish, and (2) that the cost of their maintenance imposes a financial burden which it is no longer practicable for the parish to carry, if it is to fulfil its responsibilities to the diocese and the whole Church.

It is, in their Lordships' view, uncontrovertible that two church buildings with a total seating capacity of 1,700 are unnecessary to accommodate a Sunday congregation which at present totals not more than 120 to 150 souls, unless there are compelling geographical reasons for there being a place of worship at St. Mary's, as well as at St. John's. Furthermore, if regular Sunday services are to be held at St. Mary's it would be necessary to re-appoint an assistant curate for the parish with the consequent additional expense for which the resources of the parish are inadequate, and the reduction in the number of ordained priests available for service elsewhere in the diocese.

So far as the geographical situation is concerned, St. Mary's is the victim of "down town" de-population. Only a small proportion of its congregation, the numbers of which have remained relatively static, reside in its vicinity. The appellants have sought to show that, under development plans for Chatham, which has recently become merged in the area of the Medway District Council, the resident population around St. Mary's will grow. In their Lordships' view, the evidence does not show a likelihood of any significant growth of population in the town centre, which would be nearer to St. Mary's than to St. John's. The bulk of the population of this thickly populated urban parish will continue to reside to the south of St. John's on the opposite side of the parish to St. Mary's. The appellants also point to the fact that St. Mary's, which is somewhat closer to the Chatham Town Hall than St. John's, has in recent years been used occasionally for civic services, which attract a congregation of 100 or more. But if civic services are to continue after Chatham Corporation has ceased to exist as an independent local authority, they could, in their Lordships' view, be held equally well at St. John's which itself is only a quarter of a mile from the Town Hall, if indeed they are not transferred to Rochester Cathedral, a mile and a half away.

As regards the cost of repairs now needed to St. Mary's Church, and of its future maintenance, there has been some conflict of evidence; but in their Lordships' view, even upon the most optimistic estimate, it has been demonstrated that this is beyond the resources of the united parish and far beyond any contribution to those resources which the congregation of St. Mary's, despite its utmost efforts, has found it possible to make.

The immediate effect of a declaration of redundancy will be that St. Mary's will cease to be a place of worship. The future use to which it or its site will be put will fall to be dealt with later under a Redundancy Scheme. Nevertheless, as appears from section 3(4) of the Pastoral Measure, the historic and architectural qualities of the church and other churches in the area and the historic and aesthetic qualities of their contents, are factors to be taken into consideration before recommending that a declaration of redundancy should be made. Accordingly, the appellants have relied upon additional considerations which their

Lordships agree make more regrettable the need that St. Mary's should cease to be a place of worship. It stands upon a site on which a place of worship has, according to well-authenticated authorities, existed continuously since Anglo-Saxon times. Situated next to the banks of the Medway, its free-standing tower has for the last 70 years been a prominent land-mark of Christian witness and although it is a late 19th century building, its architectural quality is high. It has a fine peal of bells and an enthusiastic band of bell-ringers. Their Lordships would, however, observe that a declaration of redundancy will by no means necessarily lead to the demolition of the tower. It seems possible that the tower would be preserved even if the rest of the church had to be demolished. As respects the architectural merits of St. Mary's, these are not disputed but similar claims to architectural merits on the part of St. John's have been acknowledged by the Council for the Care of Churches, and it has the additional historical architectural interest of being an early and rare example of the neo-classical revival of the early 19th century. As has already been mentioned, St. Mary's contains memorials of historic and artistic interest which were originally in the earlier churches on that site, but their Lordships see no reason for supposing that proper steps will not be taken for their removal and preservation.

While their Lordships understand and sympathise with the appellants' disappointment that their untiring efforts to preserve St. Mary's as a separate and semi-independent place of worship despite the union of the parishes have ultimately failed, they are satisfied that no sufficient case has been made out for rejecting the Scheme or returning it to the Commissioners for re-consideration.

Their Lordships will humbly advise Her Majesty that the appeal be dismissed and the Scheme confirmed.

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AND OTHERS**

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THE CHURCH COMMISSIONERS

**DELIVERED BY
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