

Pastoral Measure 1968

N. A. Coxwell-Rogers and Another - - - - *Appellants*

v.

The Church Commissioners - - - - - *Respondents*

**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 7TH MAY 1975**

Present at the Hearing :

LORD WILBERFORCE

VISCOUNT DILHORNE

LORD EDMUND-DAVIES

[*Delivered by VISCOUNT DILHORNE*]

The Scheme made by the Church Commissioners under the Pastoral Measure 1968 and submitted for confirmation by Her Majesty in Council is for the reorganisation of benefices and parishes in part of Gloucestershire to facilitate the establishment of a group ministry. Of the ten parishes affected, nine have accepted the Scheme.

The appellants, Major-General N. A. Coxwell-Rogers, C.B., C.B.E., D.S.O., and Lieutenant-Colonel H. E. F. Middleton, are members of the Dowdeswell Parochial Church Council. They do not consider that the Scheme provides for a satisfactory ministry in the new proposed parish of Dowdeswell and Andoversford and they suggest that the Commissioners are not fully aware of the peculiar and unsatisfactory conditions prevailing in Andoversford. They ask that the Scheme should be returned to the Commissioners for reconsideration.

The Scheme now submitted was first put forward in 1968. It provides for the division of the ten parishes into three groups, a northern, a central and a southern group, each group containing a population which can be served by one incumbent. The boundaries of Dowdeswell parish are to be altered and the benefices of Dowdeswell, and of Shipton Oliffe with Shipton Sollars and Haselton with Cold Salperton are to be dissolved and a new benefice of Dowdeswell and Andoversford with the Shiptons and Cold Salperton created. The new parish of Dowdeswell and Andoversford is to be in the central group.

In January 1969 the Dowdeswell Parochial Church Council, while not convinced that the Scheme provided the right answer to their problems, agreed to it being operated experimentally, and in the autumn of 1969 the experiment began. During the course of it Colonel Middleton was co-opted a member of the Diocesan Pastoral Committee. As a member of that Committee, he was able to tell the other members of the Committee of the doubts felt about the way in which the experiment was working.

The case for the appellants was clearly presented by Colonel Middleton, Major-General Coxwell-Rogers being unable to be present. He contended that the Scheme had been prepared in the light of figures as to

population which were wrong. They were, he said, taken from the Diocesan Year Book and he had sought to secure that the Scheme should not be made until the 1971 Census figures were available. When the Census figures became available in 1973, they differed from the figures in the Diocesan Year Book. According to Colonel Middleton, when the Scheme was first designed, there would, according to the figures in the Year Book, have been 705 persons in the northern group, 720 in the southern group and 780 in the central group, which includes the Dowdeswell and Andoversford parish. On the Census figures he calculated that the population in the northern group was 591, in the southern 638 and in the central group 918; so on the Census figures there was a greater disparity in population between Dowdeswell and Andoversford with the Shiptons and Cold Salperton and the other groups than appeared from the Year Book figures. The Commissioners, however, estimated the population of the proposed new benefice of Dowdeswell and Andoversford with the Shiptons and Cold Salperton at approximately 900 though their estimate of the population in the northern group exceeded that according to the Census.

Their Lordships cannot regard the discrepancy between the Census figures and those on which the Scheme was based and the discrepancy between the population in the three groups as constituting a sufficient reason for them to propose to Her Majesty that the Scheme should be returned to the Commissioners for reconsideration.

Colonel Middleton and Major-General Coxwell-Rogers' main concern was with regard to Andoversford, a village of some 400 inhabitants. They felt that the Scheme had not provided when operated experimentally and would not provide in the future adequate pastoral care for its inhabitants. It is the largest village in the ten parishes and it has no church or rectory and the Scheme does not envisage the Rector of Dowdeswell and Andoversford living there.

From 1963 to 1968 the Rev. A. H. Harland was priest in charge of Dowdeswell. He was so concerned about the lack of facilities for worship for the people of Andoversford that he started holding monthly evening services in the village hall there. In 1968 the Rev. R. E. Gleed, the Rector of Shipton, became priest in charge of Dowdeswell.

Since 1968 the population of Andoversford has grown considerably. In 1974 22 houses, 16 of them Council houses, were built and planning consent given for 14 more. In a letter dated the 13th November 1972 the County Planning Officer of the Gloucestershire County Council stated that the North Gloucestershire Sub-Regional Study Group had suggested that up to 1,500 additional population might be accommodated in the Andoversford area and that "although a proportion of this development could take place before 1981, it is most unlikely that any major development proposal will be initiated . . . during the next five years". Mr. Hands, who appeared for the Commissioners, recognised that if the population in the area covered by the Scheme increased, the most likely growth point was Andoversford.

Despite the increase in population that has occurred, it has not been found possible since 1968 to hold more than one afternoon service a month in the village hall in Andoversford and the number attending that service has dropped to about 12, of whom about half are children from the Sunday School. Enquiries made by Colonel Middleton have elicited that the village hall has not been declared a "Parish Centre of Worship" nor has it been licensed by the Bishop for the holding of services. No doubt in the belief that it had been licensed, Holy Communion services have been held there. In 1972 there were five such services. In 1974

the number had dropped to one. Colonel Middleton paid tribute to the hard work done by the Rector of Shipton but contended that these facts showed that during the period of the experiment, the Scheme had not provided adequate pastoral care for the inhabitants of Andoversford. He contended that it was even less likely to meet future requirements.

In their Answer the Respondents recognise that it is "unusual for a village of a population of some 400 not to have its own church" and say, no doubt in the belief that the village hall was licensed for services, that services "are and will be held in the licensed hall". In paragraph 11 of the Answer it is submitted on behalf of the Commissioners and of the Diocese that "as far as the pastoral care of the inhabitants" (of Andoversford) "is concerned there is a perfectly adequate ministry", a submission that appears somewhat surprising in the light of the information given by Colonel Middleton. The Commissioners in their Answer referred to a meeting of the Dowdeswell Parochial Church Council on the 1st May 1974 at which they said "those members who live in Andoversford expressed themselves unanimous and enthusiastic about the pastoral care that they were receiving from the then priest in charge". Colonel Middleton said there were only five people from Andoversford present at that meeting, one Churchwarden of Dowdeswell Church, two who worshipped at Dowdeswell and two others. He said it was recognised that no more could be done by the priest in charge, but he challenged the statement that the meeting was enthusiastic about the pastoral care received at Andoversford.

Colonel Middleton asserted, and it was not disputed, that no one from the Diocese had made a pastoral visit to the village hall throughout the years in which services had been held there; and this may perhaps account for the different views as to the adequacy of the pastoral care in Andoversford.

In 1964 Dowdeswell Rectory was sold and at a meeting of the Dowdeswell Parochial Church Council, at which the Archdeacon of Cheltenham was present, it was agreed that the Archdeacon should look for a site in Andoversford for a new rectory. Efforts to find one were not successful. In their Answer the Respondents say that the proceeds of the sale will be credited to the new benefice of Dowdeswell and Andoversford with the Shiptons and Cold Salperton and that "In so far as the addition of these funds would increase the endowment capital . . . to levels producing more income than is at present considered necessary for the needs of the incumbent" the Scheme proposes that excess income shall be diverted to the Diocesan Stipends Fund and that the diverted monies, less payments for clerical assistance in the parish, would help to provide additional much needed funds for stipends elsewhere in the Diocese. The Scheme was the first intimation to the appellants of any intention to apply income from the proceeds of the sale of the rectory to purposes outside the parish. In their view the proceeds of the sale and the income derived therefrom should be used to establish a rectory in Andoversford. For it to be there would in Colonel Middleton's view help in providing adequate pastoral care in that village.

If, as Colonel Middleton contends, there is now no adequate pastoral care in Andoversford and the position is likely to deteriorate if the population of that village grows, is that deficiency due to defects in the Scheme and would reconsideration of it be likely to lead to an improvement? Only if the lack of pastoral care could be shown to be due to defects in the Scheme which could be remedied would any useful purpose be served by a reference back.

In the present shortage of ordained ministers, the Scheme proposes that there should be three incumbents for the ten parishes. At one time the appellants suggested that it would be better if Dowdeswell parish was united with Whittington, but that was not acceptable to the people of Whittington. No evidence has been forthcoming to show that a different division of the parishes into three groups would improve the pastoral care of Andoversford. In these days a population of approximately 900 cannot be regarded as excessive for one incumbent. The real cause of such difficulties as exist at Andoversford appears to their Lordships to arise from the fact that the village has not a church and not from defects in the Scheme.

In the circumstances their Lordships do not consider that any useful purpose would be served by their proposing the return of the Scheme to the Commissioners for reconsideration.

Their Lordships were impressed by the genuine concern expressed by Colonel Middleton about the position in Andoversford. They hope that it will be kept under review and that, if need be, clerical assistance will be provided for the incumbent. They do not know whether the proceeds of the sale of Dowdeswell Rectory will produce income which with the other income of the parish will exceed the needs of the incumbent, and so a surplus which can be diverted to the Diocesan Stipends Fund. But as the rectory was sold with a view to the establishment of a rectory in Andoversford, they feel that the proceeds of sale and the income produced thereby should be applied to the needs of the parish, and, if possible, to the establishment of a rectory in Andoversford.

They do not, however, consider the possibility that some part of the income from the proceeds of the sale may be diverted under the Scheme a sufficient ground for proposing to Her Majesty in Council that the Commissioners should be asked to reconsider this Scheme affecting ten parishes.

There is one further matter to which their Lordships think it desirable to refer. The appellants say that although aware of the dissatisfaction and unhappiness of the Dowdeswell Parochial Church Council, the Church Commissioners have had no consultation whatever with any member of the Council and that they have not given reasons for ignoring some important recommendations regarding the Scheme. The respondents in their Answer admit that they have had no direct consultation either with the appellants or with the Dowdeswell Parochial Church Council, and that they did not announce their reasons for their decision to make the Scheme without amendments. They point out, as indeed is the case, that they were not "statutorily obliged" to do either of these things. Nevertheless, though not statutorily obliged to do so, they might not unreasonably have been expected to do so in the circumstances. If they had, they might have allayed the fears expressed and satisfied the appellants and the Dowdeswell Parochial Church Council that in the circumstances there was no practicable alternative Scheme, in which case this appeal and the expense involved might have been avoided.

Nevertheless, for the reasons stated their Lordships will propose to Her Majesty in Council that the appeal be dismissed.



In the Privy Council

**N. A. COXWELL-ROGERS AND
ANOTHER**

v.

THE CHURCH COMMISSIONERS

DELIVERED BY
VISCOUNT DILHORNE