

*Pastoral Measure 1968*

Miss H. M. Dawson - - - - - *Appellant*

v.

The Church Commissioners - - - - - *Respondents*

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 11TH FEBRUARY 1980

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*Present at the Hearing:*

LORD EDMUND-DAVIES

LORD SCARMAN

LORD LANE

[*Delivered by LORD SCARMAN*]

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The Church Commissioners, in pursuance of the Pastoral Measure 1968, prepared a draft scheme for uniting the benefices and parishes of St. Wilfrid and St. Luke, Harrogate, in the diocese of Ripon, and declaring St. Luke's parish church redundant. The appellant, Miss Hilda Mary Dawson, made written representations objecting to the draft scheme. On the 6th October 1976 the Church Commissioners, after considering the representations, made the scheme and submitted it for confirmation by Her Majesty in Council. Miss Dawson exercised her right of appeal and has appeared by counsel to argue her case before their Lordships' Board.

The merits of the scheme are, in their Lordships' opinion, substantial. The passage of time has proved ample justification for the view of the Commissioners that St. Luke's church is no longer required as a parish church or chapel of ease. In 1974 the Church Hall was converted so as to serve as a place of worship and was dedicated on the 18th October 1974. Services were transferred at that time from the church to the Hall. During the last 5 years the church has only been used for Holy Communion on Monday mornings (attendance, some 6 to 10 persons) and for other occasional services. This fine, tall church, which can seat 850 people, remains a monument to the faith and charity of those who built it at the end of the last century. But it is now the parish church only in name. The religious life of the parish has passed from it to the neighbouring Church Hall, which has proved well able to accommodate the services transferred to it.

The case for the union of the parishes and benefices is also a strong one. The two parishes are in north-west Harrogate. The present population of St. Luke's is not expected to rise, and there are no major building developments in prospect within the parish. The parish of St. Wilfrid's was extended in 1976 to include a large residential estate. If St. Wilfrid's and St. Luke's are united as the Commissioners propose, the united parish will comprise a population of some 19,000 and will have as its religious centre the noble and spacious church of St. Wilfrid's.

The proposal has been the subject of full consultation with all interested parties including the parochial church council of St. Luke's who voted in favour of the union of the parishes. The Archdeacon of Leeds has said in his affidavit that he knows of no opposition to the union of the two parishes. The Bishop and his diocesan advisers believe that the pastoral needs of the parishes would be served best if the scheme were to be made and to come into operation. The Bishop of Knaresborough, who has spent the whole of his ordained ministry in the diocese of Ripon, has expressed in his affidavit the view that pastoral re-organisation is called for in Harrogate "with its eight parishes all within a radius of  $1\frac{1}{2}$  miles." It is envisaged that the united parish will be served by one incumbent and two assistant priests operating as a group or team (though not technically a group or team ministry) based on St. Wilfrid's. This, it is believed, will be a stronger and more flexible ministry than two incumbents (one with an assistant priest at St. Wilfrid's) in two separate, and smaller, parishes.

The appellant, who appeals on her own behalf and as representative of the St. Luke's Church Preservation Committee, is a daughter of the first vicar of St. Luke's. She knows and loves the parish and its church, as also do the other five active members of the committee. She challenges both the union of the parishes and the declaration of St. Luke's church as redundant.

Their Lordships can deal shortly with the challenge to the proposed union of the parishes. As was said by the Board in the Birkenhead Priory case,

"their Lordships will be very reluctant to substitute their own judgment, based necessarily on a limited knowledge of all the local factors involved, as to what is in the pastoral interests of a diocese or a parish. They would, as has been said more than once, require cogent reasons for dissenting from the recommendations of a scheme regularly made".

"Cogent evidence of erroneous judgment" is necessary before their Lordships will allow an appeal upon the ground that the scheme is not in the pastoral interests of the diocese or parish. Their Lordships have studied anxiously the appellant's petition and accompanying documents and have listened with admiration to the sustained and detailed submissions of her counsel. But, so far from finding cogent evidence of erroneous judgment, their Lordships are persuaded that the case for the union of the two parishes on the ground of pastoral need is strong indeed. This challenge, therefore, fails.

But it does not follow that St. Luke's church must be declared redundant, though their Lordships note from the Bishop of Knaresborough's affidavit that "it is the view of the Diocesan Pastoral Committee that the declaration of redundancy is a natural element in the proposed union of benefices and parishes". The appellant's challenge to this aspect of the scheme is formidable. Submitting, correctly, that consultation is of the greatest importance, counsel has argued that, while there has been consultation with the parochial church council, it was vitiated by false information given by the incumbent and others as to the likely cost of repairing the fabric of the church. Indeed, he was able to argue with great force that the decision five years ago to transfer services from the church to the Hall was itself induced by such false information. In the circumstances he submitted that consultation had been neither full nor fair, but based upon erroneous and alarming assumptions as to the likely cost of keeping the church in repair.

The legal basis of his argument rested not on any specific infringement of statutory duty by the Diocesan Pastoral Committee, the Bishop, or the Church Commissioners in preparing or submitting the scheme but

upon the nature of the duty put upon the Judicial Committee of the Privy Council in hearing and reporting upon an appeal against a scheme. If he did not concede the point, he certainly recognised the difficulty of contesting the submission, which their Lordships accept, that in this case the Diocesan Pastoral Committee has complied with section 3 of the Pastoral Measure in ascertaining the views of the parochial church council. His real submission was that it would be unjust for the Board to permit the scheme to go forward if it were shown that the parochial church council had been misinformed on such a critically important question as the cost of maintaining the fabric of the church. He made the point that their Lordships' Board, exercising a judicial function, was concerned with justice as well as with the merits of the scheme.

Their Lordships accept this description of their role but would add that, if after a full hearing the scheme appears to have been regularly made and to be in the interests of the parishes affected by it and of the diocese, only in exceptional circumstances would they consider it their duty to propose to Her Majesty in Council that the appeal be allowed. It is, of course, possible that a scheme, which was not in the interests of a parish, may appear to have been accepted by its parochial church council because of false information. In such a case their Lordships would not hesitate to propose either that the appeal be allowed or that the scheme be returned to the Commissioners for reconsideration. The choice between these two courses would depend on the particular circumstances of the case. Their Lordships understand this to be the substantial case put forward on behalf of the appellant who, however, submits that in this case the appeal should be allowed.

The appellant makes no charge of bad faith against the incumbent and others who advised the parochial church council during the critical years 1971 to 1974. Counsel took their Lordships through the history of the discussions and consultations of the period. The incumbent and others put forward figures for the cost of repairs and maintenance of the church which were not based on any known professional estimate. Indeed, the Commissioners in their written Answer to the appellant's petition accept "that there was apparently considerable exaggeration in the figures". It is regrettable that the then incumbent (he resigned the living in 1975) should have misled the parochial church council in this very important matter. In an expressive passage in his eloquent address the appellant's counsel urged their Lordships to infer from the dismal history of gloom engendered by the exaggerated figures that the opportunity was lost "to revitalise the parish" and to raise the comparatively modest sums needed for immediate necessary repairs to the spire, tower, roof and guttering of the church. He submitted that this injustice could be rectified only by allowing the appeal.

No useful purpose would be served by rehearsing the detail of these matters. Suffice it to say that their Lordships have given them the most anxious consideration: and their conclusion is that the Commissioners are justified in the conclusion which they reached, and which is set out in paragraphs 21 and 22 of their written Answer. Their view is that the exaggerations, serious though they were, would not have affected the decision to convert the Church Hall and to transfer services there from the church because "there were other factors involved . . . primarily the problem of keeping up two buildings, one of which was by then too big for the congregation". Further, in their view "it is unlikely that effective pressure would have been exerted to reverse the decision to move to the Church Hall in view of the running costs of the church, and its unsuitability for the needs of the congregation and the other factors which emerged to play their part in leading to the decision to move."

Their Lordships agree with these views. They deplore the fact that the parochial church council was misinformed on important matters by the incumbent: they understand the very real sense of grievance felt by the appellant and the Church Preservation Committee: but they recognise that the scheme was regularly made and is, on evidence which they accept, in the best interests of the two parishes and the diocese. It would be a tragedy if an excellent scheme should be lost because of past errors which, though deplorable, neither technically invalidate the scheme nor deprive it of its present and future advantages for all concerned.

Their Lordships will, therefore, humbly advise Her Majesty that the appeal be dismissed. There will be no order as to costs.



**In the Privy Council**

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**MISS H. M. DAWSON**

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**DELIVERED BY  
LORD SCARMAN**