

*Pastoral Measure 1968*

**Derek John Morton and others** - - - - - *Appellants*

v.

**The Church Commissioners** - - - - - *Respondents*

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 24TH JULY 1973

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*Present at the Hearing :*

LORD CROSS OF CHELSEA  
LORD SIMON OF GLAISDALE  
LORD KILBRANDON

[*Delivered by LORD CROSS OF CHELSEA*]

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This is an appeal to Her Majesty in Council by Derek John Morton, John Ernest Dudley Scott and John Meredyth Hope, three parishioners of the Parish of Basildon in the Diocese of Oxford, against a Scheme made by the Church Commissioners on 16 February 1972 under the Pastoral Measure 1968 declaring the parish church "redundant". A copy of the Scheme is annexed to this Report.

The Parish of Basildon lies on the South of the Thames between Pangbourne and Streatley. On the North and East its boundary runs for about 2 miles along the river and the distance from the middle of that boundary to the South West corner of the parish is about 3 miles. In 1871 the parish had 698 inhabitants. By 1931 the number had fallen to 543 but it has increased substantially since the war—being 1,102 in 1961 and 1,284 in 1971. There are two main centres of population. One—Lower Basildon—is in the North along or near the main road (A. 329) which runs across the parish a short distance to the South of the line of the river; the other—Upper Basildon—lies about 2 miles to the South along or near another road running across the parish near its southern boundary. Upper Basildon is by far the larger of the two. In 1973 of 987 persons on the Parliamentary electoral roll 735 lived in Upper Basildon and only 252 in Lower Basildon.

The Parish Church—St. Bartholomew's—is in the extreme North of the parish between the A. 329 and the river. The nave and chancel built of flint and stone are mediaeval and the tower—built of brick—18th century. The church was restored in the 19th century and a North aisle added. There is fixed seating for 222 and space for 36 chairs. The Council for the Care of Churches regards it as a building of "considerable architectural interest and value". Moreover it forms part of a most attractive group of buildings—the others being the Church Farm and the Old Rectory—which has been designated a "Conservation area" under the Civic

Amenities Act 1967 as being in the opinion of the Planning Authority "an area of special historic or architectural interest, the character or appearance of which it is desirable to preserve or enhance".

In 1895—apparently because the shift in the population from the North to the South of the parish had resulted in many parishioners living at a considerable distance from the Parish Church—Miss Morrison, the then owner of Basildon Park, gave money to build a timber chapel called St. Stephen's on a site in the centre of the Parish mid-way between Lower and Upper Basildon. Some additional place of worship was evidently needed, for in 1962 when this timber structure had fallen into a state of disrepair it was decided to replace it by a building of a more permanent character on a site in the garden of the vicarage in Upper Basildon—about 2½ miles to the South of the Parish Church. The new St. Stephen's is in the modern style—a "pyramidal" structure built round eight steel ribs rising from the floor with a glazed lantern at the top. Inside there is fixed seating for only 116 but there is room for 94 chairs. The church cost £12,600, much of which was raised on loan repayable over a period of years. It was dedicated by the Bishop of Oxford on 6 March 1965.

It was certainly not in the minds of those who were active in promoting its building that the new St. Stephen's should replace St. Bartholomew's. The brochure appealing for donations and covenants emphasised that St. Bartholomew's was "still our parish church", and Mr. Morton one of the present appellants was a member of the Building Committee. But in 1967 the quinquennial report of the Diocesan Surveyor which showed that a sum of about £5,000 was needed for repairs to the parish church raised the question whether the parish could or should maintain two churches; and at the instance of the Vicar a "fact-finding" Committee, of which Mr. Scott was chairman and Mr. Morton secretary, was set up to report on the problem. In its report the committee set out in detail the facts of the situation—including an analysis of the attendances at the two churches in the last three months of 1967. At St. Bartholomew's, Holy Communion was celebrated at 8 a.m. once a fortnight, attendance at which ranged from 4 to 15, and evensong was held on five occasions with attendances of between 30 and 40. A further 210 attended the Harvest Festival Service and 26 the celebration of Holy Communion on Christmas Day. At St. Stephen's, Holy Communion was celebrated every Sunday at 9 a.m., the attendance ranging from 34 to 69, and evensong on the Sundays when it was not held at St. Bartholomew's, the attendance ranging from 34 to 66. A further 185 attended the celebration of Midnight Mass at Christmas; 205 attended the Remembrance Day Service on 12 November; and 200 a Carol Service on Christmas Eve. The analysis does not of course record how many of those who attended the services came from Upper or Lower Basildon respectively. The Committee expressed the view that the majority of the church going population looked on St. Stephen's as their natural place of worship but that St. Bartholomew's was more suitable for festival occasions, and came to the conclusion that though the maintenance of both churches would cast a heavy burden on the parish, since apart from the sum needed to put St. Bartholomew's in repair there was a considerable debt still owing in respect of St. Stephen's, yet the closure of the old parish church which had been the centre of worship in the parish for seven centuries ought not to be contemplated and that the parish should shoulder the financial burden—heavy though it might be. The Committee's report was considered at a meeting of the Parochial Church Council held on 17 October 1968. At that meeting a motion that the Council accept the conclusions of the Committee that the parish church be maintained by the Parochial Church Council to the best of its ability was lost by 8 votes to 7 and a proposal that a public meeting

of all Parishioners be called so that their views on the matter might be ascertained was carried without a dissident. The meeting which was held on 14 November and attended by 70 parishioners revealed the same divergence of view as had divided the Parochial Church Council and it was decided to send a questionnaire to every household in the Parish asking whether having read the Committee's report the recipient was prepared to help to repair and maintain the fabric of St. Bartholomew's and, if so, to what extent. Replies were received from some 10% of the electors of Lower Basildon and some 19% of the electors of Upper Basildon. Of those who did reply a majority of those in Lower Basildon expressed their willingness to contribute while a majority of those in Upper Basildon declined to do so. A second meeting of the Parochial Church Council to discuss the future of the Parish Church was held on 31 July 1969. At this meeting the secretary reported the result of the questionnaire and said that £1,213 had been offered including covenants which in the following six years would produce a further £2,400. After discussion a motion was carried by 14 votes to 1 that "in view of all the facts revealed we take the first steps to have the Parish Church declared redundant in the knowledge of the adequate rights of appeal provided by the new Pastoral Measure and the possibility that the church will in any case be preserved as a Historical building".

At this point it is necessary to refer to the relevant provisions of the Pastoral Measure 1968. They are as follows:

#### " PART I

#### " PROCEDURE FOR MAKING PASTORAL SCHEMES AND ORDERS

" 1. (1) The Diocesan Conference of every diocese shall as soon as possible appoint a committee to be known as the Pastoral Committee of the diocese concerned.

" 2. (1) It shall be the duty of the Pastoral Committee of a diocese from time to time as may be directed by or agreed with the bishop to review the arrangements for pastoral supervision in the diocese or any part thereof and, in cases where they consider it desirable, to make recommendations to the bishop in accordance with the next following section for any of the matters for which provision may be made under Part II or Part III of this Measure (other than section 36 thereof) by a pastoral scheme or pastoral order.

(2) The Pastoral Committee shall at all times:

(a) have particular regard to the making of provision for the cure of souls in the diocese as a whole, including the provision of appropriate spheres of work and conditions of service for all persons engaged in the cure of souls and the provision of reasonable remuneration for such persons;

(b) have regard also to the traditions, needs and characteristics of individual parishes.

" 3. (1) Before deciding to make any recommendations to the bishop, the Pastoral Committee shall so far as may be practicable ascertain the views of the interested parties.

(2) In this Part of this Measure "interested parties", in relation to any recommendations, proposals or draft scheme or order, means—

(a) incumbents of any benefices which would be affected by the implementing thereof, including vicars in a team ministry established for any such benefice;

- (b) the patrons of any such benefices;
- (c) the parochial church councils of any parishes which would be so affected;
- (d) the archdeacons and rural deans of any archdeaconries and rural deaneries which would be so affected or to which any such benefices or parishes belong, and
- (e) the local planning authority or authorities concerned.

(4) Before deciding to make a recommendation that a declaration of redundancy be made in respect of any church, the Committee shall also ascertain the views of the Council for the Care of Churches, and shall obtain from them information about the historic and architectural qualities of that church and other churches in the area and the historic and aesthetic qualities of their contents.

(6) If the bishop approves the draft proposals either with or without amendments, he shall submit the proposals as approved to the Commissioners, who shall send copies thereof to the interested parties, informing them that, if the Commissioners prepare a draft scheme or draft order in pursuance of the proposals, they will be given an opportunity of making representations with respect thereto.

The bishop shall also send to the Commissioners, with the proposals, the annexe (if any) containing the comments and information furnished by the Council for the Care of Churches.

“ 4. (1) The Commissioners shall consider any proposals submitted to them as aforesaid and may make, with the agreement of the bishop given after consultation with the Pastoral Committee, such amendments thereof as appear to them desirable.

“ 5. (1) The Commissioners shall serve a copy of any draft scheme or order prepared under the last foregoing section on each of the interested parties, together with a notice stating that written representations with respect thereto may be made to the Commissioners not later than a date specified in the notice, being a date not less than twenty-eight days after the service of the notice.

(2) If a draft scheme provides for a declaration of redundancy the Commissioners shall—

- (a) also serve a copy thereof on the Advisory Board;
- (b) publish in one or more newspapers circulating in the locality affected by the scheme a notice stating the objects of the draft scheme and naming a place or places within the locality where a copy thereof may be inspected, and stating that written representations with respect to the draft scheme may be made to the Commissioners not later than a date specified in the notice, being a date not less than twenty-eight days after the first publication of the notice in such a newspaper.

(4) The Commissioners shall consider any written representations duly made with respect to any draft scheme or order and may, if they think fit, afford an opportunity to any person, whether he has made written representations or not, to make oral representations to their representative with respect to the draft scheme or order.

“ 7. Where the Commissioners, having considered the representations (if any), are of opinion that any such draft scheme or order should be made, and do not propose to make any amendments . . . thereof, then—

- (a) in the case of a draft scheme, they shall submit it to the bishop for his consent and, when he has given his consent, they shall seal a copy of the draft scheme and so make the scheme,

and shall submit it for confirmation by Her Majesty in Council;

“ 8. (1) As soon as possible after a scheme is submitted for confirmation by Her Majesty in Council under the last foregoing section, the Commissioners shall give notice of such submission to the interested parties and so far as practicable to any other persons who have duly made written representations with respect thereto, and shall publish notice thereof in one or more newspapers circulating in the locality affected by the scheme, and the notice shall inform persons who have duly made written representations of their right to appeal to Her Majesty in Council and the time within which such right may be exercised.

(2) Any person who has duly made written representations with respect to the scheme may appeal to Her Majesty in Council against the scheme or any provisions thereof by lodging notice of appeal with the Clerk of the Privy Council before the expiration of a period of twenty-eight days beginning with the day immediately after the date of the first publication of the notice of the submission of the scheme as aforesaid.

(3) If no notice of appeal is given before the expiration of the period aforesaid, Her Majesty may by Order in Council confirm the scheme.

(4) If a notice of appeal is given before the expiration of the said period, Her Majesty in Council may order that the appeal be heard by the Judicial Committee of the Privy Council, and the Judicial Committee shall make a report thereon and may propose to Her Majesty in Council that the appeal should be allowed or dismissed or that the scheme should be returned to the Commissioners for reconsideration, and Her Majesty in Council may accordingly—

- (a) allow the appeal, in which case the scheme shall be of no effect, but without prejudice to the making and submission of a further scheme; or
- (b) dismiss the appeal and confirm the scheme; or
- (c) return the scheme to the Commissioners for reconsideration.”

Section 28 which is in Part II entitled

“ CONTENTS AND EFFECT OF PASTORAL SCHEMES AND ORDERS ”

is in the following terms:

“(1) A pastoral scheme may make a declaration of redundancy in respect of:

- (a) a church which the Commissioners are satisfied is not required as a parish church or chapel of ease or will cease to be so required as a result of any provision of the scheme; or
- (b) any part of a church (being a parish church or chapel of ease) which the Commissioners are satisfied is no longer required for use as a part of the church or will cease to be so required as a result of any provision of the scheme;

and in that case provision may be made in accordance with Part III of this Measure, either by the pastoral scheme (in the circumstances specified in sections 46 and 47) or by a scheme made under the said Part III, for the use, the care and maintenance or the demolition of the church or part of a church to which the declaration relates (in this Measure referred to as the “redundant building”), and also for dealing with a churchyard or other land annexed or belonging to the church.

(2) A declaration of redundancy may be made as aforesaid in respect of a parish church notwithstanding that the parish will have no parish church when the declaration takes effect, and the status of the parish shall not be affected by the lack of a parish church.

(3) As from the date when a declaration of redundancy takes effect in respect of the whole of a church, the church shall be closed for public worship except as may be provided under Part III of this Measure.

### “ PART III

#### “ REDUNDANT CHURCHES

“ 42. (1) There shall be a Board, to be called the Advisory Board for Redundant Churches, consisting of a chairman and not less than six nor more than ten other members, and the chairman and other members shall be appointed by the Archbishops of Canterbury and York jointly after consultation with the Prime Minister and First Lord of the Treasury.

(3) The functions of the said Board shall be to give information and advice to the Commissioners on or concerning the historic and architectural qualities of any church or part of a church as respects which the question arises whether it ought to be declared redundant, or as respects which questions arise as to its use, demolition or preservation on or in the event of its being declared redundant.

“ 43. (1) Subject as hereinafter provided there shall be constituted a committee for every diocese, to be called the Diocesan Redundant Churches Uses Committee of the diocese concerned.

“ 45. (1) There shall be a body corporate, to be called the Redundant Churches Fund, with perpetual succession and a common seal.

(4) The Redundant Churches Fund shall have as its object the preservation, in the interests of the nation and the Church of England, of churches and parts of churches of historic or architectural interest vested in the Fund by this Part of this Measure together with their contents so vested.

(5) The Redundant Churches Fund shall have power—

- (a) to hold and manage all churches and parts of churches and other property vested in the Fund by this Part of this Measure and, in particular, to carry out all necessary works of maintenance and repair in respect of that property;
- (b) to permit the occasional use of property vested in the Fund for purposes considered by the Fund to be suitable;
- (c) to charge entrance fees for admission to any such property, to raise money by public subscription and appeals, and to accept gifts and bequests either for the general purposes of the Fund or on specific trusts for purposes falling within the general purposes.”

Section 46 deals with the case where a pastoral Scheme makes a declaration of redundancy in respect of a church which is to be replaced by another church.

“ 47. Where a pastoral scheme makes a declaration of redundancy in respect of any church or part of a church, not being a case to which the last foregoing section applies, and the Commissioners are satisfied that a suitable use or uses will be available for the redundant building when the declaration takes effect, the pastoral scheme may provide for the appropriation of the redundant building to the said use or uses, and may make further provision for any of the matters mentioned in section 51 (2) or (4) of this Measure.

“ 48. Except in the cases specified in the last two foregoing sections, and without prejudice to the provisions relating to the restoration of a

redundant building to use as a church, no further provision beyond the declaration of redundancy itself shall be made by a pastoral scheme with respect to the redundant building, but such provision shall be made by the following provisions of this Part of this Measure and schemes made and confirmed thereunder (in this Measure referred to as "redundancy schemes").

49. (1) Where a declaration of redundancy is made in a case to which neither section 46 nor section 47 of this Measure applies, the redundant building shall, when the declaration takes effect, vest by virtue of this Measure, without any conveyance or other assurance, in the Diocesan Board of Finance, and the Commissioners shall not prepare a redundancy scheme in respect of the redundant building for a period of at least one year thereafter:

(2) During the period between the taking effect of a declaration of redundancy and the coming into operation of a redundancy scheme with respect to the redundant property—

- (a) the Diocesan Board of Finance shall be responsible for the care and maintenance of the redundant building, so far as is reasonable in all the circumstances, and the safekeeping of its contents, whether in the building or elsewhere, and shall insure the said building and contents;
- (b) the Diocesan Redundant Churches Uses Committee or, as the case may be, the Commissioners shall make every endeavour to find a suitable use for the redundant building;
- (c) while incurring no financial obligation, the incumbent and churchwardens of the parish in which the redundant building is situated shall give the Diocesan Board of Finance every assistance in providing for reasonable supervision of the building against damage.

(3) On a declaration of redundancy taking effect, any liability of a parochial church council or rector (including a lay rector) for the repair and maintenance of the redundant building and the safe keeping of its contents shall cease, and the Inspection of Churches Measure 1955 shall cease to apply to the redundant building.

50. (1) The Commissioners may at any time after the expiration of the period of one year mentioned in subsection (1) of the last foregoing section or, in the cases mentioned in the proviso to that subsection, at any time after the conditions therein mentioned are fulfilled, and shall in any case not later than three years after the declaration of redundancy takes effect, prepare a draft scheme with respect to the redundant building providing for any of the matters mentioned in the next following section.

(2) Before preparing any such draft scheme the Commissioners—

- (a) shall consult the bishop; and
- (b) if it is proposed to provide for the demolition or the care and maintenance by the Redundant Churches Fund of the redundant building or any part thereof, or for any architectural or structural changes in the redundant building or any part thereof for the purpose of facilitating the use thereof, shall consult the Advisory Board.

(3) The Commissioners shall serve a copy of the draft scheme on the Diocesan Board of Finance, the local planning authority or authorities concerned and the Advisory Board and, if the draft scheme provides for the care and maintenance by the Redundant Churches Fund of the redundant building or any part thereof, on that Fund.

(4) The Commissioners shall also publish in one or more newspapers circulating in the locality in which the redundant building is situated a notice stating the effect of the draft scheme and naming a place or places where a copy thereof may be inspected, and stating that written representations with respect to the draft scheme may be made to the Commissioners not later than a date specified in the notice, being a date not less than twenty-eight days after the first publication of the notice in such a newspaper as aforesaid.

(5) The Commissioners shall consider any representations duly made with respect to the draft scheme and any unforeseen change of circumstances affecting its implementation, and may decide not to proceed with it or to amend it or to proceed with it in its original form, and shall consult the bishop before making their decision.

(6) If the Commissioners decide to proceed with the draft scheme, they shall seal a copy thereof, with such amendments (if any) as they may have made therein, and shall thereby make the scheme, and shall submit the scheme for confirmation by Her Majesty in Council, who may confirm the scheme by Order in Council.

“ 51. (1) A redundancy scheme shall make the following provision for the redundant building, that is to say—

- (a) if a use or uses appearing to the Commissioners to be suitable have been found for the redundant building or any part thereof, the scheme may provide for appropriating the building or part to such use or uses, which shall be specified or generally described in the scheme;
- (b) if such use or uses cannot be found for the building or a part thereof and it appears to the Commissioners, after consultation with the Advisory Board, that the building or part is of such historic or architectural interest that it ought to be preserved in the interests of the nation and the Church of England, the scheme may provide for its care and maintenance by the Redundant Churches Fund;
- (c) if the building or any part thereof is not appropriated or provided for under the foregoing paragraphs, the scheme shall provide for its demolition.

“ 58. A pastoral scheme may provide that a redundant building which is vested in the Redundant Churches Fund or the Diocesan Board of Finance or the Commissioners, shall be restored to use as a church or part of a church, and may further provide—

- (a) for designating the church as a parish church or chapel of ease;
- (b) for vesting the building, with or without any land vested as aforesaid with the building, in the incumbent of the benefice in the area of which it is situated, or in such other person as may be specified in the scheme;
- (c) for such transitional, supplementary or consequential matters as appear to the Commissioners to be necessary or expedient;
- (d) for revoking the declaration of redundancy and revoking or amending any provisions, whether in a pastoral scheme or redundancy scheme, made under this Part of this Measure in relation to the redundant building.”

On being notified of the resolution of the Parochial Church Council the Bishop of Oxford referred the matter to the Pastoral Committee of the diocese, which after ascertaining the views of the “interested parties” mentioned in section 3(2) and of the Council for the Care of Churches recommended that St. Bartholomew’s should be declared redundant. The



Bishop approved this proposal and submitted it to the Church Commissioners. The Vicar, the Diocesan Patronage Board, the Archdeacon and the Rural Dean have all expressed the view that a declaration of redundancy should be made. The Council for the Care of Churches expressed the hope that if the church should be declared redundant and no suitable alternative use could be found for it the Advisory Board for Redundant Churches would recommend its vesting in the Redundant Churches Fund so that it might continue to be used for occasional services and perhaps eventually return to full use as a place of worship if the population expanded. The information provided by the Local Planning Authority suggests that no substantial increase in the number of houses in the parish is to be expected in the near future and that such increase as there will be is more likely to be in Upper than in Lower Basildon.

The appellants and two other parishioners made written representations to the Commissioners against the making of the scheme and were subsequently invited to a meeting in London at which they urged their views orally. On considering all the material before them, the Commissioners being satisfied that St. Bartholomew's was not required either as a parish church or a chapel of ease submitted a draft Scheme embodying a declaration of redundancy to the Bishop and on his giving his consent to it sealed it on the 16th February 1972 and submitted it for confirmation to Her Majesty in Council. The appellants having appealed against this Scheme an Order in Council was made on 28 April 1972 directing that the appeal be heard by the Judicial Committee, who should report thereon to Her Majesty in Council.

The parties put before the Board on the hearing of the appeal figures showing the attendance at St. Bartholomew's in 1971 and 1972 and at St. Stephen's in 1972 and also some up-to-date information as to the present state of repair of St. Bartholomew's and the cost of putting it in repair. In 1971 St. Bartholomew's was open from Easter until the Harvest Festival on September 19. A communion service at 8 a.m. was celebrated on 14 occasions and evensong was held on 7 occasions. The attendance at the communion service ranged from 13 to 5, only 2 or 3 of whom were residents in Lower Basildon. At the Harvest Festival service the church was full and on two other special occasions there was an attendance of 40 or 50 at evensong but at the other 4 services the attendance ranged from 15 to 2. In 1972 St. Bartholomew's was again open from Easter to the Harvest Festival on October 1st but apart from the Harvest Festival service—attended by 220 persons—the only services held were communion services at 8 a.m. on the 1st, 3rd and 5th Sundays in each month. The attendances at such services ranged from 15 to 4. At St. Stephen's in 1972 there were some 130 services on about 100 days. Evensong has been given up. The principal service is Choral Family Eucharist at 9 a.m. on Sundays, which is always well attended—congregations ranging (leaving aside special occasions) from about 45 to 80 or more. Further there were frequent celebrations of Holy Communion.

In November 1972 the Diocesan Surveyor made another quinquennial report on the condition of St. Bartholomew's and expressed the opinion that the probable cost of the restoration work set out in his report including re-wiring and internal decorations inclusive of professional fees would be in the region of £20,000 to £25,000. On the other hand an architect instructed by the appellants who made a survey of the church in May 1973—while not disputing that a sum of the order mentioned by the Diocesan Surveyor might be required to put the church into perfect condition—said that all the work which was essential in order to prevent the church falling into decay could be done for about £6,000.

In deciding whether or not a church should be declared redundant it is obviously very relevant to consider what is likely to happen to it if a declaration is made. As neither section 46 or 47 applies in this case a redundancy scheme under sections 50 and 51 would have to be made by the Commissioners in respect of St. Bartholomew's at latest before the expiration of 3 years from the declaration of redundancy. Even if it would be legally possible for such a scheme to provide for the demolition of the church notwithstanding that it forms part of a "conservation area", it would be, their Lordships think—and Counsel for the Commissioners agreed—in the highest degree unlikely that any scheme would so provide. If, therefore, no suitable alternative use could be found for the building provision would presumably be made for its care and maintenance by the Redundant Churches Fund, as suggested by the Council for the Care of Churches.

Those being the facts their Lordships proceed now to consider the arguments presented by the appellants, bearing in mind that as was said by Lord Jenkins in delivering the report of the Board on the 2 May 1960 in the case of *The Parochial Church Council of the Parish of Little Leigh v. The Church Commissioners* in reference to section 10(5) of the Union of Benefices Measure 1923, which was in substantially the same terms as section 8(4) of the Pastoral Measure 1968, that while they have power to consider any scheme submitted to them "*de novo*" on its merits as they appear to them yet they ought not save for the most cogent reasons to dissent from recommendations which have the approval of the Pastoral Committee, the Bishop and the Church Commissioners.

In opposing the making of a declaration of redundancy the appellants have the support of 402 persons who have signed a petition against the scheme. Over 300 of these live in the parish and they include 76 out of the 147 parishioners who are on the Church Electoral Roll. Their case was ably presented by Mr. Morton, who, as has been said, had been the Secretary of the "fact-finding" Committee. He first submitted that on a fair reading of section 2(1) of the Pastoral Measure the Pastoral Committee in making its recommendations ought not to confine its attention to one particular parish but should take a wider view and that if that had been done here it would have been found that there were churches in neighbouring parishes in respect of which a stronger case for "redundancy" could be made out than that presented with regard to St. Bartholomew's. Turning to the facts he urged that St. Bartholomew's had been the focus of Christian worship in the parish for 700 years and that to close it because it was temporarily under-used would be an unjustifiable breach with the past. St. Bartholomew's was far better suited than St. Stephen's for special services—such as the Harvest Festival—at which there was a large attendance. The attendances at the 8 o'clock Communion Services were as good as those at the Communion Services at St. Stephen's—other, of course, than the Choral Family Eucharist—and that in this age of the motor car there was no reason to think that if the Vicar was prepared to hold more services in the parish church and fewer in St. Stephen's attendances would suffer. Finally he urged that if a choice had to be made it would be better to put St. Stephen's to some other use—possibly for another denomination—and to retain St. Bartholomew's.

As to the point of construction their Lordships have no doubt that under section 2 of the Measure the Pastoral Committee can if it thinks fit, bearing in mind the matters mentioned in section 2(2)(b), recommend that a declaration of redundancy be made in relation to a particular parish church without regard to conditions obtaining in neighbouring parishes. On the facts they cannot regard the "under-use" of St. Bartholomew's as temporary. As has been said the information obtained from the Planning Authority affords **no ground for thinking that the**

population of Lower Basildon will increase to any appreciable extent in the foreseeable future. It may be that St. Bartholomew's both on grounds of tradition and because it has room for rather more people is a more suitable place in which to hold special services—such as the Harvest Festival—than St. Stephen's but the difference in seating capacity is not very great and their Lordships have no reason to think that any great inconvenience would be caused if all such services had to be held in St. Stephen's. Most of those who attend the 8 a.m. Communion Services at St. Bartholomew's appear in fact to live in Upper Basildon and the evidence put in by the Commissioners shows that the Parochial Church Council is alive to the necessity of making arrangements for the transport to St. Stephen's of any residents in Lower Basildon who would be unable otherwise to get to church if services in St. Bartholomew's were discontinued. It is not, their Lordships think, reasonable to expect the Vicar to risk a serious falling off in attendances at the Choral Family Eucharist by holding that service, even on occasion, at St. Bartholomew's, and to cease to hold any services at St. Stephen's and put the building to some other use (which would, so far as their Lordships can see, be the only way in which the parish could raise enough money to restore and maintain St. Bartholomew's) is, their Lordships think, altogether out of the question. Their Lordships can well understand that the proposal to close the old parish church is viewed with great distaste by many residents in the parish; but what is required to keep a church open is people who are prepared to attend its services and to provide money for its upkeep. The truth, as their Lordships see it, is that if the reasons for preserving a church are that it is a building of historic or aesthetic interest rather than that it is needed as a place of worship it is better that the money necessary to preserve it should be provided by central funds than that it should remain a burden on the parish.

For these reasons their Lordships will humbly propose to Her Majesty that the appeal be dismissed and the scheme confirmed.

## ANNEX

## PASTORAL SCHEME

This Scheme is made by the Church Commissioners this sixteenth day of February 1972 in pursuance of the Pastoral Measure 1968, the Right Reverend Kenneth, Bishop of Oxford, having consented thereto.

*Declaration of redundancy*

1. (1) The parish church of the parish of Basildon in the diocese of Oxford shall be declared redundant by this Scheme.

(2) The marriage registers appertaining to the said church shall be dealt with in accordance with section 62 of the Marriage Act 1949 and, without prejudice to the exercise either before or after the date when this Scheme comes into operation of any of the powers conferred by the Parochial Registers and Records Measure 1929 which may be applicable thereto, the register books (if any) of baptisms and burials and other parochial records and muniments appertaining to the said church shall be dealt with as the Bishop of Oxford shall direct.

*Coming into operation of this Scheme*

2. This Scheme shall come into operation upon the date on which notice of the making of any Order of Her Majesty in Council confirming this Scheme is published in the London Gazette.

In witness whereof the Church Commissioners have caused their Common Seal to be hereunto affixed.

SIGNED by the Right Reverend Kenneth, }  
Bishop of Oxford } Kenneth Oxon:

The COMMON SEAL of the Church Commis- }  
sioners was hereunto affixed in the presence }  
of:— }

D. G. Ward,  
*Assistant Secretary.*



In the Privy Council

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**DEREK JOHN MORTON AND  
OTHERS**

p.

**THE CHURCH COMMISSIONERS**

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**DELIVERED BY  
LORD CROSS OF CHELSEA**