

*Pastoral Measure 1968*

**Parochial Church Council of the parish of  
St. John the Divine Leicester** – – – – – *Appellants*

v.

**The Church Commissioners** – – – – – *Respondents*

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**JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 13TH MARCH, 1974**

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*Present at the Hearing:*

LORD DIPLOCK

LORD CROSS OF CHELSEA

LORD KILBRANDON

*[Delivered by LORD CROSS OF CHELSEA]*

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This is an appeal by the Parochial Church Council of the Parish of St. John the Divine Leicester against a Scheme made by the respondents, the Church Commissioners, with the consent of the Bishop of Leicester under the powers given to them by the Pastoral Measure 1968. The object of the Scheme—a copy of which is appended to this judgment—is to unite the benefices and parishes of Holy Trinity Leicester and St. John the Divine Leicester so as to form a single benefice and parish of which the Church of Holy Trinity would be the parish church and to declare the church of St. John the Divine redundant.

The parish of St. John the Divine covers some 250 acres in the centre of Leicester. It is a part of the city which is in process of being redeveloped—much of it as a “Civic Centre”. Large areas have been cleared of buildings and the resident population has fallen drastically. On the basis of the 1971 census it was only 270 and it is estimated that when the redevelopment is completed it will be even less. The Church which was designed by Sir George Gilbert Scott was consecrated in 1854 and has recently been placed by the Department of the Environment on its list of buildings of special architectural or historical interest. It has a very fine peal of ten bells. There are 54 persons on the electoral roll—5 resident in the parish and 49 outside it. When the last incumbent retired in 1969 the Bishop with the approval of the Pastoral Committee suspended the presentation to the living pending the publication of the Report of the Commission on the future of the Parishes and Churches of Inner Leicester hereinafter mentioned. Services have, however, continued to be held in the church each Sunday under the conduct of visiting clergy and diocesan readers. The attendance at morning service averages about 25 and in the evening about 30. Special services are held from time to time which are well attended. The interior of this Church is in a good state of repair but according to the quinquennial report of the diocesan architects prepared in July 1973 about £2,300 needs to be spent on repairs to the exterior.

The appellants have done their best to keep the church in a proper state of repair—having expended some £400 for that purpose in 1972 and some £300 in 1973. It is, however, to be observed that in 1972 they received over £1,300 from legacies and it appears that their regular income from collections and fees would not have enabled them to spend so much on repairs. The vicarage which after the retirement of the last incumbent was used for a time as a centre for drug addicts is in a bad state of repair. The capital endowment of the benefice is about £8,000 and the difference between the income produced by it and the Diocesan minimum stipend of £1,525 was made up out of central funds.

The parish of Holy Trinity lies immediately to the south of that of St. John the Divine and covers a somewhat larger area. Its resident population was about 1,330 in 1971 and is expected to be somewhat larger when the redevelopment of the area is completed. The Church, which was designed by Smirke and built about 1838, was extensively altered internally in 1967—the rear of the Church having been partitioned off so as to form rooms both on the ground and first floors in which meetings and parish functions can be held. There are 212 persons on the electoral roll—32 resident in the parish and 180 outside it. There are three services each Sunday—Holy Communion at 8, Matins at 11 and Evening Prayer at 6.30—the average attendances being 12, 100 and 200 respectively.

In inner Leicester—as in the centre of many old cities—the number of churches is totally disproportionate to the number of residents. On the other hand in the outlying suburbs where the majority of the population now lives there are too few churches. Moreover it is common knowledge that the Church of England—like other denominations—is suffering from a shortage of ordained clergymen and trained church workers. In these circumstances it is natural that the church authorities should ask themselves whether it would not be in the interest of the Church in Leicester as a whole for the number of separate benefices and parishes in the inner city to be reduced; for some of the churches to be declared redundant and in some cases possibly demolished; and for the manpower and money thus released used to better advantage elsewhere. On the other hand there are considerations to be urged on the other side. In the first place some of the churches in question have great or at least substantial aesthetic value or historical interest. Further in many of them—as in the case of St. John the Divine—a small but devoted band of worshippers has succeeded in keeping the church in question alive and its closure is likely to cause them or some of them acute distress. In June 1968 the Bishop of Leicester appointed a Commission to report on the future of the parishes and churches of Inner Leicester. The Commission in its report made in March 1970, dealt with twelve parishes and churches including St. John the Divine and Holy Trinity. In the course of their deliberations the members of the Commission visited the church of St. John the Divine, met the churchwardens and some members of the Parochial Church Council and obtained their views as to the future of the parish and the Church. Paragraph 3 of their report headed “Priorities” contains the following passage:

“Most congregations”—this no doubt included that of St. John the Divine—“have been anxious and ready to carry on with their existing organisation. Any change against the wishes of these people should only be undertaken with great reluctance, and in the light of urgent and essential duties to be performed elsewhere, bearing in mind the shortage of clergy.”

It is clear therefore that the Commission had well in mind the need to balance the conflicting considerations referred to above and having them in mind they recommended (*inter alia*) that the benefices and parishes of Holy Trinity and St. John should be united and the church of St. John declared redundant. The diocesan Pastoral Committee established under the Pastoral Measure 1968 considered this recommendation of the Commission and decided to recommend to the Bishop that it be implemented by a Scheme made under the Measure. Section 3 of the Measure provides that before deciding to make any such recommendations the Pastoral Committee should so far as practicable ascertain the views of the "interested parties" which include the Parochial Church Council of any parish affected by the Scheme and on 22nd February 1971 the Bishop and the Committee met and heard representations against the making of the Scheme from representatives of the Parochial Church Council. Despite those representations the Committee decided to recommend that the Scheme be made and the Bishop, approving that recommendation, submitted the proposals to the respondents the Church Commissioners who subsequently made the Scheme after themselves considering further representations against it made to them by the appellants.

If the Church is declared redundant then the respondent Commissioners must, not later than three years after the declaration of redundancy takes effect, prepare a draft redundancy Scheme with respect to it. Section 51 of the Pastoral Measure deals with the contents of such a Scheme. Briefly stated the position is as follows. If some suitable alternative use can be found for the church the Scheme will provide for its appropriation to that use. If no alternative use can be found but the building is thought to have such historical or architectural interest that it should be preserved the Scheme may provide for its care and maintenance by the Redundant Churches Fund. If no alternative use can be found and the church is not judged of sufficient historical or architectural interest to warrant its preservation the Scheme will provide for its demolition. The fact that this church is on the list of protected buildings would not prevent its demolition under a Redundancy Scheme (see the Redundant Churches and other Religious Buildings Act 1969 s.2 as amended by the Town and Country Planning Act 1971 Schedule 23) but no doubt it would be a factor which would be taken into account by those responsible for drawing up the Scheme. The Bishop says that if the Church were to be demolished he would arrange for the removal of the peal of bells to some other church. It appears however to be by no means unlikely that if the Church is declared redundant it will be acquired by the City and incorporated in the civic centre for use as an art gallery or concert hall. In that event the peal of bells might, perhaps, remain in the tower. In the course of the argument it was suggested by counsel for the appellants that as an alternative to its complete rejection the Scheme might be amended by excluding the declaration of redundancy. If that was done the two parishes and benefices would be united but the Church of St. John the Divine would remain a second parish church or a chapel of ease. It appears that in that event under ss.56 (1) and 74 of the Pastoral Measure 1968 the building would have to remain open.

Those being the facts their Lordships turn to consider whether this Scheme should be confirmed, bearing in mind that, as was said by Lord Jenkins in giving the judgment of the Board in *Parochial Church Council of Little Leigh v. Church Commissioners* [1960] 1 W.L.R.567, while they have power in these cases to consider any Scheme submitted to them *de novo* on its merits as they appear to them 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. The chief ground of complaint put forward in the Petition is that insufficient attention has been paid by those responsible for the Scheme to the views of the Parochial Church Council. Their Lordships can see no substance in this complaint. The Council had, and availed itself of, the opportunity of putting forward its views to the Commission, to the Pastoral Committee, to the Bishop and to the Church Commissioners and the fact that the decision has gone against them does not mean that their views were not carefully considered. In argument it was suggested that the respondents ought to have put in detailed evidence of the shortage of manpower and financial needs of the diocese and of the use which the Bishop would make of any additional manpower or money released by the Scheme so that the appellants could themselves form a view as to whether on balance the wider needs of the diocese ought to prevail against the wishes of the worshippers at the Church. Again, their Lordships can see no force in the argument. That the church wants more clergy and more money to build churches is common knowledge and the Bishop in fact indicated in his affidavit some of the districts in which the need was pressing. The only use to which the appellants suggest that the church might be put beyond serving the needs of those few who now attend its services is as a "civic" church attached to the civic centre but the respondents point out that the cathedral which is not far from the civic centre is the most appropriate church to be used for such purposes. Finally it seems to their Lordships that to exclude the declaration of redundancy from the Scheme would be to make the worst of both worlds. In this case their Lordships can well understand that the proposal to declare redundant a church which they have striven so hard in the past years to keep alive should greatly distress the members of the Parochial Church Council and the other regular worshippers at St. John the Divine. They are, however, unable to discern any reason, let alone any cogent reason, for dissenting from the views formed by the Commission, the Pastoral Committee, the Bishop and the Church Commissioners. They will therefore humbly advise Her Majesty that the appeal be dismissed and the Scheme confirmed.

## ANNEX

### PASTORAL SCHEME

This Scheme is made by the Church Commissioners this 29th day of August 1972 in pursuance of the Pastoral Measure 1968, the Right Reverend Ronald Ralph, Bishop of Leicester, having consented thereto.

#### **Union of benefices and parishes**

1. (1) The benefice of Holy Trinity, Leicester and the benefice of Saint John, Leicester in the diocese of Leicester shall be united to create a new benefice which shall be named "The benefice of Holy Trinity and Saint John the Divine, Leicester".

(2) The parish of Holy Trinity, Leicester and the parish of Saint John, Leicester shall also be united to create a new parish which shall be named "The Parish of Holy Trinity and Saint John the Divine, Leicester" and shall comprise the area of the new benefice.

**Designation of first incumbent**

2. If immediately before this Scheme comes into operation the Reverend Symon Richard Beesley is incumbent of the benefice of Holy Trinity, Leicester, he shall be the first incumbent of the new benefice.

**Parish church**

3. The parish church of the parish of Holy Trinity, Leicester shall be the parish church of the new parish.

**Declaration of redundancy**

4. (1) The parish church of the parish of Saint John, Leicester 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 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 transferred to the parish church of the new parish.

**Place of residence**

5. The parsonage house of the benefice of Holy Trinity, Leicester shall be the place of residence of the incumbent of the new benefice.

**Disposal of parsonage house**

6. The parsonage house of the benefice of Saint John, Leicester, together with the site and appurtenances thereof and the grounds usually occupied and enjoyed therewith, shall be transferred to the Leicester Diocesan Board of Finance for disposal in accordance with the provisions of paragraph 9 of Schedule 3 to the Pastoral Measure 1968.

**Patronage**

7. The patronage of the new benefice shall be vested in the patrons of the benefice of Holy Trinity, Leicester.

**Archdeaconry and rural deanery**

8. The new benefice shall be in the archdeaconry of Leicester and the rural deanery of Christianity.

**Coming into operation of this Scheme**

9. This Scheme shall come into operation upon the first day of the month following 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 Ronald Ralph, Bishop of Leicester.  
Ronald Ralph Leicester

The COMMON SEAL of the Church Commissioners was hereunto affixed in the presence of:—

D. G. Ward  
*Assistant Secretary*

**In the Privy Council**

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**PAROCHIAL CHURCH  
COUNCIL OF THE PARISH OF  
St. JOHN THE DIVINE LEICESTER**

v.

**THE CHURCH COMMISSIONERS**

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**DELIVERED BY  
LORD CROSS OF CHELSEA**