

Pastoral Measure 1968

David E. Gillman - - - - - - - *Appellant*

v.

The Church Commissioners - - - - - *Respondents*

REASONS FOR THE REPORT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE
24TH JULY 1980

Present at the Hearing :

LORD EDMUND-DAVIES

LORD FRASER OF TULLYBELTON

LORD SCARMAN

[*Delivered by* LORD EDMUND-DAVIES]

Made by the Church Commissioners on 12th October, 1978, this Pastoral Scheme relates to certain parishes and benefices in the Diocese of Leicester. The parish and benefice primarily affected is that of St. Leonard and the Scheme provides

- (a) for uniting the parishes of St. Margaret and St. Leonard;
- (b) for declaring redundant the parish church of the parish of St. Leonard; and
- (c) for altering the parishes of St. Margaret and Belgrave.

Written representations with respect to the draft Scheme were made by the Reverend G. Brain (who had been inducted to St. Leonard's in 1954) and four members of his congregation. These included the appellant, David Eric Gillman, Esquire, who had become a member of St. Leonard's Church in 1974. Having considered their representations, the Church Commissioners duly made the Scheme and submitted it for consideration by Her Majesty in Council. Thereafter the incumbent and the same four members of his congregation appealed to Her Majesty in Council against the Scheme, and their appeals were referred to the Judicial Committee on 6th February, 1979. But although, between 3rd May and 30th June, 1979, all the objectors save Mr. Gillman withdrew their appeals, on 15th September he filed a Petition of Appeal.

Although purporting to petition "on behalf of himself and in the interests of those members of St. Leonard's Church" opposing the Scheme, Mr. Gillman alone appeared in person before their Lordships to maintain objections to the implementation of the Scheme. In substance his resistance was confined to the proposed declaration of redundancy of St. Leonard's Church.

St. Leonard's parish was originally both small and rural, with its 13th century church on the outskirts of the City of Leicester. But the dissolution of the monasteries in the first half of the 16th century led to the

destruction of the ancient church, and no new one replaced it for three centuries. The parish became industrialised and its population increased substantially in the 19th century. As a consequence, the present parish church, with seating for some 650 people, was erected in 1876 in what was predominantly a working-class area. But it was never completed and architecturally has little to commend it. For some years it has been in need of substantial repair, and the character of the neighbourhood has again changed. Most of the housing having become sub-standard, clearance orders were obtained by the local authority and the inhabitants rehoused elsewhere, and the greater part of the parish has become run-down. In the result, between 1951 and 1970, the resident population of the parish declined from 1,442 to substantially less than 100. This is but part of a sad and general pattern, for as their Lordships said in March 1974 (*Parochial Church Council of the Parish of St. John the Divine Leicester v. The Church Commissioners*)

“In inner Leicester—as in the centre of many old cities—the number of churches is totally disproportionate to the number of residents.”

To the south-east of St. Leonard's lies the parish of St. Margaret, with its fine early 15th century church of special architectural and historical interest and in good repair. Adjoining it to the south-west lies the parish of All Saints, with a parish church needing repairs which are well beyond its means to remedy.

Over ten years ago the Bishop's Commission on the future of the Parishes and Churches of Inner Leicester recommended that the benefice and parish of St. Leonard's be united with those of St. Margaret and All Saints; that both St. Leonard's Church and All Saints Church be declared redundant; and that the former be demolished. But the Diocesan Pastoral Committee concluded that it would be inappropriate to involve All Saints, and that the better course would be to create a large parish embracing St. Leonard's, St. Margaret's and most of the extra-parochial area of Leicester Abbey, with St. Margaret's Church at one end and a new place of worship at the other end of what has become a new development area, St. Leonard's Church being declared redundant. Discussions on these and similar lines dragged on for several years, critical attention being understandably directed to the absence of satisfactory proposals for the St. Leonard's congregation, save at St. Margaret's. This and other criticisms were considered by the Bishop of Leicester and the Diocesan Pastoral Committee and, on 4th August 1975, the Archdeacon of Leicester convened a meeting to explain that long-term provisions could be made by acquiring a lease of land adjoining the Methodist Church in the extra-parochial area as the site of a new Anglican place of worship.

But as it was not known whether the proceeds of sale of St. Leonard's Church and Parsonage House would cover the cost involved in implementing the new plan, it was decided to carry out a feasibility study. In the result, it emerged that the probable total proceeds of sale would be wholly inadequate. Furthermore, in June 1976 the Quinquennial Survey disclosed the need for extensive repairs to St. Leonard's and that “items of immediate repair” would cost £13,500. It is unchallenged that by today the cost of such work is well beyond the capacity of the Parochial Church Council to meet, though the appellant submitted to their Lordships that sufficient means could reasonably be expected by a special appeal for funds over a two-year period.

In the result, the draft Scheme of 1974 was re-issued in January 1977 with a footnote intimating that “while in the immediate future one of the existing Free Churches is likely to give hospitality to the Anglican congregation, it is hoped that in due course an adequate building, whether shared or not, will be made available”. 22 persons (including the

incumbent of St. Leonard's and the appellant) registering objections to the amended Scheme, the Church Commissioners arranged for a representative Committee to inspect the areas and meet as many of those as wished to be heard. During their two-day visit in May 1977 this Committee met the incumbent, the ministers of the local Methodist and Baptist Churches, the Parochial Church Council and the congregation of St. Leonard's, as well as the Bishop of Leicester and members of the Diocesan Pastoral Committee. This led to the Respondents issuing in November, 1978, their "Statement concerning the Church Commissioners' decision to make the Scheme", in the course of which they said:

"The Commissioners indicated to the diocesan authorities therefore that in their view an essential pre-requisite to a declaration of redundancy of St. Leonard's Church ought to be the provision of facilities for Anglican worship in a suitable location within the residential area of the proposed united parish, and they subsequently obtained from the diocese a clear assurance that such alternative facilities for worship would be provided."

Suitable arrangements were in fact made with the Baptist Church at Buckminster Road in the Liberty of Leicester Abbey, and later the incumbent of St. Margaret's moved to a house nearby. In these circumstances the Respondents expressed themselves as satisfied that excellent facilities for Anglican worship have been made available for the foreseeable future.

Such was the state of affairs when the Respondents submitted the Scheme for confirmation. As against the solitary objection of the Appellant, such affidavits as those of the new Bishop of Leicester, the Archdeacon, and the Minister of Buckminster Road Baptist Church testified their conviction that the Scheme provided the best solution of a difficult situation. But that fact naturally does not determine the outcome of this appeal. It is nevertheless well to recall yet again that, as was said in 1974 in *The Parochial Church Council of the Parish of Holy Trinity, Birkenhead v. The Church Commissioners*:

"[Their Lordships] are called upon to review the proposals of those who have direct responsibility for pastoral care, together with the authority, experience and qualifications which enable them to discharge that responsibility. It is not necessary to point out that their Lordships are in very different case. That is why they will not, unless for irregularity of procedure, for excess of jurisdiction, or on cogent evidence of erroneous judgment, refuse to confirm a Pastoral Scheme. If this were more widely known or more closely attended to it may be that appeals would be less frequent."

To which their Lordships added earlier this year in *R. E. Rogers v. The Church Commissioners*:

". . . . the occasions when an appeal will be allowed are likely to be few. As has been repeated to the point of tedium, only where their Lordships are convinced by cogent reasons that the scheme is erroneous and does not meet the justice of the case will they take it upon themselves to exercise their powers to allow the appeal under section 8 [of the Pastoral Measure, 1968]."

This legal learning is inevitably familiar to the appellant, who describes himself in his Petition as one "whose personal researches into both Pastoral Reorganisation and Ecclesiastical Law and Procedure have provided an extra foundation upon which his approach to this particular scheme has been based". Why, then, does he persist in being its solitary opponent, and this despite his Bishop's sworn belief that ". . . . the whole mission of the Church in the area concerned is being hindered by

delay in implementing the Scheme"? He apparently accepts that ". . . at no time has it been felt that [St. Leonard's] Church could viably continue to exercise a pastoral ministry without either an amalgamation of the benefice with an adjacent one, or by incorporation of part of the heavily-populated adjacent extra-parochial area of Leicester Abbey" (Petition, para.11). And in his view, ". . . it would be true to say that the total number of persons habitually associated with the church is in the region of 85" (paragraph 18(i)). But he makes a three-prong attack on the Scheme, under the headings of

- (1) its viability,
- (2) its efficacy, and
- (3) alleged irregularity of procedure.

Of these, the first heading has numerous sub-divisions, relating to manpower and to the feasibility of retaining the vicarage, while under the third heading questions are raised regarding what is described as the "premature transfer of exclusive pastoral oversight of the extra-parochial area", this having reference to "the Bishop's intention to entrust to the incumbent of St. Margaret's Church the exclusive pastoral oversight of an area which is extra-parochial to his parish".

Having carefully studied the lengthy Petition and accompanying exhibits, their Lordships believe that no good purpose would be served by analysing any of them, for both individually and cumulatively they have only a featherweight character. Despite the appellant's zeal, it is sufficient to say that in their Lordships' considered view not a single cogent reason emerged, either from the documentary material or from the appellant's oral submissions, to create any doubt in their minds that, in the unfortunate (but by no means unusual) circumstances prevailing in inner Leicester, the proposed Scheme should be implemented. Their Lordships accordingly consider it highly regrettable that the pointless persistence of the appellant in opposing that course should have caused great and needless delay and expense. The one qualification they think it right to make is that careful consideration be given to the practicability of ensuring that the new Scheme does not obliterate the name "St. Leonard", which has been associated with the parish ever since 1238 A.D. and which should not now needlessly disappear without trace.

For these reasons, at the conclusion of the hearing of the appeal, their Lordships announced that they would humbly advise Her Majesty that it should be dismissed and the Scheme confirmed. Thereafter they have been much exercised regarding the respondents' application for an order that the appellant be ordered to pay the costs of these wholly unnecessary proceedings, as in their judgment it should have been long manifest that his objections to the Scheme could not conceivably prevail. But at 30 years of age the appellant has until recently had a substantial period of unemployment and he is wholly without the means to satisfy any part of an order for costs. Their Lordships desire to make clear that it is only in the light of these quite exceptional circumstances that they have decided against ordering that the appellant must pay the costs.

In accordance with Section 8(4) (a) of the Pastoral Measure 1968, their Lordships will therefore humbly report to Her Majesty in Council their proposal that the appeal be dismissed. There will be no order as to costs.

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In the Privy Council

DAVID E. GILMAN

v.

THE CHURCH COMMISSIONERS

DELIVERED BY
LORD EDMUND-DAVIES

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