

*Pastoral Measure 1968*

**Norah Lawford and Another**     -   -   -   -   -   -     *Appellants*

v.

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

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 10TH FEBRUARY 1981

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*Present at the Hearing :*

LORD FRASER OF TULLYBELTON

LORD SCARMAN

LORD BRIDGE OF HARWICH

[*Delivered by* LORD BRIDGE OF HARWICH]

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This is an appeal against a Pastoral Scheme made by the Church Commissioners on 17th August 1979. The Scheme concerns the parish of Hengoed in the diocese of Lichfield. It proposes to rename the parish "Hengoed with Gobowen", to declare the existing parish Church of St. Barnabas, Hengoed redundant, and to substitute as the parish church the Church of All Saints, Gobowen, at present a chapel of ease. The matter of substance in issue on the appeal is the proposed redundancy of St. Barnabas' Church.

The Church of St. Barnabas, with seating for 120, was opened for public worship in 1850 and the present parish was formed in 1854. The church serves the small and scattered hamlets of Upper Hengoed, Middle Hengoed and Lower Hengoed. A glance at the ordnance survey map, however, illustrates vividly how the coming of the railway has attracted the main concentration of population in the parish to the village of Gobowen, lying a little over a mile to the east of St. Barnabas' Church. Here in 1928 the Church of All Saints, with seating for 250, was opened for public worship as a chapel of ease. Gobowen now has a population of over 3,000 and is likely to grow in future. Little, if any, new development is to be expected in the Hengoed hamlets. The original vicarage of Hengoed ceased to be occupied by the incumbent in 1896 and since 1898 the parsonage house of the parish has been situate in Gobowen.

Against this background no one can doubt the pastoral need for a church in Gobowen. Most unfortunately, the Church of All Saints was destroyed by fire in December 1979 after the making of the Scheme. For the time being, All Saints' Hall provides an adequate place of worship for the parishioners but plans for the rebuilding of the church are well advanced. The financial implications of the rebuilding project were rightly not canvassed in detail at the hearing of the appeal or relied on as a ground in support of the Scheme, save in the most general terms that any additional financial burden on the parish must call for the more careful scrutiny of the necessity or wisdom of continuing to maintain two churches to serve the pastoral needs of the parish.

The situation in relation to St. Barnabas' was that, until services ceased to be held there in May 1979, the regular congregation numbered about 25 of whom most were over 50 years of age and some in their seventies and eighties. Transport is being and will continue to be provided for those from the Hengoed area who wish to do so to worship in Gobowen. What precipitated the closure of St. Barnabas' for public worship was the service by the local authority on 30th May 1979 of a dangerous structure notice under the Public Health Act 1961. This reflected the serious state of disrepair of the church. It will be necessary to examine this aspect of the matter in more detail later in this judgment. At this point it is sufficient to indicate that on any view of the evidence a sum of not less than £23,000 would now be needed to restore St. Barnabas' to an acceptable condition. It is not "listed" as a building of architectural or historic interest and, even if continuing in use, would be unlikely to qualify for assistance by way of Government grant.

This brief account of the salient features of the parish situation makes it easy to understand why the diocesan authorities, in submitting to the Commissioners the proposals in due course embodied in the Scheme, strongly favoured the view that the church at Gobowen was fully capable of meeting the needs of the whole parish for a place of worship and why the Commissioners were satisfied, as they were required to be by section 28(1) (a) of the Pastoral Measure 1968, before including in the Scheme a declaration of redundancy in respect of St. Barnabas', that it was not required as a parish church or a chapel of ease.

It has been rightly said that their Lordships, in exercising jurisdiction under section 8 of the Measure, will not refuse to confirm a Pastoral Scheme "unless for irregularity of procedure, for excess of jurisdiction, or on cogent evidence of erroneous judgment": see *The Parochial Church Council of the Parish of Holy Trinity, Birkenhead v. The Church Commissioners* (6th May 1974: Judgment No. 12/1974).

Counsel for the present appellants, who presented her case with both skill and discretion, no doubt had this principle in mind and prudently refrained from advancing any argument to suggest that the Scheme could be impeached by "cogent evidence of erroneous judgment" or on the ground of excess of jurisdiction. In the event the arguments their Lordships are called on to consider are confined to alleged irregularities of procedure.

Before turning to those arguments, it is right to mention, if only to show that their Lordships have it well in mind, that the appellants, as an earnest of their willingness to bear a substantial part of the necessary cost of restoring St. Barnabas' Church, have respectively deposited the sums of £5,000 and £10,000 in special bank accounts as representing the amounts they would be prepared to contribute to that end.

The principal contention in support of the appeal is that the Diocesan Pastoral Committee, before deciding to make to the Bishop the recommendations which were in due course embodied in the Scheme, failed in their duty under section 3(1) and (2)(c) of the Measure to "ascertain the views of . . . the parochial church council".

To follow this contention, it is necessary to examine the relevant history in a little detail. In July 1977 an architect's report was received by Hengoed P.C.C., showing a number of serious defects in the structure of St. Barnabas' Church and giving an estimate of £13,000 as the cost of necessary repairs. Following discussion at a P.C.C. meeting on 17th November 1977 an appeal letter dated 7th December 1977 was widely circulated inviting pledges to contribute to the cost of repairs. The appeal was to remain open until 31st December and persons giving pledges were informed that they would only be called on to implement

them if the target figure of £13,000 had been achieved. At a meeting of the P.C.C. on 11th January 1978 it was reported that only £4,135.50 had been pledged. It subsequently came to light that the appellant, Mr. Edward Charles, who is not resident in the parish but in North Lancashire, would be willing to make a substantial contribution to the cost of repairing St. Barnabas'. There followed a considerable correspondence between Mr. Charles and the Vicar. But this can be summarised by saying that in the event no firm and unconditional offer was at that time forthcoming from Mr. Charles. Meanwhile the possibility of continuing to seek to raise the money to effect the necessary repairs to the church appears clearly to have been discussed at an emergency meeting of the P.C.C. on 29th January 1978, at the Annual Parochial Church Meeting on 17th February 1978, and at the first meeting of the newly elected P.C.C. on 16th March 1978. Nothing in the minutes of any of those meetings suggests that the possibility of redundancy was under discussion, save perhaps an observation attributed to a member at the March meeting who "questioned the moral right of spending £13,000 on St. Barnabas'". The minute of the relevant discussion at the March meeting concludes with the following entry:—

"The question of the need for extra architects' reports before obtaining builders' estimates was raised. It was proposed and seconded that the P.C.C. should meet and discuss the matter with the Archidiaconal Pastoral Committee. The motion was carried."

The next meeting of the P.C.C. of which minutes are in evidence was held on 17th May 1978. At this meeting a letter from the Bishop of Shrewsbury, as Chairman of the Diocesan Pastoral Committee, was read, reporting that "the Diocesan Committee has decided to recommend to the Bishop that the Church [sc. St. Barnabas'] should be declared redundant". The letter further reported that "the Diocesan Pastoral Committees are quite clear that their own recommendation would be unaffected by any local decision by the Parochial Church Council to renew an appeal for funds for the church's restoration". A motion that "the Bishop's letter be accepted and that we await details of the redundancy scheme" was carried by a majority.

It appeared from affidavit evidence that there had in fact been a meeting between members of Hengoed P.C.C. and representatives of the Archidiaconal Pastoral Committee (a sub-committee of the Diocesan Pastoral Committee) in April 1978 but this evidence was conflicting and quite inconclusive as to the nature of the discussions that took place.

In this state of the evidence their Lordships were inclined to the view that counsel for the appellants had made good her procedural complaint of a failure by the Pastoral Committee to ascertain the views of Hengoed P.C.C. before deciding to make their recommendations to the Bishop. However, at a late stage in the hearing of the appeal counsel for the Commissioners was able to produce documents showing not only that a formal meeting between representatives of the Pastoral Committee and the P.C.C. was held on 16th April 1978 but also that notice of the intention to hold this meeting was given to members of the P.C.C. indicating that the purpose of the meeting was "to discuss the redundancy of the Church at Hengoed, and for All Saints' to be declared the parish church for the whole parish of Hengoed-with-Gobowen". There remains a puzzling lacuna in the evidence in that it appears that no minute or other formal record was made of the proceedings at this important meeting. Despite this their Lordships, at the end of the day, conclude that the available material justifies the inference that there was due compliance with the procedural requirements of section 3 of the Measure. It was submitted that there was nothing to show that the representatives of the Pastoral Committee disclosed at the April meeting what was made

clear in the Bishop of Shrewsbury's subsequent letter, viz: that the Pastoral Committee contemplated recommending redundancy of St. Barnabas' irrespective of any renewed appeal for funds for the church's restoration. However, since the minutes of the P.C.C. meeting in May, at which the Bishop's letter was read, do not record any complaint of non-consultation on this important aspect of the matter, the submission is not one which their Lordships feel able to accept.

The remaining complaints made on behalf of the appellants relate to the performance by the Commissioners of their functions under sections 4 to 7 of the Measure, more particularly their function under section 5(4) of considering written representations made with respect to the draft Scheme, which, it is suggested, were vitiated by the circumstance that the Commissioners in two respects acted on inaccurate information in relation to the Scheme furnished to them by the diocesan authorities.

Reliance is first placed on a letter dated 4th April 1979, written at the request of the Commissioners by the Secretary of the Diocesan Pastoral Committee in reply to persons who had made representations against the draft Scheme, in which the following passage appears:—

“As you will know, repairs to St. Barnabas' were estimated at £13,000 in July, 1977 and an appeal was launched for promises to meet this cost. The response to this appeal fell far short of the total in the time agreed and the Parochial Church Council decided to close the appeal.

You will know also that subsequently the Archdeacon of Salop consulted with all the interested parties, including the Parochial Church Council, under the terms of the Pastoral Measure concerning the future of the Church. Although some further promises of financial help had been received, it was concluded that these were not adequate and the Parochial Church Council did not feel able to order work to be done without assured availability of the necessary finance.”

The submission is that this erroneously represents that the P.C.C. had finally decided not to carry out repairs to St. Barnabas' because of non-availability of funds and that the Commissioners must be taken to have been misled by this error. Their Lordships cannot accept the submission. The passage quoted may somewhat over-simplify the rather complex history of events at the beginning of 1978, which has been considered earlier in this judgment, but it is not, in their Lordships' view, materially inaccurate.

Finally, the Commissioners, in setting out their reasons for making the Scheme in a document dated 22nd August 1979, record that:—

“. . . according to the Diocesan Architect's latest report, made in May, the estimated cost of all the necessary repairs was quoted as at least £40,000, plus fees and V.A.T.”

In fact the Diocesan Architect's May report, which did not purport to be a fully detailed report on the condition of the church, did not include any figure for the estimated cost of repairs. The figure of £40,000 plus fees and V.A.T. had been mentioned orally by the Diocesan Architect to the Archdeacon of Salop as a rough approximation.

At the hearing of the appeal there were put in evidence a detailed report of the condition of St. Barnabas' Church by the Diocesan Architect dated 29th February 1980, giving the estimated cost of repairs as £37,260 inclusive of fees and V.A.T., and a report dated 11th March 1980 by an architect instructed by the appellants, giving the estimated cost as £23,000.

Their Lordships feel no need to comment, still less to attempt to adjudicate in any way, on these figures. It is sufficient to say that the inaccurate reference to a figure of £40,000 as having been included in the Diocesan Architect's report, while no doubt a regrettable error, cannot, in their Lordships' view, have played any significant part in influencing the Commissioners to proceed to the making of the Scheme. Their Lordships are satisfied in the circumstances of the case that if all the material in evidence at the hearing of the appeal had been available to the Commissioners before they made their decision they would not have acted differently. Accordingly, if there was a procedural irregularity, it was not a material one.

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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**NORAH LAWFORD AND ANOTHER**

**v.**

**THE CHURCH COMMISSIONERS**

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**DELIVERED BY**

**LORD BRIDGE OF HARWICH**