

## IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

**His Honour Simon Wood, Chancellor**

In the Matter of an Application to permit the filming of a scene for the forthcoming film “28 Years Later” within the church of St Mary the Virgin, Morpeth and in the Matter of a Petition by the Reverend Simon White, Dr Andrew Mowat and Camilla Stephenson

### JUDGMENT

1. St Mary the Virgin, Morpeth is a Grade I listed church, one of relatively few in the Diocese of Newcastle, said to date from 1138 and described by Purves in *Churches of Newcastle and Northumberland: A Sense of Place* as one of the finest and largest (predominantly) C14th churches in Northumberland. He notes that the *Jesse* window is the chief glory of the church along with other important C14th glass and the churchyard contains a guard hut (against grave robbers), a fine lych-gate as well as the grave of the suffragette, Emily Wilding Davison.
2. The court is concerned with a petition dated 10 June 2024 (although steps were taken which resulted in it being treated as if issued on 10 May) by the Rev’d Simon White, Dr Andrew Mowat and Camilla Stephenson. They are, respectively, the Rector of Morpeth, a churchwarden (and *ex officio* member of the PCC) and the Supervising Location Manager for DNA Films: whilst DNA Films (“DNA”) could have been nominated as a legal entity with Ms Stephenson acting on their behalf, I take no point on that which, in the circumstances, is a distinction without a difference.
3. The petition seeks the permission of the court to permit filming of a sequel, called “28 Years Later”, to the film “28 Days” within St. Mary’s Church (although I think the petitioners mean “28 Weeks After”, the second film in the intended “28 Days” trilogy) and the request appears to be limited to one scene of this intended film. The proposal recites the fact that “the film portrays a post-apocalyptic world in which people are largely infected by a ‘rage’ virus which leads them to violence”. It asks for permission “for a temporary [3-week] minor non-structural disruption to the building” during June and July 2024 which would thereafter be fully restored.
4. As with the first film in the series, “28 Years Later” is to be directed by the leading Academy award winning British director, Danny Boyle, it having been written by Alex Garland. It is to be distributed by Sony Pictures. Each of the two previous films were received to significant critical acclaim scoring, respectively, 7.5 and 6.9 on IMDb whose website looks forward with great anticipation to the final film starring leading actors including Aaron Taylor-Johnson, Jodie Comer, Jack O’Connell and Ralph Fiennes. It is undeniably a very prestigious project involving household names.
5. The proposal is not recommended for approval by the Diocesan Advisory Committee (“DAC”) and, by the expiry of the public notice period on 19 June, the Registrar had received one objection, from a member of the PCC no less, albeit that person did not wish to become a

party opponent but nevertheless asked for her views to be taken into account. In the circumstances, this is not an unopposed petition.

## **The law**

6. The application is not one that is usually to be found in the regular diet of work seen by chancellors and their deputies. However, the court takes the view that the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (“the Measure”) applies and the procedure to be followed is that provided for by the Faculty Jurisdiction Rules 2015 (“the Rules”).
7. As I will come to, the Canons of the Church of England are directly relevant to the application, specifically the following:

### ***F 15 Of churches not to be profaned***

*1. The churchwardens and their assistants shall not suffer the church or chapel to be profaned by any meeting therein for temporal objects inconsistent with the sanctity of the place, nor the bells to be rung at any time contrary to the direction of the minister.*

### ***F 16 Of plays, concerts, and exhibitions of films and pictures in churches***

*1. When any church or chapel is to be used for a play, concert, or exhibition of films or pictures, the minister shall take care that the words, music, and pictures are such as befit the House of God, are consonant with sound doctrine, and make for the edifying of the people.*

## **Background to the issue of the petition and process adopted**

8. This petition is unique in the experience of the present chancellor and his two predecessors (which takes us back to 2001) and the Diocese has no formal guidance in place for addressing it unlike, for example, the very helpful and comprehensive document published by the Diocese of London which I found very helpful in terms of process: see [Using your church as a film location | Diocese of London \(anglican.org\)](#). That said, filming has, of course, taken place in many churches in the Diocese of Newcastle previously, with the permission of the relevant Archdeacon and without controversy, at least so far as has come to the attention of the court.
9. In this case, the Archdeacon of Lindisfarne, the Ven Catherine Sourbut Groves, had her attention drawn to the fact that the film makers had approached a number of parishes seeking the permission here sought, initially St Mary’s Church on the Holy Island of Lindisfarne where filming of a number of other scenes was to take place: when that church declined, others were apparently approached. An approach to the former Woodhorn Parish Church, which has been in the care of Northumberland County Council since being declared redundant in 1973, was turned down by the Church Commissioners declaring the proposal inconsistent with covenants. In the meanwhile, the Archdeacon had researched the previous two films in the

sequel, “28 Days Later” and “28 Weeks Later” and formed the preliminary view that the subject matter of the film rendered filming in a consecrated church potentially inappropriate regardless of whether the proposed church scene might be regarded as intrinsically unobjectionable. Accordingly, she notified the parishes in her Archdeaconry of her concerns and counselled against their agreeing to such a course.

10. The petitioners at St Mary’s indicated that they wished to consider the opportunity presented by what is now their proposal and resisted the Archdeacon’s advice. It was in those circumstances that, on 25 April 2024, she approached the Registrar and asked her to seek the view of the Chancellor which the Registrar did the same day.
11. Although the court had but limited information, it was concerned that anything secular carried out in a church had to be consistent with the use of consecrated premises, noting that Hill’s *Ecclesiastical Law* advises that in relation to any secular purpose, whilst the freehold of the church vested in the incumbent, “control was a matter for the bishop exercised by the chancellor in the consistory court” such that a faculty might permit the granting of a licence for a suitable use. Accordingly, I advised that, should the parish wish to pursue its proposal, it should apply for a faculty. My views were communicated by the Registrar to the parish and, on 10 May, steps were taken to issue.
12. The court immediately issued directions on 10 May to include matters relating to public notice and disclosure of a synopsis of the entire film and the script of the scene proposed to be filmed in church. The directions also flagged up requirements that would be necessary were permission to be granted in relation to disclosure of contractual arrangements, insurance, measures to comply with statutory fire precautions, the appointment of responsible persons to prepare risk assessments, preparation of ground rules for the use of the site, notice to the church’s insurer and the need for a fully informed representative of the PCC to be on site at all times when the film company was in attendance.
13. An issue arose as to the adequacy of the publication of the public notice which was swiftly resolved. The objector lodged her objection with the Registrar on 5 June, waiving the anonymity which she had at first sought. The Petitioners responded in accordance with Rule 10.4 on Form 6 on 14 June. The DAC met and notified their advice on Form 2 in accordance with Rule 4.5 on 29 May, as supplemented on 18 June. On the expiry of the notice period, the court issued directions which had been shared in advance in draft form, noting that, having regard to Rule 14.1, the issues appeared to be such that the proceedings were capable of being determined on consideration of written representations rather than by way of hearing. On 21 June, the petitioners agreed to that course in writing. Although provision was made for the filing of any further evidence, the petitioners indicated that they had filed all of the evidence on which they sought to rely and, thus, the court was from that moment in a position to consider it and reach a decision. Where possible, time has been abridged without demur although the court took the view that, by virtue of Rule 6.3(2), it would not be appropriate – even if permissible – to abridge the public notice period. The court gratefully acknowledges that it has had a high degree of co-operation to enable the court to produce this judgment within days of the public notice period ending.
14. It may be noted from this chronology, that, in litigious terms at least, a great deal has happened in a very short space of time. The original indication, given via the Minutes of the

PCC's meeting on 28 April, was that the intention was to commence setting up on 17 June, filming on 27 and 28 June and striking five days thereafter. It is a matter of public knowledge from the BBC and local press that filming has been taking place during this process on Lindisfarne and possibly other locations. Noting the date of issue, the need for public notice, an extraordinary meeting of the DAC and so on, rendered the timetable for those dates unrealistically short but the court has done as much as it reasonably can do, consistent with openness, transparency and adherence to procedure to resolve the petition at the earliest opportunity.

15. To conclude this section, whilst no formal Diocesan guidance exists (and until this application it would appear that none had been necessary), in practice the Diocese has, through the Archdeacons, operated very much in accordance with the process set out in the London guidance, with the Archdeacons granting permission as appropriate (very much in the manner in which they do in relation to minor works to churches) and referring the chancellor to any case of difficulty, this, seemingly, being the first on this subject matter. Having had this experience, it seems to me sensible that, moving forwards, the Diocese should formalise its process along similar lines to London.

### **The process leading to the making of the application**

16. The emergence of the proposal is clearly set out in the minutes of the PCC meeting on 28 April. Describing the film as falling in the category of "the horror genre", the Churchwarden explained the approach by DNA to film in the interior only of the church a scene forming a part of "a post-apocalyptic time when a virus had infected people giving them violent tendencies". Members of the PCC familiar with, and attracted to, the earlier films noted that the content "was violent and very gory" and that the language could be expected to contain profanity. It was said that the film did not glorify violence or evil and that the horror genre was "neither for or against the gospel message", noting that the Bible contained many gory descriptions.
17. It emerges from the minutes that the Churchwarden had actually seen the script for the intended scene and, subsequently, that he had done so under the terms of a non-disclosure agreement ("NDA"), to which I will return along with a somewhat ambiguous recording of his report that the profanity was "moderate". It was accepted that there was "gore and violence".
18. A discussion followed as to the association of the film with the church and Diocese, the propriety of the depiction of such events in a sacred space, whether filming in the church would amount to a form of outreach and how filming would affect the sanctity of the building. In brief, it was concluded that the interior of the church might not be easily recognisable (exterior filming apparently taking place in Scotland), that churches were not there for "the pretty times in life" but also "a symbol of steadfastness in times of trouble" which, it was felt, the scene respected. It was agreed that the sanctuary area must not be used for any of the action and there was a discussion regarding other practical precautions to protect the fabric and contents of the building in the event of filming taking place.
19. The Churchwarden and another PCC member had met with DNA's team and, having also had a reference from the National Trust, had a reasonably high index of confidence in them in

terms of trust. The Archdeacon's worry about a backlash from the relatives of people buried in the churchyard was acknowledged but it was noted that the response to filming elsewhere in the county had met with a positive response. The likely fee – dependent on the number of days – was to be fixed by reference to a “well-defined scale of remuneration”. I will not mention the sum in this judgment as, despite being mentioned in the very detailed public notice which has presumably now been removed, there may be commercial sensitivity around it and this is a judgment which will be published. Suffice it to say, the fee's intended destination is general funds rather than part of any specific project to fund-raise.

20. The minutes are confusing. They suggest that although the purpose of the meeting had been to discuss the project, it ended with a vote to support a motion to allow filming to go ahead, carried without dissent. However it was also agreed to pursue the matter further “and not say no at this stage” but to share the minutes with the Bishop and the Archdeacon.

### **Material provided following issue**

21. In the Statement of Significance filed on issue, it was noted that the action was to be confined to the nave and that a replica window would be constructed through which actors would burst.
22. The Statement of Need included a proposal from DNA which the court has read. Under the heading “Content Overview”, it says this:

*“Importantly we are creating a fictional script and world for the film. We are proposing filming interior elements with you and exteriors at another Church in Scotland.*

*In these opening moments, Jimmy, 10 years old, is seen in flashback. Jimmy is shown running across the lawn and entering into the Church. Jimmy is seeking refuge from people who have become infected with a fatal virus that causes them to behave abnormally.*

*Inside of the church, Jimmy closes the door and sees his father, the Vicar, who is calm and at peace in the knowledge that Judgement Day has come. He takes off a golden cross from around his neck and hands it to his son Jimmy. The infected burst through a window (which we create) and overwhelm the Vicar whilst Jimmy escapes with the cross in his hand.”*

The balance of that document refers to practical arrangements noting that “all activity to be presented in a written proposal prior to filming”.

23. The Statement of Need is a lengthy document in which it draws attention to the past use of this church for an episode of the ITV drama *Vera* as well as examples from other churches nationwide involving murder, science fiction, fantasy and horror suggesting that the consequences have been broadly positive but recognising that “there will be a small number of people who disagree with the use of sacred spaces for this purpose” albeit no one on the PCC shared that view. It quotes positive testimony for DNA, specifically Ms Stephenson, from the Senior Filming and Locations Manager for the National Trust; a message from Danny Boyle praising the “gentle, peaceful and modest beauty” of St Mary's; a contribution from Ms Stephenson in which she expresses the hope that “a little movie magic” can be created inside

the church for a story “through the eyes of the innocence of a young boy and the influence of good and evil from all walks of life” leading to light, although having “to begin.. with darkness”.

24. From the PCC, the Churchwarden notes that “Art like this tries to create the suspension of disbelief” noting that the PCC had commented that the first two films of this trilogy were no worse than a film such as *The Passion of Christ* in terms of language, fright and profanity and the film created an opportunity for the church to engage with a new generation of people in better understanding of the love of Christ”. The Rector suggests that the film affords the chance to engage with a popular apocalyptic genre, whether one likes it or not, the content of which “could in part be described by the Book of Revelation”. The church is appropriately portrayed as a place of sanctity with a story line that is more biblical than profane notwithstanding the extent of “gore and violence” he had observed in the earlier films. He does not believe that the use of the church would bring it, the parish or the Diocese into disrepute.
25. The document records that the Churchwarden alone had seen the script and had “reported to the PCC that there was no blasphemy, very little swearing and no disrespect to God” in the scene to be filmed and, thus the PCC Standing Committee and PCC itself concluded it was not profane and nor was the film likely to be. Trust was placed in the British Board of Film Classification (“BBFC”) to safeguard viewers through its classification system.
26. Consideration had been given to the reaction of those recently bereaved, the status or standing of the church and community response. The balance fell in favour of the proposal which would help the parish live out its mission and engage with its community.
27. Separately, the producer of the film lodged the following:
  - a letter setting out the lengths to which DNA had gone with financiers to persuade them to agree to set such a prestigious film in the North East along with the likely benefit to the region;
  - a letter of support from North East Screen in which the benefits to the film industry and the region, in terms of promoting and contributing to the local economy are set out;
  - a letter from the Strategic Tourism Project Manager, Economic Development and Growth for Northumberland County Council making the same points and noting that the filming on Holy Island was “resoundingly positive” including from the residents themselves.
28. I should add that the producer asked for a meeting directly with me shortly before the notice period expired. Although I was not available, the more important issue was what I regarded as the inappropriateness of providing a forum for potential lobbying when the matter was to be adjudicated by a judicial process. The court anticipated real difficulties in determining how that could be done without affording all other interested parties a like opportunity. In making a direction permitting the filing of further evidence, the court thereby sought to present the petitioners with the opportunity to file any further evidence, if they were so inclined. In the event, none has been received.

## The objector

29. The sole objector sets out her objection on a single side of typed A4. It can be summarised as follows:

- (i) She complains about the unfairness of a process whereby the PCC only became aware of the proposal on being told that the Churchwarden had signed a NDA with the consequence that he could not discuss the details of the film;
- (ii) She felt the filming in the church would be damaging for the Church of England in the long term and cited secrecy and unrest as a result of the process thus far;
- (iii) She was concerned that the financial incentive was a particularly powerful one which she thought inappropriate;
- (iv) She believed she was not the only member of the PCC who was concerned but felt constrained from speaking out, hence she reported her concerns to the Archdeacon;
- (v) She said: "I sincerely do not think God would want his buildings to be so used for such ghastly events" adding that the aftermath would not be compensated for by the fee and expressing her sense of "disgrace" that church leaders were even making the proposal.
- (vi) She concluded with a plea to prevent it from happening.

30. It is convenient to deal with the petitioners' response here:

- (i) No evidence has been offered to support the assertion that there would be damage to the Church of England;
- (ii) The minutes show that the fee was not the driving force albeit the Trustees of the PCC are obliged to act in the best interests of the charity and Diocese;
- (iii) No evidence was offered to suggest that members of the PCC were in some way restrained from speaking out;
- (iv) DNA offered to show "a synopsis and, if necessary, script pages" to the objector with whom they were happy to meet to offer reassurance.

## The DAC

31. The DAC includes not only the Archdeacon of Lindisfarne but her counterpart, the Archdeacon of Northumberland, the Ven Rachel Wood, as *ex officio* members. It held an emergency meeting with the outcome already mentioned. By virtue of s.37(9) of the Measure, the DAC is obliged to have due regard to the rites and ceremonies of the Church of England. In that regard, they needed the assistance of the Archdeacons. The Archdeacon of Lindisfarne had submitted a document, with which the Archdeacon of Northumberland associated herself, to the DAC addressing from a theological point of view, her opposition. The DAC, having been requested by the court to supplement its advice under s.37(1) and (2) of the Measure, in its revised Notification of Advice said this by way of justification for its decision:

- (1) *"It fully supported the use of churches as spaces where creativity and the arts could be expressed, even where the theme covered difficult topics.*

- (2) *The theological review of the (confidential) script by the Archdeacons highlighted that the content and language of the proposed scenes were disrespectful of Christian theology, and practice.*
- (3) *It was supportive of the various points made in the Archdeacons' review and, therefore, considered it inappropriate for the church to be used in this way."*

It went on to offer practical suggestions if, contrary to its advice, the decision was made to permit the application.

32. I took the view that what I will call the Archdeacons' "paper" ought not to be regarded as confidential, communicated that view to the Registrar and it has been included in the bundle that has been prepared for written representations. Having directed that, notwithstanding the NDA, the script for the relevant scene be disclosed to the Court and the Archdeacons, not least to consider the implications for the Canons of the Church of England on which they were singularly well placed to comment, it presents a series of objections based on the script itself.
33. The producer, in offering to show the script to the objector, indicated that the purpose of confidentiality was not to keep things from unnecessary parties "but to avoid storylines being revealed in the public forum before the film's release". I am anxious to respect that understandable wish as much as I can. I have, of course, read the script myself and, whilst I do not seek to reproduce it here in a judgment to be circulated prior to the release of the film in 2025, like the Archdeacons, cannot avoid alluding to material that they say is objectionable. There will, therefore, be a degree of circumspection as a consequence and, if further clarification is required by the parties, the Archdeacon or DAC, it should be sought.
34. The paper notes that the script for the scene in the church includes similar horror imagery to that seen in the earlier films as well as the bursting into the church already mentioned together with scrambling over the Holy Table and appropriating what are described as "the most sacred words in our scripture", thereby discrediting the notion of biblical apocalyptic theology. The use of a crucifix, although ambiguous, is arguably not as a symbol of faith, reconciliation or protection, healing or holiness. It is their opinion that the scene is more theologically problematic than the petitioners have presented and amounts to profanity in breach of Canon F15.1 in that it permits the church to be profaned and is inconsistent with the sanctity of the place. Furthermore, in breach of Canon F16.1, there are aspects which "profane the church" in that they do not "befit the House of God", nor are they "consonant with sound doctrine" or "edifying to the people".
35. The notion that engagement with the film could be missional in connecting with those not part of the church community amounts to a misunderstanding of missiology. Such, along with ecclesiology of hospitality, does not extend to those seeking to use sacred spaces to create images contrary to the doctrines of the Church of England. Noting the reference in the parish statement to "Welcoming and sharing Jesus", this does not include using a church for the production of a film designed to generate fear. As part of a horror series, which does not seek to share Jesus, it is the antithesis of our faith, again offending Canon F16.1.
36. The Archdeacons are critical of the failure by the petitioners to address the ecclesiology of sacred space and pastoral theology. Noting the long history of this church hosting life events over many centuries, a churchyard containing the final resting place of a well known suffragette and more than 100 Commonwealth war graves, it is a place that already attracts



many visitors. Those visitors are to be contrasted with those others who follow the sites of popular movies who are less likely to be pastorally sympathetic. Transforming the tourist economy is not a justification for jeopardising the peace of a sacred place to be visited by those who wish to use it for sacred purposes.

37. In a lengthy paper it expresses their concern, with examples, that there are significant discrepancies between the film as portrayed in the application and the reality of the script content. It criticises the approach to both the PCC and the DAC and suggest there has been a failure to engage correctly with the permissions process. In not recommending the grant of permission, it concludes:

“Christians are called to reach out to those in need, to open up their sacred spaces that others might enjoy their peace and beauty. This film does not offer to ‘edify the people’ nor is it ‘consonant with sound doctrine’ in accordance with Canon F16.1

St Mary’s is a sacred space, consecrated and set apart for Christian worship, Christian hospitality and Christian mission. The brief scenes of which the script has now been shared do not support any of these activities which are at the heart of our faith.”

## Discussion

38. In what has been a highly charged application, the question for the court is, ultimately, not a difficult one to answer. Diametrically opposing views are held both passionately and sincerely as set out in this judgment. The court is charged with determining, in its judgment, whether the petitioners have satisfied the court on the simple balance of probabilities that the proposed secular use of St Mary’s church is consistent with its consecrated, sacred nature.
39. There has understandably been much focus on the scene proposed to be filmed itself and rather less on the overall context for which the court could readily have called for the entire script (as, for example, the London guidance suggests). Ultimately, with knowledge of this film’s two predecessors, despite the rather bland overall synopsis shared, the court has not considered it necessary to do this to determine the application. IMDb’s website contains a short video looking forward to a “rage fuelled violent nightmare” in which the dead are “walking round eating brains”. Nothing I have read suggests that the new film is going to be materially different to its predecessors and the PCC does not appear to have been told anything to contradict that.
40. However, looking at the scene to be filmed, the theological and other objections presented to the DAC, and accepted by it, suggest that, on the face of the script itself, it can properly be characterised as intrinsically objectionable. It contains notions and imagery which offend against the Canons of the Church of England and which those best placed to advise have characterised as theologically problematic, allowing the church to be profaned, inconsonant with sound doctrine, not edifying to the people and not befitting the House of God. It is said that the boy enters the church looking for sanctuary -a place of refuge and protection - yet what is described thereafter is the antithesis of this concept.
41. True it is that just one objection has been received, an objection which is rather harshly dismissed in Form 6 as a single unsubstantiated ground that the Church of England would be harmed. Whatever else might be said of the letter, in simple, direct language it contains the

powerful statement that I repeat: “I sincerely do not think God would want his buildings to be so used for such ghastly events”. Although not couched in terms of the Canons, it chimes very much with the clerical theological view offered to, and accepted by, the DAC. Furthermore, I venture to suggest that it is a view that would be shared by many members of the Church of England and those non-members who are nevertheless broadly sympathetic to it. I cannot dismiss this as a likely minority view as readily as the Statement of Need does when it notes that, based on very few soundings, no one had expressed the view that the proposed use was inappropriate. Furthermore, I share the Archdeacons’ concerns that there is a mismatch between the portrayal of the film and the reality of the content of the script. I will briefly revert to this in terms of process.

42. In the event, I am satisfied that, whilst reasonable people may hold differing views as to the consonance or otherwise of filming this scene in this church, there is a powerful and well supported opinion that the scene is intrinsically objectionable in its own right and that, regardless of the wider context, it would be inappropriate to permit it to take place. Perhaps surprisingly, arguably it may not be necessary for me to express an opinion of my own for the purpose of this judgment because the Archdeacons’ powerful opinion characterises the scene itself as offending Canons F15.1 and F16.1 such that it would be wrong for the court to permit it whatever the context. I have been provided with evidence that is as cogent as it can be in the circumstances supporting that view and it is not evidence, in my judgment, which is undermined or contradicted by that provided by the petitioners given the reasoned challenge to the petitioners’ understanding of theology, the representation of Christian biblical apocalyptic in particular, missiology and ecclesiology of hospitality. In far simpler language, the objector expressed a similar view. The court is not obliged to accept the advice of the DAC. It does, however, need to have persuasive evidence that the DAC advice ought not to be accepted. The court lacks that evidence and prefers that offered by the Archdeacons, summarised in the DAC’s reasons for declining to recommend the grant of permission. In the court’s judgment, that view must prevail and the petitioners have not discharged the burden of showing that they should be granted the permission they seek.
43. Had this been a case where the scene to be filmed could properly have been characterised as intrinsically unobjectionable, the court would have been obliged to look at the film as a whole and consider the wider context. In the circumstances, it is not necessary to undertake this exercise given that the court is satisfied that the scene in question is objectionable on its own terms. It is noted, however, that the scene forms part of a story involving zombies post the apocalypse which, itself, is a discouraging secular use of a sanctified space. References to other films that may have been made elsewhere in other churches or cathedrals is of little or no help when considering the instant application.
44. I deal briefly with other points. The court is unpersuaded that the refusal to allow this scene to be shot in this church will have a material impact on the entirely laudable objective of encouraging the film industry to work in the North East and endorse the DAC’s clear endorsement of the use of churches as spaces for “creativity and the arts [to be] expressed, even where the theme covers difficult topics”. Nothing in this judgment is intended to contradict that. That statement cannot, however, extend to material that is profane or otherwise offends Canons 15.1 and 16.1. The court is not as reassured as the Petitioners by the involvement of the BBFC in classifying the film. That organisation’s role is to safeguard viewers and not protect sacred spaces. Its website [What does the BBFC do? | BBFC](#) says:

“..our focus is on helping children and families choose well by providing them with the guidance they need to help them choose what’s right for them and avoid what’s not.”

45. This petition has failed having been pursued in the face of the opposition of the Archdeacon and the DAC. In my judgment, the petitioners must pay a contribution to the cost of the process but I will reserve that, and receive any representations that they wish to make, given the urgency with which the decision itself is being sought.
46. The petitioners are entitled to seek to appeal against this court’s decision and the Registrar will, on request, provide them with details of the process and the potential cost of doing so.
47. I know the petitioners and others will be very disappointed. They will likely disagree with the court’s decision. The church will not receive what I do not doubt would have been welcome and useful funds. They will nevertheless understand the reasons that have been given. I wish all those involved in making the film well and hope it meets with critical success.

## **Afterword**

48. This has been a controversial case which has generated an enormous volume of work for the Archdeacons, especially that of Lindisfarne, the registry (and the Registrar in particular), for the DAC which convened an urgent meeting and for the court itself, all called upon to play their part in helping to resolve a dispute arising from the petitioners’ disagreement with the Archdeacon’s very clear counselling against pursuit of this course. The petition was issued, in effect, as an emergency requiring urgent attention by all. The application has also uncovered a number of worrying practices. Much of this was entirely avoidable.
49. I need to mention the following:
  - (i) In terms of process, I am concerned that the PCC was called upon – whether precisely as described by the objector or not – to make a decision based on a script seen by one person only;
  - (ii) That the script was obtained only after signing a NDA adds to the concern. I have not seen the NDA. Dr Mowat is churchwarden but with what authority or in what capacity he signed the NDA (and subject to what liability) is unknown. It is not known if legal advice was sought. A NDA is a very significant (civil) legal contract and can have significant consequences for the parties to it;
  - (iii) The PCC made its decision based on his contradictory description, as recorded by the minutes at least, of having read in the script “moderate profanity” followed in the next sentence by “very little if any profanity”. The Archdeacon of Lindisfarne plainly took a very different view of the script having seen it which begs the question as to what all the other PCC members were able to take from the description they were given. It was a wholly unsatisfactory procedure and, given what the producer subsequently said about the reasons for confidentiality, it is difficult to understand why wider circulation to the PCC was not included: confidentiality on the part of all is flagged up at the very beginning of the minutes;
  - (iv) The decision taken by the PCC was, therefore, questionable at best;
  - (v) The court notes that the PCC resolved on 28 April to support a motion “to allow filming to go ahead” although, under “Moving Forwards” it was noted that “Further to the

consensus, the wardens and [rector] should pursue the matter further, and not say no at this stage". This ambiguous and contradictory recording implies that proceeding was in fact still an open question. This is the resolution expressly relied on in the petition but that was preceded by the Archdeacon's referral to the registry and the court's indication that a petition would be required. The court has been presented with no evidence to suggest that any further resolution of the PCC was sought before petitioning. Taking the legal step of issuing does not appear to have been in the contemplation of the PCC on 28 April and I do not regard the resolution on that day as extending to it;

- (vi) Notwithstanding the Archdeacon's clear discouragement and the court's indication of the need to apply to it, no steps were taken to seek the advice of the DAC as required by Rule 4.1 before issuing. Of course, time was short and, as mentioned, this court is not obliged to follow the advice of the DAC albeit needs cogent reasons for not accepting it. I cannot know whether a proper adherence to procedure would have caused second thoughts but consultation with the DAC is an important procedural step that can stop doubtful applications from proceeding further;
- (vii) I have heard no oral evidence so cannot make a finding but for a member of the PCC to report herself to be left in a position where she felt unable to speak out, whether or not she is speaking for others, is troubling. Whilst it may be no more than the narrow focus on the opportunity presented left her with this feeling but the PCC needs to give thought as to whether inclusivity is respected at all times as it goes about its work.

50. I am indebted to the deputy chancellor, His Honour Judge Gittins, for addressing matters of case management in my absence on long planned leave. He has done so with his usual care and attention to detail. The decision contained in this judgment is, of course, entirely my own.

51. Finally, although I do not believe that any interested party has been disadvantaged or prejudiced by the lack of formal written guidance on the subject of filming in churches and on church land, the experience of this case demonstrates the desirability for it to be set down in a readily accessible form for future use.

Simon Wood, C

24 June 2024

## APPENDIX

### IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

#### His Honour Simon Wood, Chancellor

In the Matter of an Application to permit the filming of a scene for the forthcoming film “28 Years Later” within the church of St Mary the Virgin, Morpeth and in the Matter of a Petition by the Reverend Simon White, Dr Andrew Mowat and Camilla Stephenson

#### JUDGMENT: COSTS

1. Further to the substantive judgment dated 24 June wherein the costs of this failed petition were reserved, the court has received representations as to why the petitioners ought to be absolved from any liability to pay costs.
2. In the Afterword at paragraphs 47 and 48 of the judgment, the court identified a number of concerns as to the manner in which this petition came to be brought, the unnecessary urgency of it being determined and several worrying practices including the procedural failure to engage with the DAC before issuing the petition.

#### The law

3. The applicable *Re St Mary the Virgin, Sherbourne* [1996] Fam 63 where the Court of Arches set out the principle that where a proposal was opposed, fees became payable at rates fixed by Fees Orders made by the Fees Advisory Commission and that such fees were payable by the petitioner even when an opposed petition was granted.
4. The current rates are those set by the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2023 and, of relevance, include preparatory or ancillary work by the registrar of £158 (per hour) and the giving of interlocutory directions, consideration of written submissions and preparation of judgment by the chancellor of £143 (per hour).
5. By virtue of regulation 5(4), fees to the registrar for preparatory or ancillary work (item 18) under Table 1 in reg. 5(2), are “payable only in exceptional circumstances and if the chancellor so direct.”

#### Representations

6. It is regrettable that the very process of addressing costs has excited almost as much attention as the substantive application itself, generating significant further work for the Registrar and the court. It is even more regrettable that the court has been presented with representations which are in themselves highly contentious.
7. The court first received a letter from the Rector in which, acknowledging the judgment and indicating it will not be appealed, he:
  - (i) complains he lacked guidance from the Archdeacon ahead of the application;

- (ii) received mixed messages as to whether to pursue a faculty but, despite discouragement from the Bishop, pursued it at DNA's request "as there appeared to be a slim chance of success";
  - (iii) indicates the petition would have been withdrawn had they "been made aware of the financial penalties or been advised of the mental anguish this was to cause" or told to seek legal advice;
  - (iv) complains the petitioners received no further advice or instructions from the Archdeacon following the issue of the petition, in particular her theological advice of which they were only aware when the DAC filed its Notification of Advice;
  - (v) expressed feeling "aggrieved" by that lack of support and described experiencing "significant anxiety" as a consequence;
  - (vi) noted that the parish had not received any financial benefit as a consequence of this issue, is in deficit and he would not be in a position to pay the costs personally.
- 8.** In his covering letter to the Registrar asking for the court to "remove" these costs he does so "as I don't think we understood the full extent of pursuing a faculty for seeking permission to film in church and believed it was a simple yes or no, not a full judicial process".
- 9.** Subsequently on 27 June, the Rector submitted two sides of close typed A4 entitled "Timeline and Narrative" from which I note that the whole process began on 10 April when DNA first approached the church. In the preamble, he says:
- "As a member of the DAC maybe I should have been aware that costs can be added to a judgment, but I have never before seen a failed faculty be subject to costs."*
- 10.** The narrative goes on to suggest that the parish received mixed messages from the Archdeacon, the Registrar, the DAC secretary and, potentially, the court. Having been told by the Archdeacon that the film was not appropriate, on the eve of the PCC meeting, the Archdeacon shared she had sought advice and a faculty would be required. A couple of days after the meeting of the PCC the Bishop indicated a faculty was unlikely to succeed and, it is suggested, a decision was made not to proceed. However, on 1 May, having so notified the Registry, the Registrar pointed out that the option of petitioning remained. It is said that, on following this up, the Registrar is said to have suggested that the court "was now open to a faculty" the decision was taken to issue. On notification of the DAC's advice, further thought was given to withdrawing but they felt DNA was keen to have a final decision. They struggled to respond to the DAC position without sight of the Archdeacon's advice although no information is provided to suggest that any thought was given to asking for it.
- 11.** The Rector maintains that he, the Churchwarden and PCC were without blame and "would have very much valued a robust conversation with one of the Archdeacons", suggesting that the outcome would have been very different.
- 12.** The court has received no submission from the Churchwarden and was notified on 28 June that he had tendered his resignation to the Bishop who had accepted it.
- 13.** Ms Stephenson has lodged a short but helpful email in which she describes the engagement with the Rector and Churchwarden as exemplary, remarks that in long experience of filming in churches, DNA had always sought to ensure correct permissions were in place and hoped that this would have been the outcome. She apologised for the upset and stress indicating that, on receipt of the costs, the company would look into it, commenting on it not being appropriate for the church to pay.

## Discussion

14. If a costs order is to be made, this is not a case where personal liability should attract to the Rector or Churchwarden in circumstances where they maintain that the petition was brought with the authority of the PCC although I have raised concern as to the extent of the authority the PCC had given (para. 47(v)) and, having re-read the minutes of 28 April, although under Item 3 it is recorded that the Rector advised “that we may need a faculty if the PCC wishes to give permission”, there is no resolution to apply for a faculty and the resolution as framed is ambiguous.
15. Beyond restating the fact that this was a controversial case from the outset, whilst I do not repeat what is set out in paragraphs 46 and 47, that remains directly relevant to the reasonableness of making a costs order in accordance with principle which, as can be seen from the authority cited, is long standing. It is true that there are many circumstances in which it is not considered appropriate to enforce it – regardless of outcome – but each case turns on its own facts and comparison with cases where the court has taken a different view is not helpful on the facts of this case.
16. The Archdeacon has taken great exception to the complaint of lack of support and the failure to share her theological concerns and, sent to me alongside the representations about costs, I have seen an email from her dated as early as 17 April to the churchwardens. In it she sets out Canons F15 and F16 and I note that, by way of response, the Churchwarden dismissed F16 as irrelevant to filming and, whilst acknowledging that the script had not yet been seen, indicated his belief that the proposed scene was “not disrespecting God”.
17. The criticism implied against the others noted in paragraph 10 of this judgment is not accepted. In particular:
  - (i) the Archdeacon, in saying that the parish would have to apply for a faculty if it wished to proceed was no more than saying she was not in a position to give permission and, if it was wanted, a petition would be required.
  - (ii) The Registrar was doing no more than reinforcing what is set out in bold in the DAC’s Form 2: “Despite the Committee’s advice, you may, if you wish, apply to the court for a faculty authorising the works or proposals”. It is not the Registrar’s role to give legal advice but it does include assisting parishes with the legal process which she does. In this case she not only denies giving advice or asked to comment on the likelihood of success but points out that her only direct contact with the petitioners was a single telephone call to the PCC administrator which was specifically about the initial defective public notice. It is clear to me that the Registrar was at all times operating strictly within her remit.
  - (iii) For the avoidance of any doubt, the court never indicated that, in being willing to consider a petition it was thereby indicating any particular outcome, a course which would have been improper.
18. As for the claim of ignorance of the process and its consequences, the Rector is himself a member of the DAC which, without spelling this out and despite his reported lack of appreciation of the costs regime, speaks for itself. From the moment when the petition was issued, the usual legal steps were put in train, including the need for the DAC to advise: there was even controversy about the public notice which had to be changed so as to satisfy the requirements of Rule 6.3 leading to regular exchanges between the Registry and the

petitioners. The court struggles in the circumstances to accept that there was a lack of awareness of the process embarked upon.

19. In short, whilst I have considered all the material placed before the court with care, I remain of the view that the circumstances are such that costs should follow the event for the reasons already articulated and that the burden on the Registry has indeed been exceptional.
20. The volume of work that the petition has generated has been significantly in excess of the court's usual experience. Up to judgment, the Registrar had dealt with 228 emails prior to the costs issue and I personally received over 50 prior to judgment and, as I write, my inbox stands at 66. I have asked the Registrar not to spend more time working out exactly how many hours she has spent on this case but it is between 15 and 20 which would attract fees of between £2370 and £3160 plus VAT. I have not recorded time in relation to the many issues that arose prior to judgment including the drafting of directions. The judgment occupied more than a working day on Saturday 22 June, the day after the petitioners indicated that they wished to proceed by way of written representations, and the whole of the afternoon of Sunday 23 June, in order to prepare a judgment which was sent shortly after Ms Stephenson had emailed the Registrar at 07.34 hrs on Monday 24 June.
21. The court has no wish to seek to punish but it has a responsibility to discourage unnecessary or inappropriate litigation in its court and to mark the consequences in accordance with the usual rule. In its judgment, the Rector and Churchwarden as First and Second Petitioners, acting on behalf of the PCC, and, assuming she had the authority of DNA to pursue this on its behalf, the Third Petitioner, can have no complaint if a costs order is made. If the First and Second Petitioners feel aggrieved at being encouraged to litigate, or to litigate to judgment, by the Third Petitioner/DNA, that is a matter they can take up with her: having read her email to the court, they may well find a sympathetic ear.
22. This has been a bruising experience and, doubtless hard lessons have been learned. The outcome has had serious consequences which I note with regret. In the circumstances that the Registrar has agreed to limit her fees to £474 + VAT, a sum calculated by reference to the number of emails the Registry had received, the court will limit its claim for preparing the substantive judgment (and I am ignoring the additional time to consider submissions and prepare this further judgment) to three hours, the sum of £429 which does not attract VAT. Thus, the total much reduced liability stands at £997.80 for which the petitioners fall to be jointly and severally liable and to be paid by 16.00 hrs on 5<sup>th</sup> August. Whether it is shared amongst them, in whatever sums, or met by one alone is a matter for them.

Simon Wood, C  
5 July 2024