

In the matter of St Peter and St Paul, West Wittering

Judgment

1. By a petition dated 27 October 2011, the Rector and Churchwardens of St Peter and St Paul, West Wittering seek a faculty for the removal of the existing church heating system and the installation of a new system using nine sets of Air Source Heat Pumps (ASHP) and floor mounted fan units. This is a modern form of technology, largely untested in ecclesiastical buildings but is promoted on the grounds of its economy and environmental friendliness. As the church building has a Grade I listing, the law requires petitions of this type to be scrutinised with care and in accordance with statutory procedures. The parish is now in interregnum and the petition is therefore prosecuted by the churchwardens alone.
2. Public notice elicited a letter from Mrs Tricia Holmes dated 1 November 2011. She and her husband live in the former rectory on land contiguous to the churchyard. Having regard to the fact that the matters raised were not trivial I directed that this letter, though submitted a few days after the expiration of the consultation process, should be taken into consideration and accordingly Mrs Holmes was written to in accordance with the provisions of rule 16(3) of the Faculty Jurisdiction Rules 2000 enclosing Form 4. There was no reply from Mrs Holmes and therefore she is not a formal objector. Nonetheless I take the content of her letter into consideration together with a response from Mr Painter, on behalf of the petitioners.
3. Regrettably, when the papers were referred to me, it was immediately apparent that the petitioners had overlooked consultation with the Church Buildings Council and I had no option but to order the statutory referral on 15 November 2011 under rule 15 of the Rules. It would appear that there was some delay in the registry before this referral was made. The CBC responded by letter dated 20 January. I take this opportunity to remind petitioners of the content of paragraphs 2.6 and 4.4 of the *Chancellor's General Directions Concerning Churches and Churchyards* (Issue 2, 2007) with which churchwardens should be familiar and which sets out with complete clarity the need to seek the advice of the CBC at an early stage, expressly pointing out the legal duty on the part of the Chancellor to consult the CBC.

The proposal

4. The Schedule of Work comprises the removal of an old electric boiler, header tanks and associated pipe work. The proposed system comprises eight floor mounted internal fan units plus one wall mounted unit together with external apparatus in the churchyard. The ASHP system is recommended as it will be considerably cheaper to run. The suggestion is that the running cost is less than £600 per year, compared with monthly electricity bills of £1,000 in the winter. It is also reported to be eco-friendly, with an estimated reduction in carbon emissions of 60%.

5. Each of the external units (of which there are to be 9, corresponding to the number of internal units) is to be mounted on a concrete base, and will be painted to match the stone of the church and shielded by a yew hedge.
6. The petitioners point to a case study of similar installations in Somerby and Burrough Hill in Leicestershire, both Grade I churches in rural locations which have been successful. The contractors have apparently installed ASHP systems in some twenty churches but, to date, none in this diocese.

Consultation

7. The Diocesan Advisory Committee issued a Certificate of recommendation on 13 September 2011. The certificate included a proviso relating to the type of cabling to be adopted.
8. By letter dated 20 January 2012 from its director, Janet Gough, the CBC considered the proposal 'reasonable in the circumstances' and recommended that a faculty be granted. It asked that, in the event that the petition succeeded, the parish kept the CBC informed of its experience with the system which would be useful to the CBC in preparing national guidance on heating systems.
9. The DAC certificate advised that the petitioners consult English Heritage. The advice of EH is to be found in its letter of 30 September 2011 from David Brock. EH indicate that the effect on the fabric of the building would be relatively slight. The existing radiators are 'not beautiful' and their replacement with similar units would have little visual impact, and the pipe runs could easily be improved as part of the installation. The impact of the external units is more significant, adding clutter and being visually intrusive. EH notes that following its visit, the petitioners agreed to move one of the units to the eastern boundary which in terms of the setting of the church is considered by EH to be an improvement. It notes the secluded nature of this particular churchyard. The conclusion of EH is that 'installing this system in this church would be acceptable because of the limited physical and visual impact' but it emphasises that this is a site-specific evaluation and should not be seen as a general precedent for the diocese or province. In particular, it makes plain that wall mounted units (as had originally been proposed) would not have been acceptable, and are unlikely to be approved in any church due to the visual impact and effect on fabric.

Planning permission

10. The petitioners have had protracted dealings with Chichester District Council, whose initial indication was that ASHPs are 'functional and industrial in appearance' and not appropriate for the curtilage of a Grade I listed church. West Wittering Parish Council indicated that it had 'no objection' to the proposal. Planning permission was granted by Chichester District Council on 6 December 2011. Certain conditions were attached to the permission.

Objection

11. The principal objection, as it appears from Mrs Holmes letter, is the noise that it is feared will be generated by the external units. She points to a manufacturer's statistic suggesting levels as high as 63dBA. Appended to her letter is a report from Mr Graham C Johnson, a churchwarden in the Portsmouth diocese who is involved in the energy business, counselling great caution before heat pumps are installed in church premises, not least because extensive changes need to be made to the thermal characteristics of the building

(none being proposed here). Mrs Holmes commends as an alternative a new gas powered system. She suggests that there may be disquiet amongst some of the parishioners of Somerby where an ASHP system has been installed and indicates that the external units are unattractive and unseemly when positioned amongst grave stones.

12. Contrary to the suggestion in Mrs Holmes' letter, she and her husband had been informed of the proposals by way of a letter dated 8 October 2011 sent by Mr Painter, one of the churchwardens, although the letter referred to a planning application rather than the petition for faculty.
13. As to the substance of the objection, Mr Painter deals with this in a written response dated 18 November 2011. He indicates that one of the two external sites for the units was relocated to the churchyard wall proximate to Mrs Holmes' property on the advice of EH and the LPA, and the environmental health officer is of the opinion that any noise generated would be within acceptable levels. There is no prospect that the units will operate at high level during the night: such mode is only utilised briefly when the system is initiated. Mr Painter is confident that the 'air-to-air' system will be more effective than an immersion tank system which was the subject of Mr Johnson's report. In any event, the likelihood of having to run the heating during the night is remote. Further, Mr Painter considers that concerns as to the adequacy of yew screening are misplaced.

The law

14. Where, as here, the petition concerns a listed building, the Court of Arches has prescribed an approach which consistory courts are to follow in determining whether or not a faculty should issue. See its judgment in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1, which adopted what are now generally styled the 'Bishopsgate Questions', first posed in the unreported decision of *Re St Helen, Bishopsgate*, 26 November 1993, London Consistory Court, noted in (1993) 3 Ecc LJ 256. Those questions are:
 - (1) Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?
 - (2) Will some or all of the works adversely affect the character of the church as a building of special architectural and historical interest?
 - (3) If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

Decision

15. Applying the legal test to the facts of this case, I consider that the burden of necessity has been discharged. The current heating system has failed and the parish has resolved – after research and deliberation – to introduce a system which is more economical and more environmentally friendly than the previous system and others which are available. In times of austerity, parishes need to have regard to continuing running costs of church buildings and sustainability is valid consideration when considering reduction of carbon emissions. Although there may be something of an experimental nature to ASHPs, they have been used successfully in other churches and there is every reason to think that they will work well in this church and reduce heating bills significantly.
16. As Mr Brock has outlined, there will be an adverse effect on the character of this listed church building. However, the internal effect will be no worse (and in terms of rationalisation) somewhat better than the present system, and the external effect will be

ameliorated by discrete screening and colour camouflaging. That being so, I accept and adopt Mr Brock's conclusion that in this instance the proven necessity militates in favour of the grant of a faculty. I am fortified in this opinion by the grant of planning permission which is a significant – though not determinative – feature in cases involving changes to a listed building. I emphasise, however, that this is a determination in respect of this particular church and should not be seen as a precedent for the wholesale endorsement of ASHPs in every parish. Each future petition will be determined on its own merits.

17. I therefore order that a faculty pass the seal on condition:
- i. that the proviso in the DAC certificate concerning cabling is followed;
 - ii. that the conditions in the planning permission are followed, particularly with regard to the painting of the units, the archaeological watching brief, and the non-disturbance of monuments, tombs and headstones;
 - iii. that in the event of accidental disturbance of human remains, these are to be reinterred in a reverent and seemly manner at the direction of the rural dean;
 - iv. that works are not to commence until the faculty fees have been discharged in full.

Postscript

18. It is apparent from the slightly intemperate email of 2 January 2012 sent by the churchwardens to me at the Registrar's address (which was included with my papers) that they may be unfamiliar with the legal process and procedures of the faculty jurisdiction. If they were unaware of the court's legal duty to refer the matter to the CBC that is unfortunate but this court cannot flout the Faculty Jurisdiction Rules 2000 because petitioners and their advisers overlook procedural requirements or try to short-cut procedures. This court consistently strives to provide an efficient, fair and transparent service in the determination of petitions. This judgment has been completed within 48 hours of the papers being received, which compares very favourably with consistory courts of other dioceses and, I hope, puts the misplaced criticisms made by the petitioners into context.