

In the matter of St George, Kemp Town, Brighton

Judgment

1. By a petition dated 17 September 2011, the incumbent and churchwardens of St George, Brighton seek a faculty for the installation of photovoltaic solar panels on the main south facing roof slope.
2. The church is listed Grade II and dates from 1824. It is situated in the East Cliff Conservation Area. The work will be undertaken pursuant to an agreement with Brighton Energy Cooperative who will fund and maintain the system for the first twenty-five years.

Diocesan Advisory Committee

3. The DAC issued a certificate on 10 February 2012 recommending the proposals subject to a provision concerning the method of fixing and a further one relating to outstanding legal issues. An earlier letter dated 19 February 2008 had categorised the concept as “a splendid proposition”.

Church Buildings Council

4. The CBC provided advice by letter dated 20 May 2008. It commended the sustainability of the work and the fact that the positioning of the panels was such that they would not be visible from the ground. A number of technical and conservation issues were raised.

English Heritage

5. By letter dated 5 July 2011, Mr Tom Foxall of English Heritage indicated that whilst it raised no objection to the proposals in principle, it wanted to see further details of the proposed fixings, cable runs etc.

Victorian Society

6. A pro-forma card from the Victorian Society dated 1 April 2008 indicated that it did not wish to comment on the proposal, and this stance was maintained in a letter of 15 September 2011.

The Georgian Group

7. By email dated 30 April 2008, Kirsten McKnight, a caseworker with the Georgian Group, stated that it did not wish to offer any detailed comments regarding the proposals but endorsed the comments of English Heritage with regard to the fixture of the panels to the roof. It asked for further information on this aspect of the proposal, but upon consultation in August 2011 it indicated that it had no comments on or objections to the scheme.

Brighton and Hove City Council

8. Planning permission for the proposal was granted on 7 December 2011. On the face of it, the Council also purported to grant listed building consent although the church has the benefit of the ecclesiastical exemption and such grant is therefore a nullity. It would be wise to confirm this with the Council and invite them voluntarily to quash the listed building consent, least its erroneous grant at this stage create an unfortunate precedent in the future for this church or other churches in the diocese.
9. Despite the invalidity of the grant of listed building consent, the assessment of Mr Martin Randall in the Planning and Public Protection department is informative. His letter setting out the grant states:

“The visual impact of the proposed photovoltaic panels will cause moderate harm to the character of the listed building. The financial and environmental benefits for the building and wider community, along with the reversible nature of the development, are considered in this instance to outweigh the harm caused.”

Letter of objection

10. In accordance with the Faculty Jurisdiction Rules, the proposals were the subject of public notice. This produced a letter from Mr Paul Davey dated 27 February 2012, who did not exercise the statutory right to become a formal objector so I take the contents of his correspondence into consideration, as I do the response of the petitioners in a letter from Mr Neil Fox, churchwarden, dated 3 April 2012.
11. Mr Davey referred to a number of “indignities” which have been inflicted on the church in recent years, including a glass outbuilding to replace a Victorian vestry, the conversion of the basement into a café, the agglomeration of wheelie bins at the front of the church, and noise nuisance arising from the use of the church as a concert venue.
12. As to the substance of the present petition, Mr Davey states:

“Solar panels overlaying the elegant roof would be a step too far, in my view, taking the church to a point where it is just a frame for the aspirations of its guardians. I feel that energy saving or green issues are just not an adequate excuse for defacing this lovely late Georgian building.”

The law

13. In determining whether or not a faculty should issue, consistory courts apply the ‘*Bishopsgate* Questions’, first posed in the unreported decision of *Re St Helen, Bishopsgate*, (26 November 1993, London Consistory Court, and endorsed by the Court of Arches in *Re St Luke the Evangelist, Maidstone*, [1995] Fam 1. 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?

14. In this instance, the necessity is clear and, with the notable exception of the lone voice of Mr Davey, it is universally acknowledged. I am far from convinced that this proposal will adversely affect the character of the church as a building of special architectural and historical interest. The panels will not be visible from the ground, their fixings and ancillary cabling will be minimally invasive to the structure and, in any event, the works will be wholly reversible. Even if I am wrong on this, in my judgment the balance of discretion under the third question strongly militates in favour of the grant of a faculty.
15. Three matters, however, require clarification. First, Brighton Energy Co-Operative needs to be made a party to these proceedings and all necessary contractual documentation placed before the court for approval. Such lease or licence as may be drafted must include a provision for any disputes to be adjudicated by the consistory court of the Diocese of Chichester and for the installation (together with all routine and emergency maintenance) to be undertaken in a manner which is consistent with the sacred use of the building. For example, work must cease when the church is in liturgical use, whether for regular worship or for marriages, funerals, carol services etc. Brighton Energy Co-Operative will need to extract indemnities from their contractors to the satisfaction of the court.
16. Secondly, the financial arrangements are not entirely clear and may well be commercially sensitive. It seems to me that these works will result in a considerable saving to the parish. It may also yield a profit to the extent that the panels produce an excess of electricity. I shall need to approve arrangements for profit sharing and such like and require the petitioners to address this aspect. All representations will be treated with confidence. The PCC is a charitable organisation and is duty bound to make best use of its assets.
17. Thirdly, fixing details need to be agreed. There is a note headed "Response to DAC" which has a footer bearing the date November 2011. This goes a considerable way towards allaying the court's concerns and I would be content to delegate responsibility for confirming the suitability of the detailed proposals to an architect member of the DAC nominated by its chairman.

Conclusion

18. It therefore follows that a faculty will be issued. The faculty will be subject to the following conditions:
 - i. That the works are not to commence until the fixings, cable runs etc have been approved by an architect member of the DAC nominated by its chairman. In default of approval, the matter to be referred to the chancellor;
 - ii. That the works are not to commence until the terms of the proposed lease or licence have been approved by the chancellor, such lease or licence to ensure that any disputes are to be adjudicated upon by the consistory court;
 - iii. That the works are to be completed within twelve months or such extended time as the court may permit;
 - iv. That, having regard to the novel and pioneering nature of the works, brief reports are to be compiled six months, twelve months and five years after completion of

- the installation and circulated to the Archdeacon, the DAC, CBC, English Heritage and any other interested party who expresses an interest in receiving a copy;
- v. That the works are not to commence until the costs of this faculty have been paid in full;
 - vi. That the petitioners are to invite the Brighton and Hove City Council voluntarily to quash its purported grant of listed building consent on the basis that it has no jurisdiction to grant such consent in the case of a church building to which the ecclesiastical exemption applies;
 - vii. That the works are to be carried out under the direction of Mr Simon Dyson RIBA, provision for whose fees shall be made within the lease or licence.
- The costs of the petition are to be borne by the petitioners although they may be charged on to such other party as may be specified in the lease or licence.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

2 May 2012