

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

C088/2013

CHURCH LAWFORD: ST. PETER

JUDGMENT

- 1) St. Peter's in Church Lawford is a Victorian church which was built in 1872 and which has a Grade II listing. Church Lawford is a small village in the midst of the countryside. St. Peter's is on the extreme edge of the village accessed along a narrow lane the last part of which is a single-track gated road. It is bounded by open fields on three sides and by the Manor House on the fourth.
- 2) In May 2011 thieves stole the lead roofing from the north porch and permission was given for the porch to be re-roofed in terne-coated steel. Before that in about 2008 (a date I deduce from the subsequent grant of a faculty for the necessary repairs) there was theft of a small part of the lead covering the north aisle but the stolen lead was replaced with lead. The lead roofs of the south aisle and vestry remain in place. It is thought likely that those roofs are the original ones dating from the church's construction. Certainly the current roofs are more than one hundred years old. There has been weathering of the roofs over the years. This has been worse on the south than on the north side of the church and the south aisle roof has had a number of repairs.
- 3) The location of St. Peter's means that it is not seen by many people. The photographs show that the roof of the south aisle is pitched at an angle of 30°. It is not hidden by a parapet or the like and so would be visible to those viewing the church from a distance but would not be readily apparent to those standing near the church.
- 4) The roofing over the south aisle and vestry has been subject to sporadic minor leaks for some time but in the winter of 2012/2013 matters became significantly worse. Heavy rains coupled with driving southerly winds meant that the inflow of water was such that a whole block of pews had to be taken out of use. The Parochial Church Council commissioned a report from Full Metal Roofing Ltd as to the cause of the problems. I have been provided with

a copy of that undated report. In essence the conclusion of the report was that the problem was the result of poorly performed repairs in the past. The lead apron had been stuck to the wall with mastic and flashing had not been installed. Moreover, the nails securing the lead roofing sheets had not been sealed (so as to make them watertight). These defects meant that in conditions of heavy rain combined with southerly winds water would drip down the back of the lead apron and would also penetrate through the nailholes.

- 5) The author of the report recommended the installation of a new lead apron and flashing and that lead patches be welded over the nail heads. A quotation in the sum of £3,050 plus VAT was provided for performing those works. The effect of such works would be to remove the cause of the immediate problems. The works set out in the report would address those problems but would not remove the other problems inherent in a roof of this age. It is estimated that the proposed repairs having been effected the roof could give another ten to fifteen years of effective service but, as the Petitioners rightly point out, that can only be an estimate. In the intervening period further repairs are likely to be needed and the lifespan of the roof may be rather shorter than that period.

- 6) I have already said that there have been two instances of lead being stolen from the roofs of this church: that in respect of part of the north aisle in 2008 and the theft of the porch roof in May 2011. There are a number of precautions in place to minimise the risk of a similar theft of the lead covering the north aisle and the south aisle and vestry. The lead roof sheets have been marked with Smartwater and signs to this effect have been posted around the church. There are infra-red beam alarms on the roofs of the north and south aisles. The breaking of the beams triggers a text and voice alert message being sent to the mobile phones of designated members of the PCC. This arrangement imposes a considerable burden on those PCC members. They have to keep with their phones switched on and next to their beds. False alarms are not infrequent and these disrupt sleep. Moreover, the Petitioners express doubts as to the effectiveness of these precautions. They doubt whether the presence of Smartwater would deter a planned theft. In addition the rural

location of the church means that it can take twenty-five or thirty minutes for the police to arrive. The police have only been called out occasionally (a call only being made to them when there are repeated alerts on the alarms) but they have now indicated that they will only attend if the presence of intruders can actually be confirmed. The Petitioners point out that it is inappropriate for the members of the PCC to have to respond to alerts by travelling to the isolated church at night with a view to themselves confirming the presence of intruders and then awaiting a police presence which will take some time to arrive.

- 7) The Petitioners are the Rector and churchwardens and the Petition has the unanimous support of the Parochial Church Council. The Petitioners seek a faculty authorising the removal of the existing roofing over the south aisle and vestry and its replacement with roofing made of zinc.

The Procedural History.

- 8) This matter first came before me in July 2013. At that stage the Petitioners requested that permission be given to remove the existing roof and to replace it with zinc as a matter of urgency and in advance of consideration of the matter by the Diocesan Advisory Committee. I declined to do so and said that I was not prepared to deal with the matter without input from the Diocesan Advisory Committee. That direction was given on 12th July 2013. On 18th July 2013 the matter was considered by the Diocesan Advisory Committee and that Committee issued the certificate of Non-Recommendation to which I will refer below. Following receipt of that certificate I directed, on 25th July 2013 that the matter should proceed in the normal way.
- 9) At the end of the public notice period there were no objections and the matter was referred to the Deputy Chancellor for directions. He set out his assessment that the matter was suitable for determination on written representations (a view with which I agree) and gave directions for a report setting out the Diocesan Advisory Committee's reasoning together with a response from the Petitioners. The Deputy Chancellor also gave directions for inquiries to be made of English Heritage and the Victorian Society whether they wished to become parties and/or to make representations. There was a

regrettable delay in contacting the Victorian Society but a response has now been obtained from the Society Neither the Victorian Society nor English Heritage wishes to become parties to the proceedings but both have made representations which I will summarise below.

10) The Petitioners have confirmed they are content for the matter to be decided on the basis of written representations. Mr. Howard Parvin is one of the churchwardens and he has provided impressive and detailed written submissions setting out the Petitioners' case.

11) The Local Planning Authority was also informed of the proposal but has chosen not to make any representations.

The Petitioners' Contentions.

12) The first of the arguments on which the Petitioners rely in support of the Petition is that of cost effectiveness. They point out that the roof is coming to the end of its lifespan. The proposed repairs will cost £3,050 plus VAT and will only provide a temporary respite. The roof will last for a further ten to fifteen years at best and during that period more repairs are likely to be needed at further expense. Conversely, the cost of replacing the roof in zinc has been quoted at £5,950 plus VAT (allowing for the scrap value of the current lead roofing) as against a cost of £17,000 plus VAT to replace the current roof with a new lead roof. A zinc roof would have a lifespan of approximately seventy years and so, the Petitioners say, comparatively modest additional expenditure now will save on the cost of repairs in the next few years and will provide a roof to last for most of the current century. The Petitioners say that it is not appropriate that they should be required to keep the current roof "*to the bitter end*".

13) The second limb of the Petitioners' case relates to the risk of theft. They contend that the current lead roof is at risk of theft and point out that the amount which the church's insurers would pay out in the event of a theft of the roof is limited. Accordingly, they say that replacement with a material less attractive to thieves is a sensible measure. Although Mr. Parvin does not lay emphasis on this in his submissions it is apparent that the precautions which

have to be taken to deal with the risk of lead theft impose a real burden on the members of the Parochial Church Council.

- 14) The Petitioners seek to replace the roof with one made of zinc with standing seams. They say that this is an appropriate material if properly laid and that it can have a lifespan of seventy to eighty years. Although their preference is for a zinc roof the Petitioners have stated that they would “*with reluctance*” accept and apply a faculty authorising the installation of a terne-coated steel roof.

The Advice of the Diocesan Advisory Committee and the Representations of English Heritage and the Victorian Society.

- 15) As I have already stated the Diocesan Advisory Committee considered this matter on 18th July 2013 when it issued a certificate of Non-Recommendation. The Committee concluded that the proposed works would not affect the character of the church as a building of special interest. However, it set out four reasons why it advised against the proposal and that reasoning was expanded in the report of the DAC Secretary dated 15th October 2013.
- 16) The principal reason why the Diocesan Advisory Committee does not recommend the grant of a faculty for replacement is that of prematurity. The Committee says that the appropriate approach is to retain historic fabric in place and that there should not be unnecessary replacement of such fabric. The position of the Committee is that appropriate repairs will give the roof another ten to fifteen years of effective life and that replacement cannot be justified in such circumstances.
- 17) A further reason put forward by the Diocesan Advisory Committee is that the cost of repair is less than that of replacement of the roof. The Committee questions the financial appropriateness of the course proposed by the Petitioners and/or its financial appropriateness at this. I have to say immediately that this is not an argument which can carry great weight. The members of the Parochial Church Council are the elected representatives of the parishioners and it is they who are charged with responsibility for the finances of the Council. It is only in an extreme case that the Court (let alone the Diocesan Advisory Committee) will be justified in imposing on a Parochial Church Council its view as to the financial wisdom of a proposed course of

action. At this juncture it is appropriate that I also comment on the relationship between the Parochial Church Council and Full Metal Roofing Ltd. There was a suggestion in the e-mail exchanges in July 2013 that the proposal for replacement of the entire roof might have emanated from Full Metal Roofing rather than being a properly considered assessment of the needs of the church. The rather fuller material I have seen makes it amply clear that this was not the case. Full Metal Roofing reported with appropriate detachment and, indeed, recommended repair rather than replacement. The move to seek a faculty for full replacement is the result of the views and reflections of the Parochial Church Council. It does not result from that Council being in any way misled by a contractor seeking to benefit from more extensive works being done than would otherwise have been the case.

18) The Diocesan Advisory Committee opposes the use of zinc for the roof. It says that there is no precedent for zinc being used on church roofs in the Coventry diocese. As the Petitioners point out this is not, of itself, a reason for refusing permission. There is rather more force in the Diocesan Advisory Committee's contention that zinc is not a suitable material because of its susceptibility to corrosion as the result of reaction to pollution and also because of the risk of condensation on its underside. As the DAC accepts and as the Petitioners point out the risk of condensation can be minimised by appropriate fitting and the provision of appropriate underlay. The Petitioners contest the assertion that zinc is unsuitable because of the risk of reaction to pollution. They quote material produced by RICS saying that such reaction is only likely if the roof is in close proximity to a significant source of sulphur dioxide and that is a problem which will not arise in the rural setting of Church Lawford.

19) English Heritage has written supporting the views of the Diocesan Advisory Committee. It endorsed the DAC assessment that the roof had not come to the end of its life and that the appropriate course was repair and not replacement. English Heritage said that if the time for replacement came it would encourage the use of lead but where the risk of theft makes that inappropriate it would support the use of terne-coated steel. It would not

encourage the use of zinc. The Victorian Society has also supported the approach of the Diocesan Advisory Committee for substantially the same reasons.

The Applicable Principles.

- 20) The consequences of lead theft and the debate as to suitable alternative roofing materials have been addressed by a number of my fellow chancellors. In particular substantial judgments have been given by Hill Ch (Bexhill: St. Michael and All Angels – Chichester Consistory Court November 2011); Mynors Ch (Bromsgrove: St. John the Baptist – Worcester Consistory Court December 2011); and Commissary General Ellis (Eastry: St. Mary the Blessed Virgin – Canterbury Commissary Court November 2012). In addition I considered the approach to be taken in my judgment in the case of Eccleshall: Holy Trinity (Lichfield Consistory Court February 2013).
- 21) Account is also to be taken of the English Heritage Guidance Note “Theft of Metal from Church Buildings” and of the Church Buildings Council’s Note “Materials For Roofing That Are Used Or Considered As Alternatives To Lead”.
- 22) Moreover, given the listed status of St. Peter’s I have to have regard to the approach laid down by the Court of Arches in **Re Duffield: St Alkmund**.
- 23) The position in short is that the Petitioners have to show a good reason for such changes as they propose. This is the principle governing all faculty petitions. Where a church is listed particular account is to be taken of the significance of the church as a building of special architectural or historic interest and of the need for the benefits of any change to outweigh any harm to that significance.
- 24) The question of whether a good reason for a proposed change has been shown will have to be determined in the light of the existing roofing; the reasons for the proposed change; and the benefits likely to flow from the change. In considering roofing materials I must take account of the very substantial benefits of lead and of terne-coated stainless steel as roof coverings. Those benefits are both aesthetic and practical. The practical

benefits stem from the proven longevity and effectiveness of those materials. They combine with the aesthetic benefits in that roofs covered in lead were typically designed to be so covered. It follows that they will both look better and be better protected if covered in lead or a similar material. Moreover, the retention of lead or an equivalent material is more likely than its removal to be consistent with the architectural and historic significance of the building. It follows that the Consistory Court should be alert to those benefits; should seek to promote the use of such materials; and should be cautious where the use of an alternative material is proposed. It also follows that where, as here, the replacement of a historic lead roof is proposed the Consistory Court will need to see powerful arguments before such a change can be justified.

Is Replacement of the current Roof justified?

- 25) The roof of the south aisle is probably contemporaneous with the original building of the church. In any event it is a longstanding aspect of the building and is of material which is appropriate for the church. The roof will come to the end of its life and when that happens it will be appropriate for there to be a faculty authorising the replacement of the roof. Has that time come? Determining whether a roof (or any other element of a church structure) has come to the end of its useful life cannot be a precise exercise. There will come a point when the additional time to be gained by a repair will be modest and will not justify the cost of the repair. Conversely, the facts that a repair will not make a roof “as good as new” and that a roof is nearer to the end than the beginning of its lifespan will not necessarily justify wholesale replacement rather than repair.
- 26) I have taken account of the Petitioners’ points that the repairs proposed by Full Metal Roofing will only give a limited period of further life to this roof and that further repairs are likely to be needed sooner rather than later. Nonetheless I have concluded that the stage has not yet been reached when replacement rather than repair is appropriate. I accept the advice of the Diocesan Advisory Committee supplemented by the views of English Heritage and the Victorian Society that replacement would be premature. The particular factors underlying that conclusion are that the proposed repairs are

comparatively modest and that they will give an additional period of life for the roof which although limited is not insignificant. It is noteworthy that the Full Metal Roofing report proposed repairs rather than replacement. This is not a case where the contractor concerned is saying that repair is not worthwhile. The assessment is a matter of degree and balance but in the context of the historic and appropriate nature of the current roofing I have concluded that the argument that the roof has reached the end of its life and that replacement is the most appropriate course has not been established.

- 27) Lead theft is a serious problem. The theft of lead is not only financially damaging. The removal of lead by thieves can leave the interior of a church exposed and very real damage can occur in the interval between a theft occurring and its discovery. Moreover, as is apparent in this case, the burden on a Parochial Church Council of the measures needed to minimise the risk of theft can be a very real one.
- 28) Where a particular church can be said to be especially vulnerable to the theft of lead then the removal of the lead and its replacement by other material can be justified. It is pointless to require lead to be kept in situ in cases where doing so creates a real prospect of the removal of the lead with consequent expense and with a potential for damage to the interior of the church in question.
- 29) Lead has been stolen from the roof of St. Peter's in the past but fortunately the thefts have not been as frequent nor as severe as is often the case. A small portion of the roof of the north aisle was stolen in 2008 and the porch roof taken in May 2011. This is not a church where there is an established pattern of repeated or extensive thefts. Nor is it a church where the layout or structure of the church building facilitate the task of potential thieves. I have considerable sympathy for the members of the Parochial Church Council and the difficulties caused for them by having to monitor the alarms on the roof. Nonetheless this is not a case where the risk of theft is sufficiently great to justify the removal of the lead roof and its replacement by a different material.

30) It follows that I am not satisfied that the Petitioners have established that replacement of the existing roof is justified at this time. That means the basis for the grant of the faculty sought has not been made out and the petition must be refused.

The Debate as to the Appropriate Replacement Roofing Material.

31) As I have decided that replacement of the current roof is not justified I do not have to make a decision as to the material from which a replacement roof should be made. The Petitioners made a strong case for the use of zinc. I note that guidance notes from the Church Buildings Council and English Heritage referred to above do not rule out the use of zinc for church roofs. The notes do not, however, express any enthusiasm for its use. It is right that the Court should give considerable weight to the considered views of the expert bodies who regard terne-coated steel as the best alternative to lead. Before allowing the use of zinc in a case where replacement in a material other than lead was appropriate I would need to be satisfied that the Petitioners had shown a good reason for using zinc rather than terne-coated steel. On the material here I would not have been satisfied of that. The drumming effect of terne-coated steel can be minimised as explained by the Diocesan Advisory Committee (by reference to the English Heritage guidance) and the modest cost saving from using zinc as opposed to steel would not justify the use of the former material.

Further Works.

32) I have concluded that the faculty sought for replacement of the existing roof must be refused and the Petition dismissed. However, I am satisfied that the repairs proposed in the Full Metal Roofing Ltd Inspection Report are appropriate and are justified. Accordingly, I direct that a faculty authorising those works shall issue without further application if the Petitioners notify the Registrar in writing within six months of the despatch to them of this judgment that they wish such a faculty to be issued. Any such faculty shall be subject to conditions that the works be performed within twelve months of the grant of the faculty and that the works be recorded in the log book.

STEPHEN EYRE
CHANCELLOR
17th December 2013