

MEIR HEATH: ST. FRANCIS OF ASSISI

JUDGMENT

- 1) The church of St. Francis of Assisi in Meir Heath was built in 1940. It is not listed but was one of only two churches designed by the distinguished architect W Curtis Green. It is built in the “Arts and Crafts” style and has notably high pitched roofs.
- 2) The church is approached up a private drive of some 200m in length rising up from Sandon Road. The church is not visible from the highway and although it is in an elevated position the land around it is largely lined by trees so that it is not readily visible from outside its own grounds. The driveway opens out on to a large parking area and extensive grounds and from the former of these there is a striking view of the north and east sides of the church. The main entrance to the church is on the south side by way of a path which closely follows the edge of the church. The south roof is steeply pitched. It can be seen by those entering the church but because of its pitch and the location of the path it’s surface is not immediately apparent to such persons. The vicarage is on the south side of the church and the south roof will be readily visible from the vicarage and from the open land on the south side of the church.
- 3) The Vicar and churchwardens petition for a faculty authorising the installation of 40 black photovoltaic solar panels on the south roof of the church.

The Procedural History.

- 4) The petition was considered carefully by the Diocesan Advisory Committee and that committee has not recommended approval. Planning permission was not needed for the works and the Local Planning Authority has not chosen to make any representations in this matter. There was no objection in response to the public notice. English Heritage has not formally objected to the Petition nor has it become a party it has, however, through Mr. Alan Taylor provided a detailed submission setting out the reasons why it contends that the faculty should not be granted.

- 5) The Petitioners initially indicated that they wished to make oral submissions at court hearing. Subsequently they consented to the matter being dealt with by way of written representations. I am content that such a course is appropriate. I have also made an unaccompanied site visit at which I spent some time walking round the church and viewing it from different locations.

The Reason for the Proposals.

- 6) The Petitioners put forward a number of factors as causing them to seek this faculty. They believe that it is appropriate that they and the worshipping congregation of St. Francis should strive to reduce their “carbon footprint” and to contribute to preserving the environment by using renewable energy rather than fossil fuels. In addition the income and energy generated from the solar panels will contribute to the finances of the church and in particular to meeting its heating costs. The high roofs mean that the church building has a striking external appearance and a lofty interior. They also combine with the elevated position of the church to make heating the church difficult and costly. The income from the solar panels will help in meeting those costs and will thereby help to ensure the continuing financial viability of the church.
- 7) The Petitioners emphasise that the church is not a listed building. They express a pride in the interior of the church but suggest that its external appearance is less noteworthy. They also point out the church building has been altered since its construction in 1940 with a church hall having been added on one side and a meeting room on the other. The Petitioners lay considerable emphasis on the fact that the south roof is not readily visible other than to the occupants of the vicarage –the Vicar being one of the Petitioners.
- 8) There have been a number of letters of support for the Petition. Most of these come from parishioners and members of the congregation who set out their agreement with the points I have just summarised. In addition the matter has been considered by Fulford Parish Council and that body has written supporting the Petition. The Parish Council is particularly influenced by the financial benefits which will support the church’s continuing viability. The Revd Paul Cawthorne is the Diocesan Environmental Officer. He has written

offering strong support for the proposal. He describes it as being well-thought through; as fitting with the Church of England's "Shrinking the Footprint" campaign; and as worthy of commendation for integrating care for Creation with moves to ensure financial stability for the church.

The Opposition to the Petition.

- 9) As I have already said the Diocesan Advisory Committee did not recommend approval of the Petition. Its reasoning is set out at length in the notes of 23rd January 2013 and 13th June 2013 which have been helpfully provided. The Committee explains that although St Francis "*has not yet been designated as a listed building*" it is nonetheless architecturally significant. In 2008 English Heritage and the Lichfield diocesan authorities together with the local Methodists and Baptists commissioned the Architectural History Practice to assess the churches and chapels of North Staffordshire. The resulting report described St. Francis's as being "*a significant work*" by W Curtis Green and recommended that it should be listed. The report concluded that the alterations which had been made were sensitive to the character of the original church which the authors said "*remains substantially unchanged both externally and internally*". It is noteworthy that the alterations which were by no means insignificant were regarded as having enabled the church building to retain its special character. This is chiefly because of their consistency with that character but also, if only by implication, because the overall appearance and visual impact of the church were not materially altered. The report drew a distinction between the exterior which was characterised by "*domesticity*" and the interior which is "*a space of unpretentious grandeur*". Despite that distinction (or perhaps because of it) it is apparent that the authors of the report regarded both the exterior and interior as contributing to the special character of the church.

- 10) The Diocesan Advisory Committee considered the proposals in the light of that report. The Committee's conclusion that the proposal could not be supported was based on its assessment of the likely visual effect of the introduction of the panels. The Committee points out that the "*architectural and historical significance of buildings does not lie only in those parts which*

may be easily seen from the public highway". In its view *"the roof is a key element of the arts and crafts design and the panels would be too visually apparent"*. The unanimous view of the Committee was that *"the adverse visual effects of the proposed installation on what is clearly an important historic building outweighed its potential benefits"*.

11) Mr. Taylor's note on behalf of English Heritage lays stress on the Architectural History Practice listing recommendation. The listing for the area including Meir Heath was published in 1981 and Mr. Taylor suggests that this church was not included at that time because of a less-developed appreciation of 1930's buildings. The AHP report was thought to give adequate protection and was the reason why English Heritage has not subsequently pursued the question of listing. Mr. Taylor says that it is the view of English Heritage that the Petition should be approached by regarding the church as if it were listed. It is in that context that Mr. Taylor says that the *"external architectural significance"* of the church derives greatly from the *"dominant roof slopes"* and in which he says that the installation of the panels *"would detract substantially"* from the church's appearance. While Mr. Taylor places weight on the visual effect of the panels his ultimate concern is a different one. That concern is the potential damage to the significance of the building resulting from the introduction of new elements. It is those new elements which would *"cause substantial harm"* to the building's significance. Mr. Taylor says *"this is an absolute impact on the integrity of the building: the degree of possible public visibility is immaterial"*.

12) Both English Heritage and, to a lesser extent, the Diocesan Advisory Committee refer to the potential structural impact of the works. However, this is not the major concern for either of those bodies and the Petitioners have responded by explaining how the potential structural impact has been addressed. I can say immediately that it is clear that considerable care has been taken in that regard. I am satisfied that the installation of the panels will not pose any risk to the structure or fabric of the church. I am also satisfied that an alternative arrangement such as ground mounted solar panels would

not be practicable in the circumstances here. The real issue in this case relates to the potential impact on the church's appearance and significance.

13) Until a few days before this judgment was written the Ven Godfrey Stone was the Archdeacon of Stoke. I have the benefit of his comments on this matter written on 14th June 2013. Archdeacon Stone was party to the Diocesan Advisory Committee's decision and stood by that decision. However, he did seek to give a wider context to the Petition. His note refers to the difficulties of heating this church to an adequate temperature with the consequent high cost of heating in the context of the financial pressures on the church. In addition the provision of renewable energy and of preservation of the natural environment are, the Archdeacon says, objectives of which the church and the Court need to take note. The comments conclude with the expression of a wish that there be some scope for a wider debate on this issue. In effect, and using my words rather than the Archdeacon's, the hope is that such debate will find some way of squaring the circle by meeting the needs of the parishioners without damaging the building.

The Petitioners' Response.

14) The Petitioners counter these arguments by stressing the limited visual effect of the proposed works and downplaying the significance and attractiveness of the external appearance of the church while repeating the point that it no longer has the same external appearance as in 1940. They also say that the church is not listed and should not be treated as if it were listed. The fact that various persons or bodies believe the church should be listed does not mean that it has the significance which a building would need to have to be listed.

The Applicable Approach.

15) This church is not a listed building but it is of note and importance architecturally. The listing of a building means that particular and official recognition has been given to the special character of the building in question. In the case of a church the fact of listing has consequences for the approach of the Consistory Court. The **Faculty Jurisdiction Rules 2000** require particular consultation to be undertaken where proposals affect such churches. Moreover, the approach laid down in *Re Duffield: St Alkmund*

[2013] 2 WLR 854 requires that where a change adversely affecting the special character of a listed church is proposed then a benefit outweighing the presumption against such a change needs to be shown.

- 16) Thus there are special rules applicable to listed churches but the approach under the Rules and as laid down in *Duffield* is properly to be seen as a heightened form of the approach which should govern all applications for alterations to church buildings. Churches are erected to the Glory of God and are an important part of the national heritage contributing to the appearance and continuity of the built environment. As such they are not to be altered without good reason. In assessing whether a good reason has been shown for a proposed change to a church building the adverse impact of that change must be balanced against the benefits to be obtained from it with the burden being on those seeking to make a change to show that the benefits will outweigh the harm to be caused.
- 17) The fact of the matter is that the church of St. Francis is not listed. It has not gone through the process of consideration and assessment which would lead to listing. I have concluded that it would not be appropriate for me to adopt English Heritage's submission and treat the church as if it were listed. It is not appropriate for me to apply to an unlisted building the special regime which applies to listed buildings. This is particularly so as the listing for the relevant area was made as comparatively recently as 1981.
- 18) The fact that the church is unlisted and is not to be treated as if it were listed does not mean that I should ignore the potential adverse impact on the church's significance and appearance. Far from it. I will approach the matter that the church of St. Francis was built to the Glory of God and that it is a church building of particular interest and note. In short it is a fine and important building. Therefore, a good reason must be shown for a change which will affect its appearance. Accordingly, I must consider the impact which there will be on the appearance and significance of the church and determine whether the benefit resulting from the change is of sufficient substance to outweigh that impact.

19) The Petitioners have referred me to two decisions relating to the installation of photovoltaic solar panels on the roof of St. Mary's Moseley. That was a Grade II listed church and the panels proposed would appear as a modern addition to the roof of the church. One decision was that of the planning inspector and the other of Cardinal Ch. Planning permission was given on appeal on the footing that the church had been subject to various changes over the years and that a further change by way of the addition of panels would not alter its special character. Cardinal Ch (Birmingham Consistory Court 2011 (2011) 13 Ecc L J 379) granted a faculty for the works taking account of the approach taken by the planning inspector. The Petitioners contend that those decisions lay down a precedent which I should follow. Even if Cardinal Ch's decision were such as to lay down a legal principle it would not be one by which I would be strictly bound although it would be highly persuasive. However, my reading of the planning decision and of Cardinal Ch's judgment is that neither were laying down principles of wide application. The decisions were to the effect that in particular circumstances it can be appropriate to install solar panels which alter the appearance of a listed building. Whether such a course will be appropriate in a subsequent case depends on the circumstances of that subsequent case. Neither the planning inspector nor Cardinal Ch were purporting to say that the installation of panels will always be appropriate and permissible. It will be so in some cases and not in others and the Court must look at the balance of detriment and benefit in the particular case.

Analysis.

20) I must give considerable weight to the assessment made by the Diocesan Advisory Committee and to the expert views of English Heritage. Moreover in matters of aesthetics it is not for a chancellor to substitute his own views for those with particular expertise. However, I am entitled and bound to take account of the actual physical features of the church and to consider those features as they manifestly were on my site visit.

21) On behalf of the Petitioners Mr. Barnard says that the south facing roof "*is not visible from the approach to the church and even when directly beside the*

church is barely visible". The assessment which I made on my site visit was to the same effect. In particular those approaching the church will form their impression of it from the view of the north and east roofs. The south roof will be visible but to a markedly lesser extent and has a markedly lesser impact on the overall appearance of the church and the impression made by it.

22) The Diocesan Advisory Committee's refusal to recommend the Petition was influenced by its conclusion on the adverse visual impact which the proposal would have. As explained above this played a lesser part in English Heritage's concerns which related more to the impact on the integrity and significance of the building.

23) I have carefully considered the view of the Diocesan Advisory Committee. Even when all due allowance is given to the expertise of that body I am driven to the conclusion that the visual impact of the proposed panels will be very limited. There will be a visual impact and there will have been an addition to the building. However, the overall appearance of the church will be little altered. The Arts and Crafts appearance will remain. The appearance will be that of an Arts and Crafts building with solar panels present on its markedly less visible rear face.

24) The focus of English Heritage's objection is on the effect on the building's integrity and significance. That is a matter of very considerable significance in respect of a listed building. In such cases the special character of the building is of recognised importance. Even in such cases the argument based on the effect on integrity can rarely be conclusive by itself. Here account has to be taken of the building's character as I have already explained but the special status and consideration applicable to a listed building do not apply. This is a church building which has already been altered from its original appearance. The AHP report was able to say that those changes did not detract from the character and significance of the building. That was correct because they did not alter the overall character or overall appearance of the church. However, they did impact on its integrity in the sense that term is used by Mr. Taylor and the argument on that footing put forward against the current proposal would have applied equally to the earlier alterations.

25) The determination of this Petition is a matter of balance. I have to decide whether the undoubted benefits outweigh the harmful impact. The benefits in terms of finance for the church and in terms of generating renewable energy for the general good are real and substantial. There will be an impact on the appearance of the church but that will be very limited. There will be an impact on the architectural integrity of the building but it will not in my assessment be one of sufficient weight to outweigh the benefits. After the installation of the panels the building will be Arts and Crafts building with additional elements. It already has additional elements of the church hall and the meeting room. The introduction of those features will have impacted on the integrity of the building in the strict sense. Those elements can be seen as giving some indication of the approach to be taken to the current application. Those additional structures do not detract markedly from the fine Arts and Crafts appearance of the church and the harm they did to the integrity of the church building was justifiable because of the contribution they made to enabling the church to be used and to remain viable. In my judgment similar reasoning applies to the proposed solar panels. Those panels will have a limited impact on the appearance of the church but will not markedly alter that appearance and will contribute to the continued use and viability of the church building. In those circumstances the further harm to architectural integrity of the church is justified.

26) In those circumstances I direct that a faculty be issued authorising the proposed works.

STEPHEN EYRE
CHANCELLOR
5th August 2013