**Neutral Citation Number: [2021] ECC Wor 2**

**IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER**

**CASE NUMBER [2020-056902]**

**RE ST THOMAS & ST LUKE, DUDLEY (a.k.a. Dudley 'Top Church')**

**IN THE MATTER OF A PETITION FOR PERMISSION TO (1) INSTALL A NEW HEATING SYSTEM INCLUDING A TWO NEW GAS BOILERS, AND (2) THE INSTALLATION OF A NEW TOILET AND RECONFIGURING THE YOUTH ROOM**

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**JUDGMENT**

**Delivered on 5 MAY 2021**

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Introduction

1. A petition comes before me dated 8 February 2021 for a faculty for permission to undertake works to St Thomas and St Luke, Dudley. This church is also known as Dudley 'Top Church' because of its location at the top of the High Street, up a significant hill, with its spire visible for many miles around. It is also the home of the resourcing church for the Dudley deanery which means the worshipping community there are the recipients of very significant additional funding from the Church Commissioners' Strategic Development Fund for ministry and for building adaptation beyond that enjoyed by the vast majority of church communities in the Diocese. This funding totals approximately £2.5m.

2. I am told that Top Church is unique in being a resourcing church that is part of a team ministry. Top Church remains the parish church for the historic parish of St Thomas and St Luke and for the former parish of St Edmund King and Martyr, Dudley. It is part of Dudley Benefice, where the Team Rector is Hugh Burton. However, it is the Rev'd James Treasure who has day to day leadership of Top Church. He is licenced to the benefice as an assistant curate to be known as the Resourcing Church Leader or 'Vicar'. The Dudley team ministry also has a Team Vicar, the Rev'd Rachel Newell who has a dual role as Associate Vicar of Top Church. There is in addition a curate in training based at Top Church. Top Church also employs an Operations Director Community Missioner, Youth and Children's Missioner and a Worship Leader.

3. The above arrangements in respect of Top Church are regularised via a detailed Bishop's Mission Order dated 17 November 2020 made under the Mission and Pastoral Measure 2011. The financial resources of Top Church are held separately from those of the Dudley Team Ministry, a separate Charitable Incorporated Organisation having been set up for the purpose in early 2020.

4. The petitioners are Nathan Conway the Operations Director of Top Church, Rev'd James Treasure and Ben Coleman a Churchwarden. The petition seeks a faculty for three items of work:

    a. The installation of a new heating system;
    b. The installation of an additional toilet; and
    c. The reconfiguring of part of the building used as the 'Youth Room'.

5. The request for permission to install a further toilet was originally a request to install two further toilets but following receipt of the notification of advice from the DAC the petitioners amended their proposals, and now seek a single additional toilet and consequential amendments to the reconfiguration of the Youth Room.

<u>The Church</u>

6. The earliest recorded church building on this site dates back to 1175 and its dedication was to St Thomas Becket. However, the significance of the site appears to date back further, as Iron Age (pre-Christian) burials have been recorded in the Churchyard. The dedication of the church changed to St Thomas the Apostle during the reformation. The current dedication to St Thomas and St Luke is from 1972, following the redundancy of the nearby St Luke's Church the parish of which had originally been carved out of St Thomas's parish in 1876. By 2017 the congregation of this church had sadly dwindled to around 15. However, the location and potential of the building lead to it being chosen as the site for the northern resource church in the Diocese of Worcester, with an express aim to grow the congregation to around 250 people and generate energy and resources for further church-planting elsewhere in the diocese.

7. The current building comprising the church of St Thomas and St Luke dates from 1818, when it was completely rebuilt, the previous church on the site having been demolished following an Act of Parliament passed in 1815. It was remodelled and extended in the 1880s, and again in the 1950s. Despite the remodelling it remains an outstanding example of a late-Georgian church. It is regarded by architectural historian Dr Christopher Webster as among the five most interesting churches of the period across England. The main body of the church is octagonal with a balcony and a short chancel. It has an innovative cast iron roof structure. It marks the transition from the Georgian classical style towards the Gothic Revival of the 19th Century. It is not aligned on a conventional east-west axis. The chancel is on the south-east side of the octagonal 'nave' and the entrance onto the High Street through the base of the tower is on the northwest side. There are two other entrances either side of the chancel on the east and south 'corners' of the building.

Behind the chancel on the south-east side of the building are several additional rooms, together with toilet facilities and a kitchen. A major renovation and reordering of the main worship area of the church took place very recently, under a faculty granted by the previous Chancellor of Worcester. Although I have not yet had the opportunity to visit it, due to the logistical problems of the Coronavirus pandemic, the photographs I have seen of the finished work suggest a well-designed project completed to a high standard.

8. The petition with which I am concerned is the next stage of the project to develop the building in the context of the church growth which I am told is taking place despite the difficulties of the pandemic. I am told the congregation has grown to around 150 since 2018, and that similar numbers are being maintained at the services taking place via video platform due to the national restrictions imposed due to the pandemic. I have not been told how many of the growing congregation are new or returning worshippers and how many have transferred into this congregation from other churches, but it is nevertheless an impressive and encouraging achievement by the leadership team.

Public Notice and PCC approval

9. Public notice of this petition was given in accordance with my general direction dated 5th February 2021. Notice was given both inside and outside the church building and on the Top Church website. No objections have been received.

10. Unlike in respect of the first stage of this major project, no special notice of this has been given to any amenity society or heritage body as the petitioners and the DAC both took the view that the proposals are not likely to affect its character as a building of special architectural or historic interest, nor are they likely to affect its archaeological importance or any archaeological remains at the site.

11. Having looked carefully at the proposals, I agree that no such harm to the character of the building is proposed, and that accordingly no special notice is required. The re-ordering proposals relate solely to the supporting 'back rooms' where the changes proposed are to relatively recent internal partitions within a large room. The proposed new heating system is replacing an existing system, with modest additions and replacements of existing elements will make very little change to the physical appearance of the church.

12. Under the governance arrangements for this church, the relevant Parochial Church Council is that of the Dudley Team Ministry and consequently their views have been sought. The PCC passed a motion unanimously on 27 January 2020 in support of Top Church seeking a faculty for a range of works including the new toilets and the internal re-ordering of one of the back rooms to enlarge

the youth room. It similarly unanimously passed a motion on 25 January 2021 in support of seeking a faculty for the installation of a new heating system.

13. As set out at paragraph 5 above the plans for the toilet has however changed since PCC approval was given, so that I will require as a condition of the faculty that the petitioners file with registry confirmation of the PCC's approval of the revised plans.

Detail in respect of the youth room, toilet and hallway

14. The present youth room is part of a larger room that comprises the south east corner of the building. That larger room is currently subdivided into several spaces, including two toilets, a small hallway / lobby from which the entrances to the toilets open and two small rooms / large storage rooms and a larger room at the south-east end which is the current youth room. The toilets are at the north-west end and the small rooms / large cupboards in the centre.

15. The proposals for the re-ordering of the youth room include the removal of some internal walls that currently form the two small rooms / large cupboards. I am not told the provenance of these walls, but they are clearly later than the room itself as one of them bisects a window in that room. The existing doorway between the current youth room and the hall/lobby is also to be removed.

16. Once the internal walls and doorway are removed a new internal end wall is proposed at the northwest end of the now enlarged youth room, approximately 700mm from the external wall of the accessible toilet, with a doorway on the north-east end of that wall leading into the now smaller hall / lobby.

17. The space created on the north-west side of the new wall at the north-west end of the enlarged youth room is to be used to create an additional toilet next-door to the current accessible toilet. Following the notification of advice from the DAC, the specification for this toilet has been amended, and it will have an internal width of 650mm, allowing for reasonable ease of use, including for people with reduced mobility. The revised plans, numbered WDSTSL04 2011 and WDSTSL04 2110 set out the detail.

18. The partitions and doors of the toilet is to be made of Douglas fir boarding, to match that of the existing toilets. Once the structural work is complete, there will be a redecoration of the enlarged youth room.

Decision in respect of the youth room, toilet and hall/lobby.

19. From the photographs that have been helpfully supplied all the rooms / cupboards seem pleasant and functional but are of no particular architectural significance.

20. The general presumption against change is easily displaced in this case. Clear evidence is given for the need of larger space for the use of the increasing number of young people who are now part of this congregation.

21. Similarly, with increasing use of the building, comes an increasing need for toilet facilities.

22. I have no hesitation at all in granting a faculty for these works, subject to the conditions set out at the end of this judgment.

Detail in respect of new heating system

23. The existing heating system is gas boiler powered wet heating system. The existing boiler has a maximum capacity of 144kw. The main body of the church is heated by a combination of 6 cast iron radiators and 4 fan assisted radiators with balcony above heated by two steel pipes and a single cast iron radiator close to the organ. The fan assisted radiators, which are around 40 years old are in poor condition, two working poorly and two not working at all. The system is controlled by a simple on/off control with thermostats. The rooms behind the chancel and the toilets also have radiators operating from this system.

24. Further details and specifications of the existing system are set out in the Statement of Need and the detailed report of HeatinGlobal dated 16.10.20. HeatinGlobal are a firm that specialises in church heating. They have assessed the requirements for the building and will install the proposed new system if a faculty is granted.

25. The HeatinGlobal report indicates that the present boiler is only 60-70% efficient. This means only 60-70% of the energy used to run it is translated into heat energy to warm the building. This report also indicates that the pump used to transport the hot water around the system is inefficient. It indicates that a significant proportion of heat is lost from doorways and the thermostat is in an inappropriate location.

26. The experience of church users is also that the building is cold. A significant proportion of the congregation and visitors who responded to a survey conducted as party of an earlier National Lottery Heritage Fund project identified this concern.

27. The proposed new system would comprise:

    a. Two new frame mounted mains gas powered condensing boilers to replace the existing boiler. These are said to be 98% efficient;
    b. A new flue, flue liner, pumps and filter;
    c. Four new Caspian FF fan assisted radiators to replace the existing ones;
    d. Four further new Caspian FF fan assisted radiators installed on the side walls of the nave;
    e. Pipe sleeves and thermal insulation to concealed pipes;
    f. Removal of the steel pipes in the balcony and replacement with heating coils;
    g. Three new 'electric curtains', one above each external door to form a thermal block in each doorway; and
    h. The installation of a new timer controller with wifi/remote access capability.

    The full specification is again set out in detail the Statement of Needs.

28. The specification is supported by a heat loss calculation undertaken by HeatinGlobal which indicates that the church requires 152kW of heat to bring the whole church system up to 20 degrees centigrade on a cold day (-5 degrees). This capacity is to be provided by two 80kW boilers which replace the existing 144kW one. The new filter will clean the system and keep it running efficiently. Insulation to the pipes will also add to the efficiency, and the thermal blocks over the doorways by way of 'electric curtains' will reduce heat loss when the doors are opened. The specialist report by HeatinGlobal, suggest that by replacing the heating system as proposed will reduce the current fuel consumption by around 35% whilst providing a warm and comfortable space for the use of the church community and visitors.

29. The report for the proposed works confirms, as one would anticipate from a reputable firm, that the works will conform to current gas safety standards, any patching-up work required will be undertaken, that the system will be fully tested and commissioned upon installation, health and safety legislation will be complied with and that those undertaking the works will have full public liability insurance up to £5m. They also confirm that the works can be undertaken without the need to cease Sunday worship in the church.

<u>The position of the DAC</u>

30. The DAC has recommended these works are undertaken subject to the following provisos. Namely that:
    a. Details of the fixing to be used to mount the two new heaters to the panelling in the main church should be agreed with the DAC.
    b. Details of the new heaters to the toilets and details including elevation of the proposed new extractors to be agreed with the DAC.

31. These provisos are sensible to ensure proper scrutiny of the smaller details of the proposals that are currently absent from the papers before me and I will adopt them as conditions to the faculty.

Concerns about the heating proposals

32. In February 2020 the General Synod committed the Church of England to achieving net zero carbon emissions by 2030. This is a very ambitious target, but one that is being taken seriously across the Church. The level of climate change being brought about by global carbon emissions has been declared both by our own government, and internationally, as a climate emergency. Heating buildings using fossil fuels is a significant source of greenhouse gas emissions, indeed around one quarter of the UK's total carbon emissions come from central heating.

33. In the light of these concerns the Church Buildings Commission has published guidance as to how to proceed when a new heating system is required in a church building. It states that that careful consideration should be given to moving away from fossil-fuel based heating (gas and oil burners) towards electric based heating such as air- or ground-source heat pumps, pew heaters and far-infra-red radiant heaters with these being powered by 'green' electricity. Other options to be considered include hybrid boilers that combine a heat pump and a conventional boiler and (if well implemented) biomass. See https://www.churchofengland.org/sites/default/files/2021-03/Heating_principles.pdf It must be noted that the guidance does not insist that gas and oil powered heating is never the right solution for a particular building, but does require a proper assessment of the needs, investigation of the options and consideration of zero carbon alternatives.

34. The application before me is to install two fossil-fuel burning boilers to heat this church building. So far as I can tell from the documents provided to me, there has been no consideration of any other form of heating system other than a conventional gas-powered wet system. If there had been any such consideration, the details would have been provided to the DAC and to me in compliance with Faculty Jurisdiction Rules r.4.2 (2)(d) which provides that intending applicants must submit to the DAC for their advice 'any advice or other material relating to the environmental implications of the works or proposals', and FJR r.5.5.(2)(e) that requires such material to be likewise provided with a petition for a faculty. No such material being provided with the petition I will determine this faculty on the assumption that no alternatives have been considered.

35. I am troubled by this application, and by the apparent lack of consideration of non-fossil fuel alternatives. I know I am not the only chancellor faced with the difficult decision whether or not to permit the introduction of new heating systems that will last for 10-15 years or more and do not accord with the objective of achieving net zero carbon by 2030. Two similar applications have been reported as coming before the Chancellor of Southwark in the last 12 months.

36. The issue of replacing a gas boiler was considered in *Re St Marks, Mitcham* [2020] ECC Swk 5. In that case the parish had asked the question as to whether there was a 'greener' alternative but had been told there was not. The chancellor took the view that 'so long as the petitioners … had considered the implications of a proposal for the 'carbon neutral' agenda, it was generally not appropriate for [the Chancellor of Southwark] to substitute [his] own judgment of the matter (whatever that might be).'

37. Similarly, in *Re St Mary, Oxted* [2021] ECC Swk 1 a petition was heard requesting a faculty to install a new gas boiler. In that case the petitioners had investigated some green alternatives, in particular electric boilers which would have cost a similar amount to install, but were significantly more expensive to run at around £8,000 per year as opposed to around £1,800 per year for a conventional gas boiler. This was seen as unaffordable and they therefore sought a faculty for the gas boiler. They hoped to be able to move to an electric boiler in 15 years time, when they could take advantage of emerging technologies that will be more widely available and affordable at that time.

38. Again, the chancellor indicated that he would follow the same approach as he did in *Re St Mark, Micham*. He said at para 6, 'This is that I would require the matter to be considered by Petitioners but that I would leave to them the judgment as to how the matter was to be addressed, assisted as appropriate by the advice of the DAC.'

39. In so far as these judgments may be read as suggesting that a chancellor should not consider the environmental implications of a proposal, at least where the petitioners have already done so, I respectfully disagree. Addressing the climate emergency is the responsibility of everyone, whatever their role. This is particularly the case for those operating the faculty jurisdiction at a time when the Church of England has committed itself to achieving carbon neutrality by 2030.

40. In many cases chancellors are required to assess the harm to the significance of a church as a building of special architectural or historic interest. One of the biggest threats to the heritage of our buildings is the climate emergency. This is something that has been recognised not only by the Church Buildings Commission, but also by secular heritage agencies such as Heritage England who have a specific department dedicated to Historic Building Climate Change Adaptation.

41. A chancellor also has to balance against any harm to heritage whether there is a clear and convincing justification for the proposed change taking into account the resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission and putting the church to viable uses that are consistent with its role as a place of worship and

mission).[1] The public benefit in avoiding climate breakdown is obvious. The mission of the church expressly includes environmental protection, expressed in the Anglican Communion's Five Marks of Mission as 'to strive to safeguard the integrity of creation, and sustain and renew the life of the earth'.

42. That the environmental implications of a petition may be properly considered by a chancellor is also clear from the Faculty Jurisdiction Rules 2015. Under FJR 4.2(2)(b) and 5.5 (2)(e) a petitioner is required to provide to the DAC and to the chancellor respectively 'any advice or other material relating to the environmental implications of the works or proposals'. If documents showing the consideration of the environmental implications of the proposals are to be considered by the chancellor in determining whether the case for the works is made out, it is clear that such implications may be a relevant element of his or her deliberations. It seems to me that such implications do not cease to be relevant in an appropriate case simply because the petitioners have not obtained any such 'advice or other material'.

43. Whether or not I am correct as that a chancellor should take into account environmental concerns irrespective of whether the petitioners have already done so, in the case currently before me there does not appear to have been any consideration by the petitioners of the 'carbon neutral agenda' or any consideration of alternatives for the heating of the church. To that extent the situation is very different from the circumstances in *Re St Mark, Mitcham* and *Re St Mary, Oxted.* Where no consideration of alternatives has taken place, there does not appear to be any dispute that it is entirely proper for a chancellor to consider the environmental consequences of a proposal for themselves. If a chancellor has insufficient expert knowledge in respect of the environmental impact of the proposals, they may direct that such information is obtained, for example by way of the petitioners commissioning an expert report on the matter. This would happen in the in the same way as a chancellor directing that an expert report be obtained where additional information in respect of historical, architectural or archaeological matters is required. Further, the Church Buildings Commission collates and publishes up-to-date guidance on addressing climate change in the context of works to church buildings, to which petitioners, DACs and chancellors have free access.

<u>Decision in respect of new heating system</u>

44. I have seriously considered requiring the petitioners in this case to undertake a thorough options appraisal before considering this petition further, and/or requiring them to obtain an expert report on the viable alternatives for heating that does not generate carbon emissions. I have decided against it in this case for the reasons set out below, but will require thorough, informed consideration of alternatives in future petitions that come before me seeking permission to install a heating system that generates substantial carbon emissions. I hope knowledge of this future

[1] See *Re St Alkmund, Duffield*, [2013] Fam 158.

requirement will give support to the DAC and the diocesan environmental advisors working with parishes to consider carbon neutral options at an early stage of any proposals.

45. The reason I have not, in the circumstances required further consideration of alternatives in respect of this application, are:

    a. Procedural fairness; and
    b. The potential for mitigation of adverse effects via conditions placed on the faculty

46. The Church of England's net zero agenda has also gathered impetus very quickly since the Synod motion in February 2020. The importance of achieving net zero carbon emissions by 2030, and the practical steps that are needed to enable this, are becoming mainstream very quickly.

47. I have so far only had preliminary discussions with the DAC and the Diocesan Environmental Committee as to how the Diocese of Worcester's commitment to achieving net zero carbon emissions should be worked out within the operation of its faculty system. Hitherto, there has been no widespread notification to petitioners and the DAC that I will expect detailed assessment of energy use and consideration of carbon neutral alternatives when considering proposals involving the substantial use of energy – particularly in respect of the installation of boilers. However, it is clear to me in light of the Diocese's commitment and the clear CBC advice now available to all petitioners, that an energy use audit, and an options appraisal and/or an expert report considering non-fossil fuel alternatives should take place at an early stage in respect of such faculty applications in the future. This judgment puts all relevant parties on notice of this.

48. The petition before me forms part of a suite of works planned from at least 2018, comprising the re-ordering of the building to make it fit for purpose as a resourcing church. The specific work identifying the heating specifications and making proposals was undertaken in the autumn of 2020. These proposals would have been brought forward far sooner, at a time when the focus on dealing with the climate change emergency was less advanced, were it not for the covid-19 pandemic that has caused significant delays in enabling the proposals to be brought forward

49. These concerns alone would not be sufficient to persuade me that I should not seek further information as to carbon neutral alternatives. However, this point is taken together with the following point.

50. In this case, it will be possible to mitigate the worst effects of the carbon emissions that will be caused by the new heating system by imposing conditions requiring (a) the use of a 'green' gas tariff and (b) the off-setting of the remaining emissions caused by the system. Green gas tariffs vary widely, and different options are available in different parts of the country. Where it is not possible for all of the gas used to come from renewable biogas, the emissions caused by the remaining non-renewable gas sources must be offset.

51. I understand that chancellors of other dioceses may also have imposed a condition requiring the use of green energy tariffs in other appropriate cases, although I have not yet discovered a reported case where this has been done.

52. Green gas tariffs are more expensive that regular tariffs at present. Similarly, there are costs associated with off-setting. However, this church has a large and growing congregation to pay for such running costs as cannot be met from the grant funding. Also, I am told the congregation is, and is intended to continue to be, a young congregation with 70% or more under 40. Recent research by Tearfund among younger Christians makes it clear that one of the three primary issues with which they are most concerned is climate change[2]. As set out above, environmental concerns are at the heart of the mission of the Church of England.

53. It may be that Top Church is already committed to using green tariffs for its gas and electricity supply. In any event, the expert report indicates that the installation of the new system should reduce overall gas usage by 35% whilst achieving a significantly warmer church. That substantial saving should provide sufficient funds from which to pay for the green tariff and the offsetting.

54. The realistic possibility of a green gas tariff and/or offsetting, taken together with the other matters identified above, persuades me that it is appropriate, exceptionally, to grant this petition, despite the lack of consideration of carbon neutral alternatives.

Conclusion

55. I shall grant this petition subject to the following conditions:

    a. Gas supplied under a green tariff shall be used where possible.
    b. The carbon emissions created by all non-renewable gas used shall be off-set (either via the tariff or separately or a combination of both depending on the tariffs available).
    c. The installation of the new toilet and reordering of the youth room and hall/lobby shall be as set out in the plans of Donald Insall Associates numbered WD.STSLD.04 2011 and WE.STSLD.04 2110.
    d. Details of the fixings to be used to mount the new heaters to the panelling to be agreed with the DAC.
    e. Full specification of the works to install/refurbish the toilet facilities to be agreed with the DAC, including details of the new heaters to the toilets, and details, including elevation of the proposed new extractors.

[2] *Burning Down the House: How the Church could lose young people over climate inaction.* The Youthscape Centre for Research on behalf of Tearfund, 2020.

f. No works in respect of the toilet / youth room shall commence until the PCC of Dudley Team Ministry file with the registry evidence that a motion has been carried in support of the amendment to the works proposed in respect of the toilet / youth room, namely that the re-ordering shall be as set out in the plans of Donald Insall Associates numbered WD.STSLD.04 2011 and WE.STSLD.04 2110.

**THE WORSHIPFUL JACQUELINE HUMPHREYS**

**CHANCELLOR OF WORCESTER**

**5 May 2021**