

Neutral Citation Number: [2019] ECC Bla 5

In the Consistory Court of the Diocese of Blackburn

In the Matter of Hornby St Margaret, (Grade I), and

In the Matter of a Petition (ref. 2019-034167) dated the 10th September 2019, presented by Rev'd Michael Hampson, Vicar, and Richard Haworth and Flona Humphreys, Churchwarden and Deputy Warden, in relation to re-roofing works

JUDGMENT

- 1) The petitioners seek permission to substitute a GRP product in place of lead over the roof areas of this Grade I building, which has met with objections from the Diocesan Advisory Committee, Historic England, the Society for the Preservation of Ancient Buildings, and the Church Buildings Council.

The Proposal

- 2) The petition describes the Works or Proposals in this way: *Removal of top layer (only) of roof (where it has not already been removed by thieves) which is lifetime expired lead (cracked and leaking beyond repair). Replacement with proprietary (D....H...) non-metal lead-replacement roofing system, manufactured by (H....D...), with (H...D...) themselves as project managers and Croft Roofing as approved contractor.*
- 3) It will be understood that the initials I have chosen to use rather than the full names used by the petitioners, represent, first, a named product, and, second, the manufacturer, who is also the proposed project manager. The cost is put in the petition at £56770, as estimated by the 'main contractor', Croft Roofing, a figure which the PCC say they can meet from funds at their disposal or which they can raise.
- 4) In short, the petitioners wish to strip off any remaining lead roof covering and have the roofing firm apply the proprietary material ('the material' or 'the GRP material'), in accordance with the manufacturer's instructions, in its place.
- 5) I have been supplied with a good deal of supporting material by the petitioners. Some of this comes from the manufacturer in one form and another, including marketing and advertising information, details of its use on 4 or 5 other listed church buildings of various kinds, relating to faculty applications, the views of those involved with those churches on how it has performed, and in one case a lengthy letter from a Chancellor granting permission for its use. This has been helpful, but I am aware of the danger of being diverted from the detail of *this* application in relation to *this* church, and have tried to concentrate on that. I have of course read the materials supplied to me.
- 6) The material is a GRP product, which stands for Glass Reinforced Polyester, and is commonly referred to as GRP or fibreglass. I have been provided with a sample, which is a hard plastic-like material. It is described as 'a fully mechanically fixed waterproofing membrane, made up of preformed components packed ready to fix on site', as opposed to a 'wet lay' system. It is obviously much lighter than lead or other metal alternatives, and quicker to lay, and is said to be 'more robust' than single ply membranes. It is also said to be 'versatile, flexible....easy to detail, repairable.... And able to be refurbished on site...' It is 'proven' to deliver 20 years guaranteed BBA certified dependability, with an expected life in excess of 30 years. It has apparently been used on schools, leisure centres, hospitals and 'has been widely used on Grade I, II* and II listed buildings, as approved by EH, and NT.' Costed over a 50 year lifespan D....H....can be 'refurbished 'in situ', extending the installed life..beyond that of other roof coverings, at considerably lower costs. 'There is a total lack of scrap value... ' Evidence of support from the National Trust has not been provided; from EH it is limited; in their *Metal Theft from Historic Buildings* (2017) at p13, EH say they will not support the use of synthetic non-metal materials on listed buildings '*unless there are highly exceptional circumstances*'. The petitioners claim that to be the case here, although that appears to relate to the amount of monies they have available rather than anything else. Impecuniosity is not 'exceptional' in the life of Anglican churches.
- 7) Back in August, Mr Hampson applied to me for emergency or interim relief in respect of the roof above the north aisle, asking that I should allow the use of the material in that region. I was prepared to grant this request for a period of 5 years, on the basis it had the approval of the relevant amenity bodies for that limited time. However, I attached a number of conditions, including in relation to what was to be done by the parish as that period drew to a close. Mr Hampson sought clarification of what was undoubtedly a

complex Order, and I sought to give such comfort as I could, in particular about the possibility I had included, as spelled out in Part 15 of the Rules, that the petitioners could be required to return things to their earlier condition, *if ordered by the Court*, in the event of any later objection being made, despite the PCC having already undertaken work pursuant to the Emergency/Interim Order, and the consequent expenditure of money. In giving clarification, to the effect I thought such a situation would be highly unlikely to arise, I also emphasised that the change of roofing material would in all probability require planning permission from the local authority. This was a matter over which the Consistory Court had no control. Whether Mr Hampson was not sufficiently comforted by my assurances, or for some other reason, I am not sure, but in the event, no steps were taken to implement the Emergency/Interim Order.

- 8) The Diocesan Advisory Committee (DAC) did *NOT RECOMMEND* the proposal, and Historic England ('HE'), the Church Buildings Council ('CBC') and The Society for the Protection of Ancient Buildings ('SPAB') have all objected to the proposal, to which Mr Hampson has provided a Response. I will in due course refer to the CBC's **Guidance Note** on Alternative Roof Coverings following theft of lead. None of these amenity bodies has chosen to become a formal objector, but, under the Rules, I am required to take their views into consideration in coming to a decision.
- 9) I have considered how the case should be resolved against that background, with there being no formal objectors, and concluded that it is a case that can be dealt with on the documentation available, and that it is expedient to do that. Mr Hampson, after consultation with the other petitioners, has agreed in writing to that course. Although there is deep disagreement about what the outcome of the case should be, and seemingly a lot of dispute about technical matters, the issue at the heart of it is clear-cut. A hearing would in my judgment serve no useful purpose. **I Order that the matter be determined on a consideration of the documentation available and the representations made to me.**

The Church

- 10) St Margaret's is in the northernmost part of the diocese, in the deanery of Tunstall, and is part of the four parish United Benefice of Hornby with Claughton and Whittington with Arkholme and Gressingham. It represents more than half the population and two-thirds of the Sunday attendance at the four churches. Mr Hampson has been in post since 2012.
- 11) The building is constructed of sandstone ashlar. There is an octagonal tower on three levels, with a parapet, set at the west end, (the tower being the oldest part of the present building, and dating from 1514). In addition there is a nave and chancel, under a continuous roof, with a clerestory level, and north and south aisles. There is a semi-octagonal apse at the east end. There has been a church on the site since at least 1338. In 1817 a new nave was erected. The church was restored in 1888-90 by the well-known Lancaster architects' firm of Paley, Austin, & Paley, when the nave was re-built, arcades and the clerestory inserted, a new roof was put on (presumably including most of the present lead covering), and the building was re-floored, the existing west gallery removed, and the box pews replaced with more modern pew seating. A new vestry was added and the former vestry became an organ chamber. The listing information gives further details, including in relation to some of the interior features. Overall this is an imposing building of impressive size and its Grade I status speaks for itself. It is constructed throughout of traditional materials, including the 'simple low pitch lead roof' behind embattled parapets (according to HE's description in their letter of 6th September 2019). It stands within the Hornby Conservation Area.

The Need

- 12) One of the chief concerns of the Parochial Church Council of any venerable church building, and especially one of such heritage value, is to keep it weatherproof, and deal promptly with any problems of water ingress or damp that arise. These responsibilities frequently especially involve the wardens and incumbent. It is pretty obvious that no PCC will embark on major re-roofing works without believing it is necessary, however or for whatever reasons they arrive at that conclusion, but the real issue about **Needs** in this case is not whether a new roof or at least substantial roofing repairs are necessary, but why the GRP material should be used instead of lead or some other metal substitute.
- 13) At the time the petition was completed by Mr Hampson on behalf of the petitioners, they had not consulted their architect, even for general advice, nor had they approached the local authority about the proposed change of roofing material and any planning considerations that would arise as a consequence. In part E of the petition, they indicated they had not at that time consulted any of the amenity bodies

listed there. There is no report or other evidence from their church architect available, or past QI's that would detail the present problems. Church architects are always professionals with special knowledge and expertise in dealing with historic buildings and offering suitable advice to PCCs, and over time they are bound to gain special insight into the buildings for which they have responsibility. They will also be aware of the possibility or advisability in some cases of undertaking other roof work when the underlying structure is exposed. The petitioners have ruled that out in seeking permission for '*removal of top layer (only) of roof*', without having taken their architect's advice. I do not treat that as a fatal objection, but it is a clear indication of how wedded they have become to the solution provided by this manufacturer.

- 14) The **Statement of Needs** is short: a new roof is proposed because of '*extensive long-term leaks (the existing roof is 'lifetime expired') and recent major lead the ft.*' The **Statement** however refers to a document uploaded in support, which is a **statement from Mr Hampson** dated 7th May 2019. In that, he says: 'The roof over the current footprint of St Margaret's has been problematic since the current footprint was first established in 1817.' He goes on to quote as follows:

'...The huge span of the roof quickly led to trouble. The trusses soon failed and the ceiling had to be supported on larch poles. 'Ten pillars of wood in the Chapel' cost over £60 in 1826-7, while 'Putting up a Middle Row of Pillars' cost another £21 in 1832-3. Such repairs as were carried out in 1838 tided the church over until 1888 when another faculty was obtained. Under the terms of of this the church was restored by the distinguished Lancaster architects Austin and Paley.'

- 15) This quotation is taken from the *History of St Margaret's* by local historian Professor Andrew White at p.5. I have been provided with a copy of this short history by Dr (sic) A J White, which is illustrated by A B Ogden. It is undated, but I am told it was available from 2015. The writer's qualifications are not specified. It is an interesting publication, which gives added 'flavour' for a stranger to the church by its descriptions of the history of Hornby itself, and its Castle.

- 16) Mr Hampson goes on: 'The lead roof provided in 1889 has remained in position...but has not been watertight within living memory (and probably not ever)'. He attributes this to the overlaps in the lead facing towards the prevailing wind instead of away, the lead being laid too thin as an economy measure, and the overlaps being too small. When rain falls vertically it is mostly weathertight, but the roof 'leaks appallingly' in the south aisle, the south central nave and to a lesser extent, the north central nave, when the wind blows. Buckets have collected water in aisles and pews as long as anyone can remember.. He also says: 'There is a history of failed attempts to improve the 1889 roof. The entire south aisle section was replaced like-for-like with lead in the 1980's, but that has leaked more than any other section of the roof for at least half the years since then, up to the present day.'

- 17) In late August 2018, following another wet Sunday morning, the vicar and wardens made the decision in principle that the time had come to stop attempting repairs and improvements, and to replace the entire nave roof. At first the assumption was that this would be in lead, whatever it took, and however long it took, to achieve that.

The theft

- 18) Mr Hampson goes on to record the theft of lead on the night of 13th September 2018 from the only area that did not habitually leak - the north aisle. Rain caused some interior damage before the theft was discovered. Local builders put up a plastic membrane, which proved 'completely watertight' (allegedly better than the lead roof remaining) through a series of significant storms over the last 8 months (ie September 2018 to May 2019), giving time for the parish 'to consider properly' the project to re-roof the entire roof.

Petitioners' reasons for seeking approval for the GRP material

- 19) Mr Hampson then summarises the reasons that have weighed in deciding not to proceed with a metal roof. He refers to 'we' in his statement, which could simply be himself and the wardens, but I suspect is a reference to the PCC as a whole, which according to the documents submitted, considered the detailed breakdown of estimated cost dated 21st November 2018 from Croft Roofing in the sum of around £57000 plus VAT, at a meeting on 13th February 2019 (see below).

- 20) These **reasons** I summarise as follows:

- A) A metal roof has not served them well, from 1889 or from the 1980's
- B) Metal roofs are attractive to metal-thieves, risking enormous harm to the building

(There are then 4 sub-reasons given, of which the first two refer specifically to lead theft, the next repeats the point about potential additional harm to the building caused by theft, and the last asserts stainless steel is as expensive to install, 'often has a scrap value just as high as lead and causes more damage than lead during a theft').

- C) No metal option is affordable
- D) the insurance implications of a metal roof are not affordable (CCTV) or are visually intrusive
- E) Non-metal options are available that are visually indistinguishable from lead at ground level
- F) No part of St Margaret's roof is visible from the ground
- G) Non-metal options are available with a life-expectancy of 50 years, guaranteed for 20 years and repairable beyond that.

It was concluded a metal roof is not affordable and would 'actively harm the building'.

Three non-metal options had been considered, two rejected - one rubber-based and one felt - and the third being for the 'D....H....' material now sought; the manufacturers' on-line information page was attached. They (the parish) acknowledge the importance of preserving the heritage, but have concluded this proposed system 'best serves and best protects this historic building now and into the future'.

21) When the **Parochial Church Council** met on 13th February 2019, there were 8 members in attendance and apologies from 6 others. I am unsure how large the total membership is. The Minutes record that it was decided not to renew the vestry roof as it was in good condition, thus saving £7000 (the figure in round terms on Croft's estimate, a sum which I have already omitted from the overall figure in para.19 above). The Estimate from Croft Roofing was accepted in principle at £56000, of which the parish had £23000 in the Fabric Fund and £7000 from the insurers (following the theft, presumably). They decided to go ahead with the work all at once when funds allow, and to launch a fundraising campaign. I note Croft is said to have offered help with 'facilities and *grants*' (my emphasis) but nothing seems to have followed from that.

22) The **Diocesan Advisory Committee** considered the proposals on 14th June 2019 and did **Not Recommend** the works for the following principal reasons. They had '*great concerns over the use of this substance (i.e. the 'material') especially on a Grade I building, and advised the PCC to look at alternative metal finishes such as terne-coated stainless steel (TCSS) or zinc which have longer life expectancy and are much more durable*'. They were of the view the work was likely to affect the character of the church as a building of special architectural interest, so (if the Parish decided to press ahead with the petition despite the DAC's views), they indicated notice of the proposals should be given on the diocesan website as required under Rule 9.9 of the Faculty Jurisdiction Rules 2015. They also advised that consultation with the following bodies should take place: Historic England, the local planning authority, the Victorian Society (sic) and the Church Buildings Council. (In the result, SPAB has responded to the consultation process rather than the Victorian Society).

Consultation with amenity bodies

23) Responses were received from SPAB on 10th July, CBC on 7th August and HE on 5th September. Perhaps unsurprisingly there is substantial overlap in what they say and I will seek only to summarise the objections raised.

24) **SPAB** complained about the lack of drawings 'as existing' and 'as proposed', and any technical assessment by a conservation architect identifying the nature and extent of the problems. 'The views of the inspecting church architect should certainly be sought'. They wanted details of any security measures in place. (*I understand there to be none*).

They summarise the petitioners' reasons for opting for the material but contend TCSS does not have the same scrap value as lead (as the parish asserted). After consulting with Ecclesiastical they reject the contention the latter assess the risk with steel and lead as the same. There were a very small number of thefts of TCSS, usually attempted in the belief a roof was in fact lead.

They rejected any suggestion metal alternatives could 'actively harm' the building. GRP would result in harm to the building's 'special interest'. They reject the solution of removing lead from the roof to deter further thefts (I am not sure that is advanced by the petitioners, as opposed to the remaining lead being 'worn out'). Other security steps can be effective. Lead has a long and proven history; GRP does not. It is still very early days in the lifetime of that product. The costs of renewal, eg scaffolding; will be considerably greater with such a material over time. SPAB asserted that the manufacturer had put forward widely differing

estimates for the lifespan of the product. They asserted lead could last 150 years, considerably longer than the material's best estimate of 50 years, and lead could be easily repaired *in situ*. The material's longevity depended on there being little structural movement.

Lead is important 'for its contribution to the building's special architectural and historic interest'.

Overall the Society believed the petitioners had failed to demonstrate a justification for changes to the roofing material, and, as I read it, to the GRP material in particular. Their views are based on experience of similar *products*.

25) **CBC:** Dr David Knight, their Senior Church Buildings Officer, noted the reluctance of the parish to use lead again as a replacement, and was prepared to advise against it. 'An appropriate material would take note of the technical performance of the proposed roof *and its impact on the character of the church as a Grade I listed building*' (italics mine). 'The Council would strongly prefer that a new metal roof is provided, which it considers to be more in keeping with the character of the church as a listed building and the most enduring, long-term solution.

Although the contribution of the roofing material to the character of the listed building is not, in this case, related to its appearance from the ground, the Council agreed the lifespan of the roofing material coupled with its performance on a building that has slight movement in it were sufficient reasons to advise against the use of a non-metal alternative.'

CBC also expressed concern about a new substrate to the roof of a more rigid kind, leading to less seasonal flexibility, and the possibility of impact damage, and the need to provide protection from foot traffic. 'The Council would not support the proposed introduction of a GRP roof on this church'.

26) If I were minded to go against their advice, however, CBC drew attention to the lack of detailed architectural drawings, which they viewed as essential, especially for the detailing of joins with walls, gutters and edges, and they also proposed certain conditions for the provision of further information, the introduction of false lead rolls (which the petitioners are agreeable to), and the need for a warranty. Apart from the preparation of drawings, in which the petitioners are content to rely on the manufacturer or roofing firm's expertise, these other matters are not controversial. Perhaps surprisingly Dr Knight does not refer to TCSS as such, nor to CBC's **Guidance Note** on Replacement Roofs.

27) **HE:** HE had visited the church on a rainy day during the summer and seen evidence of rain leaking into various containers, and visible stains to the fabric. They understood the practical and financial problems involved, and the active steps taken by the parish towards finding a solution.

They considered the application lacked 'drawings and a technical assessment on the nature of the problem, its cause and recommendations on the various options for repair, by a conservation accredited professional' (which are deemed necessary before decisions are made according to p5 of their 2017 document cited above). They would help 'to justify the impact of the proposals on the listed building'. The application would also benefit from 'previous QI surveys and the opinion of the church architect on the necessary remedial works, including the potential impact of using D...H...GRP'.

HE considered the installation of such material on the roof 'would cause considerable harm to the listed building; the metal covering was an intrinsic part of the building's architectural significance, and their previous experience and research had revealed 'serious technical and performance issues' (with the material) - 'early failure, the need for remedial works and potentially replacement, all evidence the unsuitability of GRP roofing systems on historic buildings and the consequent risk of damage....due to water ingress'. They expressed doubts about the long term cost when weighed against longevity. While continuing to favour replacement in lead with appropriate security measures, they recognised that TCSS reflected the architectural significance of the building and has technically proven performance and they recommended its use. Lead had centuries of effective use, and the church's problems were almost certainly due to incorrect installation and detailing. If there were insufficient funds available, they suggested roofing felt as a temporary measure for a period of 5 years initially, while funds were raised. The application lacked 'clear and convincing justification for the harm that would be caused (by the GRP material) '.

28) In summary, these bodies had a concerted objection (for largely similar reasons) to the use of the proposed material, considered that it damaged an important feature of the historic building, and further considered the failure to produce evidence from the church's architect or detailed drawings an important failure. They were firm and strong in their opposition to the proposal.

Parish response

29) Mr Hampson responded to the **DAC's** views (possibly as they had been made known to him beyond the strict terms of the Notification of Advice), as follows:

- i) *He contends Ecclesiastical Insurance assess the risk to be the same for steel as lead.*
- ii) *He dismissed concerns expressed by DAC members or their consultants about condensation with D... H... 'which has been used successfully on very similar church buildings' and the petitioners continue to favour it 'on the basis of its successful track record elsewhere on heritage buildings including churches....'*
- iii) *He invited the DAC to provide information as to the need for more insulation as required under Building Regulations or as was thought advisable, in the DAC's opinion*
- iv) *He reported that the planners' informal view was that planning permission would not be required for a change of roofing material from lead to the non-metal alternative. (It is right to note that that informal view has not survived; it is now clear the planners (Lancaster City Council) will require planning permission to be obtained before the change of material can go ahead - see an email from the Council's Conservation Officer, Megan Atkinson, dated 19th June.)*
- v) *He had also put the DAC concerns to the manufacturers of the product, (H...D...), who had provided him with 4 supporting documents, and went on: 'I trust that this level of detail will re-assure the DAC that the architect would have nothing to add to the highly professional service offered'.*
- vi) *He set out the manufacturers' refutation of the DAC view that GRP causes problems with condensation*
- vii) *He then set out the manufacturers' 'unequivocal recommendat(ion) of Croft Roofing for (this work); they have been installing (it) to a very high standard for over 24 years' and they have offered further technical advice if needed.*

30) Mr Hampson also responded specifically to the amenity societies in a Note of 24th September, and repeated the parish's continued reliance on their 19 page submission of 28th August with supporting documentation. I summarise what he argues.

SPAB: They considered that H....D....'s engagement as Project Managers by the PCC, the drawings they had prepared, their accumulated experience and their technical department's assurance that the product was suitable for this application alleviated any need for 'as is' or 'as proposed' or the involvement of the church architect.

Further investigations into the roof problems would cost thousands and add nothing of value to the project.

Reliance on the advantages of metal roofs was beside the point; funds were not available.

He disputed it was 'very early days' in the life of the product; the contractor has been successfully installing it for 'over 24 years'. He relies on the views emanating from the experience of All Saints Sedgley.

Problems of lack of flexibility and malleability in relation to the product apply even more to TCSS.

CBC: There is no need for a substrate, and he relies on his response to SPAB's points.

HE: If this is, as HE say, a 'simple low pitch lead roof', there is no need for bespoke drawings.

The need for a new roof is confirmed by HE's site visit.

He repeats his previous responses about the need for a 'technical assessment and drawings'.

He feels HE are departing from their published advice regarding *Metal Theft from Historic Buildings*.

The product is far superior and of similar cost to roofing felt.

Notices

31) Public notices were exhibited over a period expiring in October and Notice under Rule 9.9 has, I believe, been given on the diocesan website. I have had no indication that either procedure has elicited any objections.

Legal issues

32. a) It is for the petitioners to persuade me that their proposals should be approved.

b) In regard to a listed building, there is a heavy presumption against permitting proposals that will or may harm its significance. The particular Grade of the church for listing purposes, is highly relevant as to whether or not serious harm will be occasioned. St Margaret's has of course been listed as Grade I - the highest category - to which only a small percentage of listed churches are assigned. The test currently applied

involves identifying the special architectural and/or historic interest of the listed church (*Re St John the Baptist, Penshurst* (9th March 2015) *unreported*, at para 22) and then considering a series of questions to be addressed sequentially, that were laid down in *Re St Alkmund, Duffield* [2013] Fam 158, at para 87. These **Duffield Questions** are now much more than a framework or guidelines by which chancellors may be assisted in reaching decisions, but are essentially normative, and provided a structured approach to decision-making (see Hill: *Ecclesiastical Law* 4th edition Oxford 2018 at para 7.72).

c) These proposals affect only the traditional lead-covered roof of this Grade I building. That type of roofing embodies the significance of the church that will be affected by the proposed changes. All the amenity bodies would ideally prefer a new lead roof, (in the absence of potential theft), but recognise that that may well result in further attacks on the building by thieves, with the loss of the new lead roof covering and probable damage over and above that, both to the structure of the roof and elsewhere. Because of that, they are willing to contemplate an alternative metal, although of course the petitioners firmly reject that possibility, and seek the GRP material instead. The amenity bodies recommend as an alternative the adoption of TCSS, but mention zinc and copper as further possibilities. I do not propose to consider these latter two any further, as the information I have about them is less, and they are not seriously under consideration as possibilities by anyone in this case. Although I have authorised the use of TCSS many times on listed buildings as an alternative roof covering, to the best of my recollection, I have not been asked to authorise either of the others, except, I think where the replacement was of a previously copper covered spire or turret of some kind. **The real issue in this case is not whether the petitioners have persuaded me that a new roof covering is needed, which they have, but whether the GRP material should be permitted, rather than TCSS.**

33. d). Before going further, I need to make a number of preliminary points.

i). It is for the petitioners to persuade me in this case, as I say, not of the benefits that will arise from putting on a new roof covering, but that the appropriate material is D...H... It is not even enough to show that is a *possible* solution to the problem, but that it is the *right* solution having regard to all the circumstances, especially the arguments of the petitioners and those put forward by the DAC and amenity bodies.

ii) **Planning permission** is required before there can be any change of roofing material. If the work is done without that approval being obtained, the local authority could take enforcement action, that could include the parish having to remove the 'offending' material. While I am confident that the local planning authority will grant planning permission for TCSS, I am far from confident they will be favourably disposed to D....H.... Present indications are that they will not. This is a matter over which I as Chancellor have no control. It is for the local planning authority alone, subject of course to any procedures for review or appeal that arise in the secular system. I have ignored this question in arriving at my decision. However I can confirm that the petitioners do not need to obtain planning permission *before* seeking the permission of the Consistory (diocesan) Court for these changes under the ecclesiastical (faculty) system, just as, I believe, the local authority could not insist on the petitioners obtaining faculty consent *before* seeking local authority permission. Where both consents are required, it is a matter of choice or perceived convenience as to which the parish will pursue first, although I suspect the decision may depend in part on the fact that the fees for planning applications are likely to exceed the costs of seeking faculty approval.

iii) We know the DAC has declined to give its support to the use of D....H.... Again I make clear that fact does not prevent the petitioners pursuing their proposals and requiring that I give a decision on the matter. It is clearly not a requisite of a faculty application being successful, that the DAC *Recommends* it or at the least, *Does Not Object* to the proposals. If that were the case, the DAC would in effect become decision-makers, at least in saying it does *Not Recommend* in certain cases, thereby causing the application to go no further. The DAC is an advisory body, not a decision-making body, as the title makes clear. Form 2 under Schedule 3 of the Faculty Jurisdiction Rules 2015, the DAC's Notification of Advice, contains a statement in bold which sets out that where the DAC does *Not Recommend* the proposals : **Despite the Committee's advice, you may, if you wish, apply to the court for a faculty authorising the works or proposals.** This confirms the position I have stated.

iv) Nonetheless it is unusual for an application to be made without some degree of support, even if somewhat muted, from the DAC, and, I dare say, even rarer for such a faculty to be approved. I may on rare

occasion have disagreed with the DAC on some issue of aesthetics or something else on which reasonable people may reasonably not see eye-to-eye, and been prepared to grant a faculty, contrary to that body's advice, but that is very rare.

34. v) The SPAB, together with HE and CBC, have objected to the proposals in strong terms, as I have summarised above. Again it is worth stating that, despite the widely-held view of some PCCs, their consent or approval is not a pre-requisite of the grant of a faculty. They are bodies that need to be consulted under Schedule 2 of the Rules, depending on the Grade of the listing and the nature of the proposals. Consultation has certainly taken place in this case, in that the petitioners have given the necessary information and then have responded to the matters of objection that have been raised, although I have not detected any real desire on the petitioners' part to discuss the matters constructively as opposed to setting out their disagreement. (I dare say the petitioners would in turn contend that the objecting amenity bodies are not open to the fresh ideas that (and material) the petitioners put forward, but are stuck with commending only old solutions.) In most cases where the amenity bodies have objections or concerns, efforts might be made by the petitioners to discuss the matter further, but in this case the positions are fixed and entrenched.

35. **ChurchCare**, which is a 'trading' name adopted by the Church Buildings Council, has issued a **Guidance Note: Alternative roofing materials to lead**, which was updated in August 2016. This is not in my judgment, simply another set of views to be set against those of the petitioners, or the manufacturers of the material, or indeed, those who have used or approved the use of the material on historic structures, and been very satisfied with the outcome. Each of the 7 pages of the Guidance, save the opening page, carry the following wording at the foot: *'This guidance is issued by the Church Buildings Council under section 55(1)(d) of the Dioceses, Mission and Pastoral Measure 2007. As it is statutory guidance, it must be considered with great care. The standards of good practice set out in the guidance should not be departed from unless the departure is justified by reasons that are spelled out clearly, logically and convincingly'* (my emphasis). I believe that wording sets out accurately in summary form how statutory guidance needs to be approached. The guidance formulated by CBC under the power given them in the Measure has a **normative** quality which must be applied, unless there are reasons not to do so that can be stated 'clearly, logically and convincingly'. It cannot be disregarded, or not applied simply because someone comes to a different view on the best way to proceed, for what appear to them doubtless to be good, sensible and sufficient reasons.

Guidance Note

36) This document contains much advice, comment and discussion, and it is not possible to deal with all it contains. I shall pick out what seems to me the most relevant parts. There is no indication it has been referred to by the petitioners, despite the fact it *'is intended to assist those considering options following theft of metal from the roof of a church'*. I am satisfied its approach is applicable to an application like this, where much of the lead roof covering is to be removed simply because it is worn out and no longer doing its job. Again I stress, it is not simply a catalogue of the pro's and con's of specific materials, but is intended to guide petitioners (among others) as to what is the *right* solution in accordance with the views of the CBC, which attune with those of other similar bodies, when carrying out work to this significant part of the listed structure.

'The material that is most often used to replace a traditional church roof after a theft when the continued use of lead is not realistic, is TCSS on account of its appearance and performance on traditional buildings. It has received broad support around the country, weathers well, and can have a lifetime of more than 50 years.' The CBC considers that this is the material most likely to be substituted for lead for roofing when replacement of lead is not viable.

Careful detailing of (TCSS) is required to maintain the character of the building.

'There are concerns about its appearance on prominent roofs, but these are less relevant.....when the roof is not readily visible from ground level.....'

'Many of the alternative materials described below will only work effectively and be durable if they are laid over a suitable substrate. **The success of any replacement roofing will depend on an accurate and detailed specification of work** (emphasis in original). 'It is essential that you consult an architect or surveyor before any work is commissioned.'

(There are then references to the architect being able to make provision to deaden the sound of falling rain or condensation....., and the need for other remedial work that can be done at the same time).

There is a lengthy section dealing with TCSS which is 'stainless steel continuously hot dip coated with a lead-tin alloy'.

'It is widely considered the best alternative roofing material on shallow-pitched or flat roofs.'

'It is.... generally considered less workable than lead where especially detailed forming is required' (and various other difficulties with its use are identified).

A number of non-metal alternatives are also discussed. They are generally 'not recommended, especially for large roof areas. On some occasions they may be used as an interim measure....

FibreGlass/GRP

'...has a lifespan over 30 years....Most examples of use are on flat roofs, or very gentle slopes....'

37) Against this wealth of advice and argument, I turn now to discussion of the **Duffield Questions**. These lay out, as stated above, a series of questions to be addressed in any application for changes to a listed church that will or may affect its significance. (It seems to me beyond argument on the basis of the advice of the amenity societies, that that is the position.)

Duffield Questions

38) I shall refer only to the questions that are relevant to the case.

Q1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

Plainly the answer is YES; the traditional lead roof-covering would be removed (where not previously stolen and therefore already missing), and replaced by a modern GRP material.

Q3. If the answer to question (1) is 'YES', how serious would the harm be?

*This question is directed to the effect of the works on the character (or significance (see the wording of Q1)) of the listed building, rather than the effects on the particular part affected by the proposals. In my view, the degree of harm would be **moderate** rather than anything higher, principally for the following reasons. The roof covering is not readily visible to those viewing the exterior, and obviously invisible to those inside the building. The GRP is produced in such a way as to imitate the appearance of traditional lead. Nonetheless, the amount of the material to be applied is significant, virtually the whole roof, save for that over the vestry. If it be said that TCSS is also a modern material, developed within say, the last 150 years, it is nonetheless a metal-based material with characteristics largely similar to those of lead in regard to longevity, the way it is applied, and its appearance, and its use on historic listed buildings is well recognised and accepted, in cases like this where lead is no longer thought appropriate.*

Q4. How clear and convincing is the justification for carrying out the proposals?

The underlying need is for a roof covering that will provide weatherproofing for this building, to protect its integrity and also safeguard the people using it against adverse weather, for worship or any other purposes, over a reasonably long lifespan. While it is apparent that the roof covering needs to be renewed either because of the ft or simple deterioration through age, the petitioners contend that the choice of D....H... as the appropriate material for that, is justified, despite its not being a traditional material, because

- i) the funds they already have available, will stretch to the cost of the GRP material, but not to anything like TCSS*
- ii) the fact no one is likely to attack the roof in the mistaken belief this is in fact lead, with a re-sale value, so there will be no risk of damage to the underlying structure or nearby stonework*
- iii) it will do the job required of it, and they have lost confidence in lead or any other metal finish after the church's experience over many decades. This alleged 'loss of confidence' cannot be an objective assessment, where lead has been successfully used for centuries on countless buildings.*

I shall attempt to assess the counter-arguments below under **Discussion**.

Q5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the character of a listed building, will any 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) outweigh the harm?

The more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will be particularly the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

The proposals here are in the nature of repair and replacement, and there is no benefit that is in contemplation, beyond the obvious advantages of having a weatherproof building, both for the well-being of the structure, and the people who will use it. I do not underestimate the real value of those benefits, but there are no further objectives that the petitioners are seeking to achieve.

Discussion

39). I will try to pick up on arguments presented on both sides in the following. Although it is not stated expressly, there is a strong underlying sense in this case, that the petitioners have been so impressed by their perception and understanding of the GRP material, they have set their hearts on it, and been unwilling to weigh contrary views, particularly those based on heritage considerations, as advanced by those with special expertise in the field, gained over many years, and in respect of many other historic churches. There is a real sense, albeit unexpressed openly, of this being their church, they will be paying for the repairs, and so they should be allowed their preference as to how it should all be done. No countervailing arguments, even on technical matters, are accepted by them.

40) Further, as the petitioners trust the contractors to apply the material properly, they see no need to consult their architect at all, certainly not to seek any technical advice from him or her, or to engage the architect in a supervisory role for the work, which they judge unnecessary and something which will simply cause extra cost. They do not acknowledge that the architect brings to the situation professional expertise **and independence of judgement**, coupled with special knowledge of this building, as well as general insight into the possibility of the roof, which has been subject to failure over a prolonged period, needing or being improved by changes to its construction while the opportunity presents itself. The petitioners have failed to acknowledge the value the architect could bring, which is adverted to in the Guidance Note and the amenity bodies' letters of objection.

41) As to the question of cost, they are in a position to meet the quotation for D...H...to be laid, but not TCSS. I have not been provided with figures for the cost of TCSS as the roofing material; I am prepared to accept it will be more expensive by a significant factor, just as lead would be, and also that the added cost cannot be met at the present time out of the parish's available resources. However, many churches are able to access funds from charitable bodies of one kind or another, especially if they are of Grade I (like St Margaret's), or II*. The petitioners have provided no evidence such grant-making bodies have been approached, but without success, so they are reliant solely on their own resources. If such grants were available, the funds they themselves have available are likely to be sufficient or nearly sufficient to meet any requirement for matched funding to be made by the parish. They have considered that the question of cost points decisively to the use of the GRP material, whereas this is a present difficulty which it may be possible to overcome.

42) It is not usual to provide more concrete help in a judgment, but I can see that petitioners might say, well it is always easy to make such suggestions, but where actually could we go? There are no guarantees with the following! Possible sources of help could be *The National Churches Trust*, *Churchcare* (up to £10000, I believe), this being as I have already said a 'trading name' for the CBC, or any others from a list of funding organisations and bodies produced by the central church: *Charitable-Grants-for-Churches-June-2019*. Also it appears that Government has continued its scheme for *Grants for Listed Places of Worship* up to early 2021, which has in the past provided large sums of money to help with the repair and upkeep of the heritage assets of the Church of England.

43) The position of the objecting bodies is that the GRP material is unsuitable for use on a historic building, for a number of reasons. They believe it is too rigid to be used on a structure that may well exhibit a degree of movement. This is an argument that attracts counter-assertions, and I do not think I am in a position to resolve it. They consider it inappropriate for use instead of a metal covering because that does not fit with a Grade I building and it does not promise the same lifespan as they do.

44) I do not decide this case simply on questions of longevity and value for money, To a great extent the whole arithmetic of the situation is a matter of judgement, and I can see the attractions of paying less now

with a shorter potential lifespan. The disadvantages of that are clear in theory, with repair or replacement costs having to be faced sooner, but I do think it is very much a 'judgment call' for the parish. None of us are in a position to know how the Church of England in general or St Margaret's in particular will be placed 20 - 30 years down the line. Only so much future planning can be even relatively certain. There is a stronger argument relating to the general suitability of the material for use on a building like this, but I appreciate that the petitioners and manufacturers advance contrary arguments to the other bodies whose evidence I have. 45). Nonetheless this is an argument which appears in the amenity bodies' objections, namely that the GRP is not an 'authentic' or 'genuine' substance for use as a replacement roof covering on a building several hundreds of years old, however much it resembles the look of lead. I do not question the adequacy as a roof covering of this GRP material on modern or new structures, where it may perform as well as the manufacturers claim. Nothing in this judgment should be taken as a general criticism of the material I am concerned with, but it lacks, as it is bound to, any sense of tradition.

46) Suppose parts of the ashlar stonework of the church fell into a state of serious deterioration and required replacement. I can envisage a manufacturer of mortar or cement products devising a product that mimicked the stone in colour and texture, and with an anticipated long life, and which also was considerably easier and cheaper to fashion into suitable size pieces to build into the damaged areas than natural stone. Any suggestion the 'stone' product should be used rather than natural quarried stone similar to the original, because to do so would be hundreds or thousands of pounds cheaper, would be rejected not only by the amenity bodies, but probably also I suspect by the petitioners. The manufactured product may look the same, and perform much the same, but in the end it is 'false'. There is that consideration which is advanced, that militates strongly against allowing the use of H.....D.....GRP on the roof of this church.

47) I do not reach this conclusion easily or lightly. It may be, in the future, the amenity bodies come to a more relaxed or, as the petitioners would doubtless say, 'realistic' view of what may or should be done by those with the present and difficult responsibility for the upkeep of a historic building when this sort of issue arises, but that is not their present view.

48). In the end I am forced to the view on looking at all the material before me, that the petitioners have failed to produce a *clear, logical and convincing* case. Where there is a difference, I prefer the arguments of the amenity bodies. The failure, despite all the reasons given them, to engage their architect, and the incomplete evidence about the availability of grants for a traditional material (TCSS), weigh against them as well as the consideration, this is not an authentic or genuine material for total replacement of the roof on such an important historic building. **This application must be refused.**

49) I reserve any question of costs for later decision. Any body seeking costs must notify the amount and basis therefor to the Registry not later than 10th January 2020, and the petitioners may respond by 24th January. I shall give a decision in writing. Let me be clear, I am not encouraging anyone to the view such an application has merit, or would be likely to succeed.

John W Bullimore
Chancellor
4th December 2019

Footnote

50) The manufacturers put forward in their literature instances of this material being used on a number of listed churches, and that has been coupled with evidence from individuals associated with those churches that the material is working well. In addition there is a lengthy letter from an experienced Chancellor to the churchwardens of one of those churches, giving permission for its use despite the objections of the amenity bodies. I can see from the petitioners' point of view the use elsewhere and the Chancellor's approval, and the support of other Chancellors are useful arguments to put before me. However the right treatment for one patient with a particular problem, may not be the same for another.

The letter is dated 5th October 2011. *I assume it has been produced to the petitioners by the manufacturers, and I assume they have the Chancellor's permission to use it in this way.* In case these assumptions are wrong, I will not identify him further. I know him to be very experienced in relation to the faculty jurisdiction and listed buildings and 'heritage assets' more widely, and an expert who has published in both these areas.

51) The letter is headed *Urgent* and relates to *St John the Baptist Br.....*, and the re-roofing of the north and south side aisles and south porch, with the GRP material. 'The works are said to be very urgent'. The church is Grade I. The letter records that the DAC were against, although some individual members were broadly supportive, as was the Archdeacon. EH intended to object formally, but said EH had (previously) approved TCSS in some cases, and on a short-term expediency basis, other materials such as mineral felt. EH were agreeable to the matter being dealt with on written representations.

SPAB's Technical Panel considered the material would be 'inferior, inadvisable and inappropriate'.

The Conservation Officer of the local authority considered an alternative to lead would be acceptable in the circumstances, but would prefer TCSS.

52). The Chancellor had seen reports from CBC on metal theft and alternatives to lead, and EH's 2011 Guidance Note on theft of metals from churches.

The Chancellor concluded that 'in this case' given the nature and location of the roofs, the higher cost of lead and increased likelihood of theft, 'there is no reason to insist on the use of lead, however desirable that might be in terms of traditional historic building practice'.

If lead was not to be used there was a wide range of possibilities. 'There seems to be a general consensus that the material...is probably 'not ideal''. TCSS seems to be generally preferred. The material 'is said to be cheaper, at least in the short term.

The petitioners were free to re-consider their choice....

Conditions were imposed that the work was supervised by the church architect, (who had previously approved the use of the material to the incumbent), and before any work is done, a specification was to be approved by the Court following consultation with the DAC.

Comments

Similar conditions could not be imposed in relation to Hornby - it is impossible in my view to impose such responsibility on an architect who has not approved or been involved in the application.

53). I have looked at such evidence as is presented of the use of the material in regard to listed churches in Great Yarmouth, Redditch, and Leamington Hastings. All except Yarmouth, relate to work carried out later than in the first case mentioned in para. 50, ie after 2012. Yarmouth was done I believe in 2000. I do not intend to carry out a detailed analysis of each of those, which would simply add to the length of this overlong judgment, without significant gain. Each appeared to be related to specific limited areas of roof rather than the whole. I am prepared to accept that, save in one case, the church authorities have been pleased with the result; in that one case problems were attributed to those who laid the material rather than the manufacturer.

JWB