

Neutral citation: [2016] ECC Swk 1

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF ST LUKE, CHARLTON

AND IN THE MATTER OF A PETITION FOR THE INSTALLATION OF SIX ANTENNAE, A TRANSMISSION DISH AND ACCESS LADDERS WITHIN THE BELL TOWER BEHIND REPLACEMENT GRP LOUVRES AND REPAIRS TO DECAYED TIMBERS AND FOR THE GRANT OF A LICENCE

1. This is a petition by the Rector and Churchwardens of St Luke's Church, Charlton and Net Coverage Solutions Limited in respect of the installation of telecommunications equipment in the tower of St Luke's Church, Charlton. The Rector is Revd Erica Wooff and the Churchwardens are Ms Elizabeth Buck and Mr Robert Simson. The petition seeks a faculty to permit

the installation of six antennae and a transmission dish in the bell tower behind replacement GRP louvres, along with access ladders, and repairs to decayed timbers

in accordance with plans that are identified.

2. It also seeks authority for the Vicar and PCC to enter a licence agreement with Net Coverage Solutions Limited for a period of 20 years in respect of the equipment.
3. Under rule 5.3 of the Faculty Jurisdiction Rules 2013, the Petitioners were required to publicise the application for the petition by displaying notice of it for a continuous period of not less than 28 days (i) inside the church, on a notice board and (ii) outside the church, on a notice board or in some other prominent position (whether on the church door or elsewhere). It was then necessary for publication of the notices to be certified by one of the petitioners and Ms Wooff duly signed such a certificate, which is dated 15 January 2015. It certified that notices had been displayed on a notice board inside the church and on the principal door outside the church between 10 December and 8 January 2015.
4. The petition attracted three objections, namely from Mrs PJ Wardale dated 3 January 2015, from Lady Zammit dated 4 January 2015 and Mrs Kitty Baden Powell dated 5 January 2015.
5. In their objections, Lady Zammit and Mrs Baden Powell took the point that the church had been closed since September 2015 and that, accordingly, only a limited number of people would have seen the notices.
6. In accordance with rule 9.3 of the 2013 Rules, the Registrar wrote to each objector asking her whether she wished to become a party opponent or was content that I should take her objection into account in my determination of the petition. Lady Zammit and Mrs Baden Powell replied that they did not wish to become parties opponent and were content that I

should take their objections into account. Mrs Wardale did not reply and accordingly she has not become a party opponent; but her objection also falls to be taken into account.

7. On 22 September 2015, Winckworth Sherwood, Solicitors, acting on behalf of the Petitioners submitted a document responding to the various points that the objectors had made. On the point about notices, they said

The public notices were displayed inside and outside the church for the statutory period in accordance with the Faculty Jurisdiction Rules 2013. The Petitioners have not received a direction from the Registrar for further display of any public notices in accordance with rule 5.3.

8. On 8 October 2015, I gave directions in the matter. As regards the point about the notices I asked the following questions:

The notice (Form 4A) is certified to having been displayed on a notice board inside the church and on the principal door of the church between 10 December 2014 and 8 January 2015. However Lady Zammit tells me that the church was closed from the end of September 2014 until February 2015¹. If this be so (and I would be grateful if the Petitioners could confirm or otherwise), there would not have been much point in displaying the notice inside the church. Is what is meant by the certification of the notice that it was displayed in the place (wherever it was) that the church held services during this period? On a separate point, would the notice that was displayed on the principal door have been visible or readily visible to passers by?

9. In their response dated 9 November 2015, Winckworth Sherwood said:

The Petitioners recognise that the circumstances here were somewhat unusual and not specifically provided for in the relevant part of the Faculty Jurisdiction Rules 2013. Given the Parish Church was not open for worship², the Petitioners erected two external public notices. One was on the principal door of the church (where it was indeed visible to passers by) and a second was on the prominent village notice board which abuts the main shopping street.

10. *No public notice was erected inside the church of St Thomas Charlton, but the proposal and the fact that "consultation" (by which the Rector was referring to the public notice period) was taking place was announced during services there, during the regular notices.*

11. In turn by a letter dated 7 December 2015, Mrs Baden Powell has responded

... I do not agree with the statement that as well as the statutory notice on the church main door, there was a second notice on the prominent village notice board which abuts the main shopping street. I know there was no such notice because I look at the board

¹ The February date emerges from Lady Zammit's letter dated 27 August 2015 in which she informed the Registrar that she did not want to become a party opponent.

² The closure had come about because a significant part of the ceiling inside the church had collapsed.

regularly. My statement can be confirmed by an ex member of the congregation who now lives in Kent. He was a regular church goer, was admitted to the choir at the age of eight and served till his late teens, regularly attended Evensong as well as choral duties at the morning Eucharist service and gave a major part of his free time to various maintenance and decoration duties at our church hall, the Assembly Rooms in the Village. He meets another ex church member in The Village as it's the half way meeting point between their homes, Kent and Hertfordshire. As the church and church activities were so important to them in their formative years, they still take a keen interest in what's happening in the parish. They certainly met during the Christmas/New Year holiday period and saw no second notice. Another congregation member, who is also a church officer, maintains that there was no such notice on the board. Another point to be considered is that the church abuts a dry-cleaning business which used the wide pavement to park its tall delivery van, thereby precluding a clear view of the board. Only people with an interest would walk around the van to view the board contents. Reference the notices at St Thomas, there weren't any. I know of at least two people who attended regularly, one of whom is a Southwark Pastoral Auxiliary, and they both maintain that no announcements were made.

12. In her letter dated 8 December 2015, Lady Zammit also says that there was no notice on the village notice board nor oral notices at St Thomas's. She further has submitted a photograph of the notice on the church door, which, she says, shows that the door is not close to the public pavement.

13. Winckworth Sherwood have responded to these comments as follows:

The Petitioners reiterate that a public notice was displayed on the village notice board, despite what is stated by the objectors. Whilst the comment about the dry cleaners' van is noted, the Petitioners respectfully submit that they have nowhere more visible than this notice board to display such a public notice at St Luke's.

14. It seems to me that once the Petitioners realised that because of the closure of the church an issue arose about how the petition should be publicised, it would have been better to have raised it with the Registry; and, in any event, once the Petition was lodged to have referred to the additional notice which they say was posted on the church notice board.

15. As matters stand, it seems to me it is very difficult to reach a conclusion about the facts of what occurred on the material before me; and that, if I did, the party against whom I found might consider themselves unfairly treated. However to require a hearing to consider what happened and its effect would involve disproportionate expense.

16. In the circumstances, I think that I have two choices. Either I should hold that the publicity that has occurred is, in the circumstances, adequate; or I should require the republication of the notices.

17. In favour of the former course is the fact that the "letter of the law" has been observed and, following that statutory publicity, objections have been made. The scope for objecting to the installation of telecommunications equipment within a church is limited (see *In re Emmanuel Church, Bentley*³ and *In re St Peter and St Paul's Church,*

³ [2006] Fam 39.

*Chingford*⁴) and given that the three objections that have been made seem comprehensive in their scope, it seems unlikely any new matter will emerge even if there are any additional objections. To hold that the consultation that has taken place was adequate would avoid a delay of what is unlikely to be less than six weeks.

18. In favour of the latter course is that fact that petitions such as the present are very sensitive. It is always important to ensure fairness but the adverse consequences of not doing so may be magnified in such sensitive cases. It may ultimately be that further publicity makes no difference to the outcome either because there are no further objections or because any objections that are made do not add anything. Nonetheless what the substance of rules is designed to achieve is that anyone who might want to object to a proposal has that opportunity. A person who has been denied that opportunity may feel aggrieved even if he has nothing new to add. The delay is unfortunate but it is not disproportionate.
19. In the circumstances I prefer the latter course. This is because the right under the rules to comment on proposals such as the present is an important one and to proceed in circumstances such as the present may be perceived as being unfair. The notices should be displayed for a further period of 28 days in accordance with the rules. To avoid confusion, the notice should have printed at the top REPUBLICATION. It would also be appropriate for an additional notice to be posted on the village notice board.
20. I have dealt with this preliminary matter at length because of its importance and so that both the petitioners and objectors may understand that I have taken their differing concerns fully into account.

PHILIP PETCHEY
Chancellor

14 January 2016

⁴ [2007] Fam 67.