

Neutral citation: [2016] ECC Swk 10

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

Introduction

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. The Rector is the 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 Rector and PCC to enter a licence agreement with Net Coverage Solutions Limited for a period of 20 years in respect of the equipment. The annual licence fee will be £14,300 (subject to potential upward revision). The PCC have received independent advice dated 22 January 2015 that the commercial terms proposed are the best that can reasonably be achieved in the circumstances having regard to current market conditions.
3. My papers include a certificate dated 14 September 2015 which states that the equipment and installation proposed in the present case is designed to meet the Guidelines of the International Commission on Non-Ionizing Radiation for Public Exposure.
4. By a resolution dated 15 June 2015, the PCC resolved by 9 votes 1 to proceed with the proposals.

Republication of notices

5. 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). Although such publicity did take place, objectors took the point that the church had been closed for repairs during this period. Recognising this fact, the Petitioners had organised the display of notices in alternative locations; however the objectors challenged the adequacy of this. In these circumstances, I directed republication of the notices. A copy of my judgment, setting out the full background is [2016] ECC Swk 1. The re-publication took place (after the church had re-opened) between 24 January 2016 and 5 March 2016.

Further objections

6. The re-publication of the notices attracted about 80 additional objections. 25 are from members of the congregation. Of the objectors, however, only one opted to become a party opponent. This was Mr Michael McCarthy, who also expressed the wish that the petition and his objection to it should be considered at a hearing. In their response to his objection, the Petitioners made it clear that Mr McCarthy would be at risk of an application for costs if he maintained his objection. This of course was on the basis that Mr McCarthy would be unsuccessful; but the Petitioners' further submission was that, in the light of authority, his objection was bound to fail.
7. It would be very unfortunate if someone pursued an objection as a party opponent without appreciating that he would be at risk as to an application for costs, particularly if the Petitioners were correct in submitting that his objection was bound to fail. Under the Faculty Jurisdiction Rules, parties who are minded to become parties opponent are of course warned generally as to the risk of an award of costs being made against them, but the Petitioners' response raised the matter in a specific context. Accordingly on 15 April 2016 I gave directions, explaining in some detail to Mr McCarthy the risk that arose as I saw it. A copy of those directions is [2016] Swk 9.
8. By an e mail dated 18 April 2016, Mr McCarthy informed the Registrar that he no longer wished to be a party opponent. I shall of course take his written objection into account in considering this matter.
9. Accordingly now the position is that the grant of a faculty is opposed by more than 80 people, but none of them have opted to become a party opponent. I shall of course take all these objections into account in reaching my decision but it is not necessary for there to be a hearing to consider the matter.

The law: risk to health

10. Government guidance to planning authorities about telecommunications equipment is short and to the point. It is now contained in paragraph 46 of the National Planning Policy Framework and is as follows:

Local planning authorities must determine applications on planning grounds. They should not ...question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission Guidelines for public exposure.

11. The relevance of the Guidelines was considered by Grenfell Ch in *In re St Margaret Hawes and Holy Trinity, Knaresborough*¹. He said:

...in the absence of compelling evidence of a real risk to human health as a result of transmitting radio waves up to the levels set by the United Kingdom Government in their adoption of the ICNIRP guidelines, it would be wrong to adopt lower guidelines for a base

¹ [2003] 1 WLR 2568.

station just because it happens to come under the jurisdiction of the consistory court in addition to planning requirements².

12. This statement was expressly approved by the Court of Arches in *In re Emmanuel Church, Bentley*³. The Court of Arches added:

*This applies with equal force to the suggestion that a faculty should be refused because of concern (however genuine) about the possibility of a health risk, which cannot be substantiated in any way by evidence*⁴.

The law: transmission of pornographic and other unsuitable material

13. The objection to the installation of telecommunications equipment in churches was considered by the Court of Arches in *In re St Peter and St Paul's Church Chingford*⁵. The Chancellor had declined to grant a faculty on the basis that the installation of such equipment could lead to the transmission of pornography and other material which was not consistent with the use of the church as a place of Christian worship. The Court allowed an appeal, making the following observations:

55 Thanks to the parties to this appeal we have had the benefit of hearing detailed evidence from Professor Ramsdale and the opportunity to examine the documents laid before us, many of which we have already referred to earlier in this judgment. Although the chancellor did not differentiate between children and adults we believe that it is necessary to do so. The major consideration is the risk to children from using a mobile phone to access pornography on the Internet.

*56 The need to protect a child against danger starts from birth. The dangers in life have to be drawn to their attention primarily by parents but also by teachers and others who have responsibility for their safety and wellbeing. This, for example, necessitates early instruction on road drill, on never accepting lifts from strangers and, later on, appropriate guidance in connection with sexual matters (There is some evidence that children themselves appreciate the need for instruction: see Rosemary Bennett, *Guides want Help with Safe Sex and Debt*, "The Times", 25 July 2007, p 5). As this court pointed out in *In re Emmanuel Church, Bentley* [2006] Fam 39, para 49: "Whilst the concern of parents to protect their children is natural, we cannot overlook the fact that it is not possible to eradicate every element of risk before introducing some new feature into modern life."*

57 The risk associated with the internet is of children viewing pornography, or even being drawn into sexual abuse, and this has been clearly identified by the Government and by network operators and action has been taken to counter the risk, as we have explained above. The Government has tightened the law and there is evidence of active enforcement of it. We found Professor Ramsdale's evidence to this court helpful and persuasive. The network operators have introduced filtering techniques for those under 18 and there is continuous monitoring of websites by the Internet Watch Foundation so that sites with potentially illegal material can be blocked. We regard these steps as a reasonable and

² See paragraph 84.

³ [2006] Fam 39 at para 50.

⁴ *Ibid.*

⁵ [2007] Fam 67.

welcome public response to countering the risk to children. Parents and teachers also have their part to play in educating the young about some of the unpleasant and potentially dangerous features of the Internet. This is a pressing need as children are introduced to technology early in primary school and even before that stage. As Professor Ramsdale confirmed, it is open to a cautious parent who provides a child with a 3G mobile phone to arrange for a block to be placed on access by the phone to the Internet. It will then be available only for its original function for voice calls and texting.

58 As for adults, the risk is that some adults benefiting from the improved transmission in the Chingford area may somewhere use a mobile phone to access pornography which is not classed as unlawful by the criminal law. Christian standards of morality are rightly high on biblical authority, but human beings are imperfect and the Christian message is one of forgiveness and encouragement to lead better lives in the future. To bar something which will be of benefit to the public generally because there is a risk that some will be able privately to access material, which many Christians and others deplore, is to take an unbalanced approach. A more balanced view in relation to pornography would be for Christians to work in conjunction with others at improving standards of sexual morality in society generally.

Consideration

14. Between them, the objectors raise three main objections to the proposals. I shall consider each objection in turn.

Undertaking by previous incumbent

15. This is not the first occasion on which proposals have been brought forward to install telecommunications equipment at St Luke's Church. Similar proposals were considered in 2002. At a meeting held on 15 April 2002, the PCC resolved, by 6 – 11, not to proceed with such proposals. Lady Zammit, Mrs Baden-Powell and Mrs Wardale all made the point that the then Rector undertook that proposals to install such equipment would not subsequently be brought back to the PCC.
16. This raised the question as to whether any such undertaking had been given by the Rector and the further question (if an undertaking had been given) as to what were its terms. In their response dated 22 September 2015, however, the Petitioners in effect side-stepped the question, saying that even if an undertaking had been given (which they did not necessarily accept), it would not have been binding in law.
17. I think that it is indeed likely that as a matter of law, an undertaking by one Rector would not be binding upon his successor and perhaps not binding upon himself. However that may be, it does seem to me that any such undertaking is potentially relevant to the decision making process on a subsequent occasion. For this reason, I asked the petitioners to investigate if there was any documentary evidence as to the terms of any undertaking; and to ask Canon Dr Jeffrey Heskins, the previous Rector, what his recollection was. His reply was as follows:

... Dr Heskins would like to refute the suggestion by Mrs Wardale that the matter concerning a telephone mast in the tower of St Luke's Charlton would not be presented to the PCC ever again. His recollection is that he would not present it again during his tenure as Rector – which is quite different.

18. It does not appear that anything was written down. Without hearing oral evidence, I am not in a position to determine precisely what was said, and of course even if there were an oral hearing the matter might not become clear. Neither the objectors nor Canon Heskins have identified the occasion or occasion on which the undertaking was given or sought to identify the precise words. I think there would have been scope for misunderstanding in circumstances where nothing was written down. In particular I think that it is possible that Canon Heskins might not have emphasised any limitation on the undertaking because that might have been taken to suggest that after his incumbency the matter **might** be brought back again.
19. On the material before me, I consider that I cannot properly approach the matter on the basis that an open-ended undertaking was given.
20. However I do not think that the undertaking that was given necessarily becomes irrelevant. If one imagines that Canon Heskins had resigned shortly after the undertaking was given and in, say, 2003 a new proposal had been brought forward, it seems to me that there would have been a powerful argument that the matter should not have been reconsidered so soon after the initial decision. One guesses that, whatever the precise terms of the undertaking, Lady Zammit, Mrs Baden-Powell and Mrs Wardale would still wish to make the argument that it is inappropriate for the current proposals to be brought forward in the light of whatever undertaking was given (and it is not in dispute that an undertaking was given).
21. The difficulty with this argument is that 15 years have elapsed since the undertaking was given. The PCC has now changed its mind. Nobody requires a church to install telecommunications equipment if it does not so wish. The mechanism by which a church decides is a resolution of the PCC, the members of the PCC having been elected by those on the electoral roll of the parish. Like all democratic processes, the system is not perfect. However it is a democratic process, and the process that has been put in place for taking decisions. It seems to me that it is reasonable after a lapse of 15 years to allow the PCC to revisit its earlier decision. This does not mean that members of the congregation and/or parishioners are debarred from objecting to the proposals but this must be for reasons given. Only in an exceptional case would it be appropriate to seek to go behind the PCC's decision on the basis that it was unrepresentative or for some other reason flawed.

Risk to health

22. The approach taken by the secular planning system to objections to the installation of telecommunications equipment is that there can be no sustainable objection if a proposal meets the ICNIRP Guidelines. The Court of Arches in *In re Emmanuel Church, Bentley* was saying that the same approach was appropriate in the consideration of petitions in the consistory court; and the judgments of the Court of Arches are binding on me. It was against this background that I permitted the installation of telecommunications equipment in the case of *In re St Anne's Church, Wandsworth*⁶. (In that case, two individuals objected on health grounds but did not opt to become parties opponent).

⁶ Unreported; 2 November 2015. At paragraph 23 of that judgment I explain that material supplied in the context of that case indicated that the monitoring of radio waves at existing telecommunications installations produces measurements that fall far short of International Commission Guidelines. Since 2001, Ofcom has funded and conducted a total of 724 surveys. The highest measurement recorded was 1/279th of the International Commission on Non-Ionizing Radiation Protection (ICNIRP) safety threshold. No installation tested by them exceeded 0.005% of the specified radiation safety limit. This programme was continued by Ofcom until 2012. Subsequent testing has produced similar results.

23. I should add that the Court of Arches in *In re Emmanuel Church, Bentley* did envisage that it would be possible for an objector to seek to substantiate by evidence that a faculty should not be granted. However no such evidence has been put before me.
24. Accordingly in the present case there is no basis for refusing to grant a faculty on the basis of risk to health since the proposal meets ICNIRP Guidelines.

Transmission of pornographic and other unsuitable material

25. In the light of what was said by the Court of Arches in *In re St Peter and St Paul's Church, Chingford*, which is binding on me, it would not be appropriate to refuse to grant a faculty on the basis that the equipment will facilitate the transmission of pornographic and other unsuitable material.

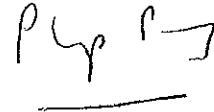
Other matters

26. The equipment will be installed inside the church tower. Accordingly it will not adversely affect external views of the church. The tower is not generally accessible and Historic England do not object. The suggestion was made that the installation of the equipment might preclude the desired "upgrade" of the church's listing from Grade II* to Grade I. However by an e mail dated 4 November 2015, Historic England have said that they consider that the proposals would not have any negative effect on any future proposals to upgrade the listing of the church.
27. It should be noted in favour of the proposals that £14,300 pa will be a useful addition to the Church's income.

Conclusion

28. There being no sustainable objections to these proposals, it is appropriate that a faculty should issue in respect of them, and I so direct. I need not impose a separate requirement that, for example, the ICNIRP guidelines are complied with since this and other compliance issues are all addressed by the terms of the licence to be granted. As the DAC recommend, I shall require the cable runs to be agreed with the Church's Inspecting Architect. The works are to be completed to the reasonable satisfaction of the Church's Inspecting Architect.
29. The Objectors feel very strongly that a faculty should not issue. They may feel, having read this judgment, that in the light of the previously decided cases that I refer to, there was only limited scope for their objections to lead to a conclusion that a faculty should be refused. I think that this is broadly correct. This however does not mean that their views are not entitled to respect. For their part, I hope that they will look carefully at this judgment. As regards the health issues, I would suggest that, even if one were to set aside authority, the argument is evidently a powerful one that the Church courts should follow the approach taken in secular planning proceedings unless there is before the court expert evidence to the contrary. As regards concerns about pornography, although the view that the Court of Arches has taken is not the only view, it does not seek to minimise the proper concern which the objectors have about the use of the internet for the transmission of pornography. It is unfortunate when the position is, as here, that there exists a significant number of members of the congregation who are opposed to what is proposed. St Luke's

has experienced difficult times recently with the need for extensive repairs, and I know that the divisions that can open up when a faculty is opposed can be unhelpful. However I have read about the strengths of the community in Carlton and the support of both congregation and the wider community in the village for its church – both the building and the institution. I look forward to hearing in due course that the church community has been able to learn from the experience of this contested faculty application and that its witness to the gospel continues with renewed commitment.

Handwritten signature of Philip Petchey in black ink, consisting of the letters 'P', 'L', 'P' followed by a stylized flourish.

PHILIP PETCHEY
Chancellor

29 April 2016

