

Neutral Citation Number: [2023] ECC Swk 2

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ST MICHAEL’S CHURCH, WANDSWORTH COMMON

**AND IN THE MATTER OF A PETITION BY REVD TIFFANY ALICE EWINS, MR
TOM HOLMER AND MS LISA SMELLIE**

JUDGMENT

Introduction

1. This is the petition of Revd Tiffany Alice Ewins, Mr Tom Holmer and Ms Lisa Smellie, the Vicar and Churchwardens respectively of St Michael, Wandsworth Common¹. By it, they seek a faculty to replace the existing gas boiler and radiators in the church with a ChurchEcoMiser system (involving the installation of 23 new electric radiators).
2. The petition is not opposed and I have decided to grant a faculty. However the petition does raise an issue of some difficulty which will, I think, be of general interest. I am accordingly writing a judgment.

Background

3. St Michael’s, Wandsworth Common is an attractive church (listed Grade II) designed by William White and built in 1881. It is heated by a gas boiler which is coming to the end of its life. From 2020 onwards the parish began to explore the options for replacing the boiler and providing a new heating system for the church. Obviously in the context of the target of the Church of England to achieve carbon neutrality by 2030², the parish wanted to move to a green option; if possible, one that was carbon neutral.
4. Representatives of the parish had a preliminary meeting with representatives of the DAC in May 2021 and went away to consider the options.
5. The preferred option and that which forms the subject of this petition is to install a ChurchEcoMiser system. This is a proprietary system (ChurchEcoMiser is a registered trade name) which is marketed by Mr Chris Dunphy, a person who has enormous experience of church heating.
6. In short, what is proposed is to install an appropriate number of electrically powered radiators. It will be helpful if I set out a number of paragraphs from the prospectus for the system:

The ChurchEcoMiser system mimics a ‘traditional’ radiator and pipework heating system in both style and appearance but without the need for a boiler. Instead, stylish, unobtrusive electric radiators are sited throughout the church to gently warm the fabric of the building, not just the air within it ...

¹ The church is known by this style but formally it is St Michael’s, Battersea.

² The target in the Diocese of Southwark is 2035.

The heat output from the ChurchEcoMiser radiators is approx. 90% radiant heat and approx. 10% convected heat. Radiant heat will warm the fabric of the building, providing a more even, comfortable temperature which will also help to protect the fabric of the church, which is an important factor when dealing with listed buildings ...

When the radiator is first switched on, the internal cells store as much heat as possible; this takes approx. 10 – 20 minutes depending on the size of the radiator. After that, the surplus heat is radiated out from the core and the radiator starts to feel warmer and because of the large surface area of the ribs, heat is dispersed over a wide angle ...

The ribs are hollow and full of air and as such act like mini chimneys. This ribbed design allows cold air to be drawn from the floor and warmed as it passes through the top. This ‘chimney effect’ helps to provide an optimal mixture of convected and radiant heat.

7. The material makes it clear that what is proposed is not a system of electrically powered storage heaters, which operate by providing mainly convected heat.
8. The Parish propose to use “green” electricity.
9. At a meeting on 14 June 2022, the DAC considered the proposal to consider a ChurchEcoMiser system and thereafter wrote to the Parish on 8 July 2022 and (following a response from the parish) on 2 September 2022. These letters set out with care and in some detail certain reservations about the proposal. There was a further meeting between representatives of the parish and representatives of the DAC on 6 October 2022. The position has been reached where the DAC continue to have reservations but these are not shared by the Parish
10. The DAC point out that, for ‘more frequently used churches’³, direct electric heat emitters are not an option recommended in the guidance issued by the Church Buildings Council⁴. The DAC’s main reservations are as follows:
 - although green electricity will be used, and the heating system thus not have a carbon footprint, for so long as there is only a limited/partial supply of non-fossil fuels energy to the National Grid, this merely means that there is less ‘green energy’ available for everyone else to use;
 - the cost of electricity: it estimated that the cost of the current gas heating was £3,500 and that the equivalent for an electrical system would be £11,200;
 - the benefits of eliminating operational carbon would be offset by the embodied carbon of the new system;
 - although adopted by a number of churches, St Michael’s would still be an ‘early adopter’ of the EcoChurchMiser system so that there is not, as yet, extensive experience of how it works in practice.
11. The DAC saw advantage, if it were feasible, in installing an air source heat pump (ASHP) system.
12. For its part, the parish was unpersuaded by the DAC’s reservations. As regards ASHP there is a potential issue with noise. What is required, accordingly (as the DAC accept) is a report from a Mechanical and Electrical Engineer with experience of the installation of such low carbon technologies. This would cost the PCC money which they are reluctant to spend in

³ The comparison is with churches used only for Sunday services.

⁴ See *Church Heating: Options Appraisals and Getting Advice*.

circumstances where their feeling is that ASHP will be controversial and, potentially, unacceptable. The Parish have a number of other concerns as regards ASHP.

13. The proposal was considered again by the DAC at a meeting on 8 November 2022. In the particular circumstances of the case, it resolved neither to recommend the proposals nor not to recommend but, instead, not to object to them⁵.

14. In this case the Parish first consulted the DAC on the ChurchEcoMiser proposal before 1 July 2022.

15. If it had consulted after that date, it would have had to have submitted

Any advice or material relating to the environmental implications of the works or proposals, including, in the case of matters to which net zero guidance applies, an explanation of how the intending applicants, in formulating the proposals, have had due regard to that guidance (see rule 4.2 (2) (b))

It is evident that, in any event, it did supply that material.

16. However, because the consultation was before 1 July 2022, the DAC was not required by the rules to include a statement under what is now rule 4.9 (7A).

17. Rule 4.9 (7A) provides:

In the case of works or proposals involving matters to which net zero guidance applies, the Committee's advice must include a statement of

(a) whether, in its opinion, the explanation under rule 4.2 (2) (b) is adequate;

(b) If its opinion is that the explanation is not adequate, its reasons for that opinion.

18. If the DAC had recommended the proposals to me, I would take it as read that the explanation given would have been adequate. As it is – the DAC having decided not to object to the proposals – I did not know whether they regarded it as adequate or not. Accordingly by directions dated 19 April 2023, I asked the DAC whether, if rule 4.9 (7A) had applied, they would have required the Parish's explanation as adequate. By an e mail dated 3 May 2023, the DAC advised me that it did consider the Parish's explanation to be adequate. It said that

[t]his is because, as was already said, the parish has considered those concerns expressed by the DAC previously, and has extensively researched the options, and (due to the problems with the current church gas boiler) does not have abundant time in which to continue exploring options more extensively. The transition to 'net zero carbon' is gradual rather than sudden, and there will still be future opportunities for this parish to pursue an energy audit / feasibility study, and to look at other measures like solar panels and insulation.

19. The DAC also commented:

- in the medium term, the proposal will lead to a reduction in carbon emissions
- the new system does not impair the building fabric
- in recent email correspondence with St Michael's, I understand that they are actively pursuing an energy audit / heating feasibility study

⁵ Under the Faculty Jurisdiction Rules, the role of a DAC is to advise whether it recommends proposed works, does not recommend them or does not object to them (see rule 4.5(2)).

- as regards earlier DAC advice/comments about factoring in ‘embodied carbon’ (i.e. the carbon emissions involved), there is not yet an agreed methodology to assess embodied carbon objectively and accurately within these types of proposals and to weigh it up against reductions in operational carbon emissions.

Consideration

20. This case is a practical illustration of the difficulties facing a church wanting to go green.
21. In any particular case, a parish will identify what it considers is the best option for it, taking into account the Diocese’s target of achieving net carbon neutrality by 2035 and the reasons underlying that target for seeking to achieve net carbon neutrality as soon as possible. There will often be alternative options. If the DAC is not satisfied as to thoroughness of the parish’s research or the correctness of its conclusions, it will not state under rule 4.9 (7A) that the parish’s explanation is adequate. If it is adequate, one would expect it to recommend the works; one cannot readily imagine that in these circumstances it might not recommend the works. However, as this case demonstrates, it is possible to identify circumstances in which the DAC does not object to the works.
22. Whenever the DAC does not object to works, rather than recommending them (as happens from time to time), it is flagging to me that it has reservations. In the present case, it is in effect telling me that it has reservations about the solution proposed at St Michael’s and that there might be a better one; but that it does not feel it would be appropriate to seek to press that reservation further by declining to recommend the works. This is a perfectly understandable position to take and it is helpful in these circumstances to have the assurance that the DAC considers the Parish’s exploration of the issues to have been adequate.
23. The question now for me is whether I should seek to encourage the Parish further to investigate ASHP by declining to give permission for the ChurchEcoMiser system. I do not think that it would.
24. I begin by noting that I could not **require** the parish to carry out further work. If it were to “dig its heels in” there would be nothing I could do; although, of course, sooner or later the existing heating system would finally break down. But however unhappy such possible stand- offs might be, it does seem to me that the rules as now amended do contemplate the DAC and potentially the Chancellor saying *No* to proposals that are not green; and if this is contemplated, then surely also saying *No* to proposals that are insufficiently green; or not demonstrated to be sufficiently green.
25. In practical terms, the question for a Chancellor in these circumstances is whether he or she considers that the DAC and the Chancellor have between them pressed the Parish sufficiently hard as to the exploration of the available options. It will be a matter of judgment in each case. In the present case I think that the Parish have done enough. I have particular sympathy for its position in not wanting to spend choice of money on a consultant’s report about ASHP.
26. This all said, I do recognise the DAC’s reservations. From my lay perspective, I am very concerned about the cost of electricity that will have to be met by the parish and, in particular, the cost of green electricity. The Parish have, of course, considered this and are hopeful that the greater efficiency of the ChurchEcoMiser system will mean that the cost will be less than £11,200 (or whatever is the appropriate figure to be considered in the context of comparing the cost of its current system with what is proposed).
27. I have considered whether, in the circumstances, I should impose a condition – a legal requirement – that the electricity purchased in respect of the new heating system be supplied under a green tariff. On balance, I have decided that I should not. It is, of course, the Parish’s

firm intention that it should only buy green electricity. But one cannot foretell the future and I do not consider it appropriate to dictate the Parish's budget priorities into that future. Standing back, this is a situation where everybody in good faith is trying to achieve the best and greenest solutions. It seems to me that if they are not achieved by voluntary effort, they are unlikely to be achieved by legal compulsion.

28. The DAC has asked that, if a faculty issues, the Parish will monitor its use and report its experience to the DAC. I am sure that the Parish will be happy to do this.

Outcome

29. I direct that a faculty shall issue. It shall be subject to the following conditions:
 - (1) a floorplan marking the cable-routes together with photographs annotated to show radiator locations and indicative cable-routes are to be provided to the DAC for approval (in the event of disagreement the matter to be referred back to the Court);
 - (2) the radiator positions and cable routes are to be agreed with the Church's Inspecting Architect;
 - (3) the work overall to be completed to the reasonable satisfaction of the Church's Inspecting Architect;
 - (4) the work is to be completed within two years.

PHILIP PETCHEY

Chancellor

12 May 2023