

Neutral Citation Number: [2024] ECC Sal 2

In the Consistory Court of the Diocese of Salisbury

Petition 2023-081723

re St Mary, Stalbridge

Introduction

1. In my earlier judgment I set out the circumstances in which an oil-fired boiler was installed in the church without a faculty; explained my decision to grant a confirmatory faculty; and set out the conditions I imposed. At the same time, I gave directions as to the provision of further evidence on the circumstances in which the boiler was unlawfully installed. Those directions are set out in an annex to this judgment.
2. I now consider the evidence filed in response to those directions to determine how the illegal act occurred, and to decide the court's response. The following narrative is derived from the evidence of the incumbent, the Revd Canon Richard Hancock; the PCC Secretary, Ms Helen Hitchens; and the church warden, Simon Witcomb.

History

PCC meeting, 27 September 2023

3. Following the DAC's meeting on 8 September 2023, at which it determined that it was unable to recommend the grant of a faculty, the PCC held an emergency meeting on 27 September and decided unanimously (a) to commission the installation of the oil-fired boiler in any event; and (b) to write to the Bishop explaining their actions.
4. I do not know who proposed this course of action. The church warden tells me that he agreed "wholeheartedly but reluctantly" with the proposal; I am unclear what this actually means, save that it appears it was not his proposal.
5. The incumbent's evidence was that he was fully aware that the proposed conduct was unlawful; and that he had advised the PCC meeting of the possible consequences of proceeding without a faculty (referring to his previous experience as a Rural Dean in the Diocese of Oxford). Despite this, however, he had chosen to

support the PCC's decision. He justified this on the basis of collective responsibility. He told me: "We are a team. We work together and we felt that we had to; if we weren't going to be unified about this, then there was no point going further."

6. This was, I find, an error of judgment on his part. The incumbent is not merely a member, or even *primus inter pares*, of the PCC; he is the person in whom responsibility for the care of this listed building ultimately vests. While it might put an incumbent in an unenviable personal position, the Church of England is not a congregationalist church, and there may be occasions – and this was one such – where the incumbent cannot stand shoulder to shoulder with the PCC. The continued existence of the ecclesiastical exemption relies not merely on the existence of the faculty system, but on its participants' respecting and operating it in practice, and that was not seen to happen on this occasion.

Letter to the Bishop of Salisbury, 3 October 2023

7. The PCC wrote to the Bishop on 3 October. The letter was copied to the suffragan; the Archdeacon; and "the DAC & Chancellor". It declared the intention of the PCC to install the new oil-fired boiler "despite not having received DAC approval", and noted that they "can't wait for an already overburdened DAC to review our proposal again or for a lengthy appeal process".
8. This discloses a disappointing level of misunderstanding of the faculty system, particularly since the incumbent at least had the experience to know that the grant of a faculty is not in the gift of the DAC, and the referral of the petition to the Chancellor is not an appeal process but the inevitable course of events. Indeed, the notification from the DAC had expressly reminded the petitioners that the PCC still had the option to petition the chancellor for a faculty despite the advice of the DAC. Not only that, but the consideration of a petition by the consistory court is not routinely "a lengthy process"; they are usually dealt with swiftly, especially when no hearing is necessary.
9. It is fair to note that, where the letter sets out the rationale for the decision to choose an oil-fired boiler (capable of conversion to HVO) over alternative heating

systems, I have already indicated that I am persuaded; that is why I have granted the confirmatory faculty sought.

10. The parish's frustration at the "C of E's overburdensome bureaucratic process" and its determination to, as it put it, "take a stand and put the needs of the rural church first", which it described as "courageous Christian leadership", is apparent from the letter. It is not the place of this court to enter into a discussion of many of the points raised, focussing as they do on perceived tensions between the priorities of the parish and those of the diocese and wider church. However, I can properly say that to direct that frustration at the DAC, whose role in this regard is set out in the Faculty Jurisdiction Rules approved by General Synod, is misplaced.
11. The letter's parting shot was that the PCC was "fully aware that the diocese could challenge our decision but are also aware that this could attract a lot of media attention." It is hard not to read this as some sort of veiled threat; and giving all possible allowance for the frustration that was being felt, it was inappropriate to threaten consequences should "the diocese" dare to hold the parish to account for taking a course of action which it knew to be unlawful.
12. The parish received acknowledgments of the letter, but no substantive response. (As noted in my earlier judgment, the copy of the letter addressed to the Chancellor was, quite properly, not sent to her by the Registry; such attempts to influence the judicial process are to be strongly deprecated. It does not appear that a separate copy of the letter was sent to the DAC.) The incumbent's oral evidence was that the PCC was surprised not to receive any response. He said: "We haven't even had a formal response from Bishop Stephen on that letter, so no advice was forthcoming, no guidance as to what we could or couldn't do."
13. He concluded his evidence to me on this aspect as follows: "I think there's been serious miscommunications on both sides. I think if there had been a response from the DAC to that letter, the Bishop to that letter, or the Registry to that letter as to what our options might be and consequences, there might have been a very different turn of events. So, in that sense, I think we're all culpable."

14. While the admission of some fault is welcome, this seems to me to be disingenuous. It is clear that the incumbent and the PCC were well aware that installing the new boiler without a faculty was unlawful; the incumbent had told them so, and they needed no further guidance from the Bishop or anyone else to tell them. In any event, the incumbent also told me that he had had a conversation with the Bishop and the Archdeacon at a service for the installation of canons during which the matter had been raised; and the Archdeacon had warned him that there could be consequences if the parish persisted in its actions.
15. Additionally, I note (from the information provided by the heating contractors, not from the PCC) that the contractors were actually commissioned to instal the boiler in the church by email sent the same day as the letter was sent to the Bishop. In all the circumstances, the suggestion that any reply to the letter would have led to a different course of events seems fanciful.

Further matters

16. I should mention one other matter which appears to illustrate the petitioners' awareness of the wrongfulness of their actions. Their own electrician, Ed Cudlip (who is also a member of the DAC), had been extensively involved in discussions about how to heat the church. However, when the heating contractor asked the PCC secretary whether it was being asked to supply an electrician, her reply – perhaps significantly, after consulting the incumbent – was that it would be better if the contractor supplied its own electrician. Mr Cudlip told me he was in fact unaware of the replacement boiler until 2 December, when the PCC secretary mentioned to him that the parish had gone ahead with the work, but another electrician had been involved because they “didn’t think it appropriate to contact me as they knew I probably wouldn’t do the job.” (Mr Cudlip added: “they were correct!”)
17. It is hard to escape the impression that the petitioners wished to avoid the DAC, through Mr Cudlip, becoming aware of the works being done until it could present them as a *fait accompli*. In fact, the first the DAC was aware of the works was when the DAC chairman heard the incumbent talking about the installation in breach of faculty rules at a clergy training event. (I do not know the date of the event, but it

post-dated the works and may not have been until late November or early December; and I use the phrase “talking about” rather than the word “boasting”, which was used in the relevant communication to the court, because the latter imports a motivation to the speaker which I cannot be sure was there.)

18. Finally, on the matter of communications between the various parties, I should record that the church warden said in his written evidence: “With hindsight, it is apparent that the problems we had in meeting the DAC’s requirements could have been avoided if we had met with the DAC at the church in the early stages of the faculty preparation, to discuss all the issues and to prepare an action plan listing all the areas of research that were expected of us.” I am grateful to him for this level of reflection and appreciation of the positive role of the DAC in assisting parishes to achieve their goals within the framework of the faculty jurisdiction, and I encourage all parishes foreseeing works – and in particular, works to heating systems – to consult the DAC at the earliest opportunity.

The heating contractor

19. I caused questions to be put to the heating contractor, J Cowley & Sons. They are not parties to this petition, and I am grateful for their prompt and full response.
20. Cowleys tell me that they have regularly worked on listed buildings and churches throughout their 45 years in business; although they do not have detailed knowledge of the faculty jurisdiction, they know about it; they understand that most significant work in churches requires the grant of a faculty; and understand that work undertaken without lawful authority in a listed building or a building subject to the faculty jurisdiction may constitute a criminal offence. They are proud of the fact that they have been recommended from one PCC to another, and they tell me that on one occasion, the DAC had referred to them as “well known and experienced”. I have no reason to doubt that.
21. They set out four recent examples of their work in churches. Three were carried out under faculty; one followed the Archdeacon’s view that no faculty was required. I was surprised to read that although, in the last case, they had had sight of the Archdeacon’s letter advising that no faculty was required, in none of the

other cases had they had sight of the faculty. This was particularly surprising since, in one of the three cases, it was I who granted the faculty; and I had expressly directed (as I always do) that the petitioners were to supply each of the contractors with a copy of the faculty before any work was commenced. Plainly, that direction had been ignored.

22. In this case, Cowleys set out a history of communications dating back to October 2022 which refer (on six separate occasions) to the need for a faculty for the work. Then, on 3 October, the PCC secretary emailed Cowleys: “I am writing to confirm that we would like you to go ahead with the fitting of a [specified] boiler in St Mary’s Stalbridge.” In the context of the earlier communications, the absence of any reference to a faculty is notable, and should have caused alarm bells to ring. I would have expected Cowleys, at the very least, to ask for confirmation that the commissioned works were authorised, even if the course of their relations with churches in the diocese had not led them to expect sight of the faculty itself.

23. In this context I can do no better than repeat the words of Hill Ch in *re Holy Trinity and St Jude, Halifax* [2023] ECC Lee 3:

“12. It cannot be restated often enough that those whose business includes work on church buildings or in churchyards of the Church of England must be familiar with the process and procedures of the faculty jurisdiction and have a firm grasp of the principle that unless a faculty (or other authorisation) has been obtained, any work done will be unlawful. As I observed in *re All Saints, Bunton* [2018] ECC Chi 1, at paragraph 80:

‘... contractors should always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works ...’

13. ... Those who embark upon works on church property without reading and digesting the content of the relevant faculty do so at their own peril, and must live with the consequences, sometimes draconian, that can follow.”

24. I would only add that this applies not only to contractors but also to anyone who procures unlawful works to churches.

Disposal

25. As set out above, Cowleys' conduct is not entirely beyond reproach. However, realistically the only sanction I could impose on them would be to order that they not be permitted to work in any church in the diocese for a set period of time. In the circumstances of this case and recognising the regard with which the firm appears to be held, this would be too draconian. I limit myself, therefore, to advising them that in future they must always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works in any church.
26. However, while I am not deaf to the way in which the petitioners sought to justify their actions, I cannot overlook the sustained and serious way in which the conduct of the incumbent and the PCC fell short of what is required of them by the faculty system. Some sanction is appropriate.
27. I propose to make an order under s.78(3) Ecclesiastical Jurisdiction and Care of Churches Measure 2018, known as an excluded matters order. This will have the effect, for a specified period of time (which I propose should be two years), of depriving the parish of the benefit of List B authorisations. Any works falling within List B which would ordinarily require only the authorisation of the Archdeacon will, during the specified period, instead require a faculty.
28. As the making of such an order is not urgent, I am required by s.78(4) to seek the advice of the DAC before I make such an order. I will therefore ask for their advice, both as to the principle of making the order and as to the suggested duration. A final decision will follow that advice.

Postscript

29. I put on record that on 11 January 2024, prior to the hearing, I received a letter from the local Member of Parliament. The letter was addressed to me by name as Deputy Chancellor and sent to the Diocesan Registry; the writer was, therefore, fully aware that my role is a judicial one. I will not set it out in detail, but it had plainly been written at the instigation of someone connected to the parish: it starts "I understand that a Consistory Court is to be held to consider the installation of a

new boiler at St Marys [sic] authorised by the PCC but without the correct permissions of the Diocese.” It went on to ask me to take a particular approach in my considerations.

30. I record that I have paid no regard to the letter, which was (most probably, through ignorance rather than deliberately) entirely inappropriate. I sincerely hope that an MP would not even consider acting in a way which might be regarded as applying pressure on a judge of any civil or criminal court to exercise their jurisdiction in one way rather than another, either in a particular case or generally. Like those courts, the ecclesiastical courts are courts of law; and their absolute independence from the legislative and executive branches of government must be understood and respected by members of those institutions.

Costs

31. The petitioners are to pay the court and Registry costs of the petition.

David Willink
Deputy Chancellor

8 April 2024

Annex

re St Mary, Stalbridge

At the hearing held in the church of St Mary, Stalbridge on 25th January 2024, I announced that I would direct that a confirmatory faculty pass the seal for the installation of the new, oil-fired boiler. I further announced that there would be conditions attached to the faculty, including but not necessarily limited to conditions relating to duration of the faculty and to the offsetting of the carbon emissions arising from the use of the new boiler; but that I wished to consult the DAC on those conditions. Once I have reached a conclusion on those conditions, I will issue a written judgment on that aspect of the petition.

I further announced that I wished to obtain further evidence before reaching a conclusion on the matter of the deliberate and unlawful act of installing the boiler without authority. Once I have that evidence, and any relevant representations, I will decide whether a further hearing is necessary, or whether I can dispose of the matter on paper.

Accordingly, I direct the parties as follows:

1. The churchwarden and the PCC secretary shall each file at the Registry, by 4pm Friday 1 March 2024, a factual statement setting out in their own words their evidence concerning the events leading up to the replacement of the boiler without a faculty. This must, as a minimum, address in chronological order all significant communications, correspondence and actions involving that individual and one or more of: the other individual referred to; the incumbent; other members of the PCC; Mr Cudlip; and any contractor involved in the works. Copies of relevant documents may be attached. It must conclude with a statement “I believe that the facts set out in this witness statement are true”, and be signed and dated.

2. The incumbent may, if he wishes, file at the Registry, by 4pm Friday 1 March 2024, a further factual statement in the same form, addressing any matters arising from the hearing on 25th January 2024.
3. By the same time and date, each of the three petitioners may make any submissions they wish, addressing the question whether I should dispose of the remaining matters at a further hearing or on a consideration of the papers.
4. The partners of F Cowley and Son, the heating contractors, are directed to answer the following questions, their answers to be filed the Registry by 4pm Friday 1 March 2024.
 - a. How familiar are you with the faculty jurisdiction?
 - b. What do you understand to be the consequence of a building being subject to the faculty jurisdiction?
 - c. How much experience do you have in working on listed buildings, including churches?
 - d. What do you understand to be the potential consequences of undertaking work on a listed building without lawful authority?
 - e. Please set out the communications between you and any representative of St Mary, Stalbridge which led to your undertaking the heating works in the church. In particular, please set out in detail any such conversation or correspondence which touched on:
 - i. the need (or otherwise) for, and/or the existence (or otherwise) of, legal authority for the works to be undertaken; and
 - ii. whether you would be able to take on and sub-contract the necessary electrical works, in preference to the church's usual electrical contractor; and if so, why.
 - f. Please set out the communications between you and the Rev Canon Richard Hancock. In particular, please set out in detail any discussion which touched

on the need (or otherwise) for, and/or the existence (or otherwise) of, legal authority for making a new opening in the church wall to accommodate a new flue for the boiler.

- g. When did you appreciate that you might have reason to believe you were undertaking work without lawful authority? What if anything did you do about it?
- h. Is there anything else that you would like the court to be aware of?