

Neutral Citation Number: [2024] ECC Car 2

Application Ref: 2023-087670

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

IN THE MATTER OF ST. ANNE’S CHURCH, INGS

Determined on the papers and without a hearing

JUDGMENT

Delivered on 8 May 2024

A. Introduction

1. By a Petition dated 8 November 2023, Robert Walling and Sylvia Shaw (both churchwardens) and Dr. John Hiley (project leader and PCC member) (“the Petitioners”) seek a faculty authorising certain works at St. Anne’s Church, Ings (“the Church”).
2. The proposed works (“the Proposals”), consist of the installation of a solar PV array consisting of 28 black panels, mounted above the existing slate roof of the Church. The proposal is that this system should be supported by an associated inverter and by battery storage, all to be installed in the Church tower.
3. The petition does not have the support of all the amenity societies that have been consulted. It is also the case that the Lake District National Park Authority (“the LDNPA”), as local planning authority, have refused planning permission.
4. There are no parties opponent to this petition. Nonetheless, in reaching my decision I have taken into account the written submissions made by the amenity societies and the reasons given by the LDNPA for refusing planning consent.
5. This judgment explains why I have decided to direct that the faculty should be granted, notwithstanding the reservations that the amenity societies and the

LDNPA have expressed. The conditions mentioned in Section J, below will attach to the faculty.

B. The Church

6. Pevsner¹ records that the Church was:

“Built in 1743 at the expense of Robert Bateman, a child of the parish who, as Wordsworth wrote, ‘grew wondrous rich’.² ... The church consists of unbuttressed w tower, nave and chancel in one, and a N attachment of 1878-9, done extremely well. The E window of the church is of the Venetian type, but has a broken pediment into which the arched part of the window reaches up. The side windows are arched, with blocky imposts and keystones. Only the tower details are old-fashioned and look more C17 than C18. Pedimented W doorway. The coved ceiling of the church is probably of 1878-9, and not so well done. The paving is of marble sent by Bateman from Leghorn, and the alter top has inlay also of marble.”

7. The Church is Grade II* listed, and is described thus in the National Heritage List for England³:

“Parish Church dated 1743 on plaque, restored and North Transept added in 1877. Roughly coursed rubble walls, sandstone quoins and window surrounds, graduated greenslate roof and stone ridge. Stone urns to each corner. 6 bays. Continuous nave and chancel. Square tower at West end with corniced ashlar parapet surmounted by 8 stone flaming torches. West entrance in base of tower has plain classical doorcase with broken pediment enclosing the coat of arms of Robert Bateman of Reston Hall (q.v.). A plaque over the door is inscribed “This Chapel was begun to be built Anno Domini 1743 at ye sole expense of Mr Robert Bateman Merchant of Leghorn Born in this Hamlet but He Dying suddenly the

¹ *Buildings of England Cumberland and Westmoreland* (1967), Sir Nikolaus Pevsner.

² The church history records *“The colourful legend that Bateman was murdered by the ship’s captain on a voyage home to England is untrue, though still repeated”*.

³ List entry number 1281325.

same year the work was ordered and appointed to be finished by his Executors". C19 studded wooden double doors fitted with wooden lock apparently dated 1682 but very worn. East window: Venetian with rusticated central architrave within open and broken pediment; remaining windows: arched heads with keystones and impost blocks. Interior has coved and panelled ceiling, said to have been plastered during C19 restoration, with continuous frieze and dentil cornice, supported by Ionic pillars on pedestals in the chancel. East window, to memory of Isabella Thompson and signed by Edward Frampton, is flanked by panels with quotations from the Bible set in C19 Jacobean style panelling; C18 turned altar rails; brass in chancel commemorating the restoration of 1877 with poem by Wordsworth to Robert Bateman. Opening in West Tower filled with 3-stage screen of Corinthian order. Lower stage has round-headed double doors with small twisted pilasters, flanked by Corinthian pilasters with defaced capitals. Royal Arms above. Marble floor sent from Italy by Bateman. C18 font with cherub heads possibly with later pedestal."

8. The Church is situated in the Lake District National Park.

Statement of Significance

9. In support of the Petition Dr. Hiley, one of the Petitioners, has prepared a document titled "*St Anne's Church, Ings - its historic and architectural heritage - the impact of Solar Panels within a holistic plan of renewal*" dated 6th May 2023. Paragraph 3.2 of that document is an assessment of the heritage significance of the Church. I respectfully observe that it would have been preferable for a Statement of Significance to be prepared by an architect. That, however, is not the course of action that has been taken, despite some encouragement from the DAC. Apparently the architect until recently involved with projects at the Church has retired.
10. Paragraph 3.2 reads:

"The present church provides an outstanding example of a Georgian church with a distinct, clear geometric form sited within a ring of graves on all sides. It

remains largely as it was built, though there have been the two additions on the North side of the building: a vestry and organ chamber in 1887 and an accessible toilet extension in 2019. Despite this, its symmetry and classical formality are notable today both inside and out, though the original door was on the south elevation. The current entrance through the tower has increased the prominence of the tower and symmetry of the west elevation.

Originally the main view of the church would have been from the village lane, through the gates and to the main door on the south elevation. A significant change to the context of the village of Ings and the Church of St Anne was the Ings Diversion of 1913, which dramatically altered the approach to and views of the church. Fields ‘cut-off’ by the Diversion were purchased by the Church and form the churchyard to the north side of the building. The Diversion (now significantly widened to form the present day A591 bypass) has thus given ‘breathing space’ to the church, by moving the traffic away from the building and allowing a more peaceful composition.”

11. I have no reason to doubt that this is an accurate and fair description of the Church and its heritage significance. I note that the Petitioners expressly acknowledge, through this document, that this is “*an outstanding example of a Georgian church*”: citing its “*clear geometric form*” and its notable “*symmetry and classical formality*”.
12. This is consistent with Historic England’s description⁴ of the Church as being “... *a relatively rare example of a rural Anglican place of worship from the mid Georgian period. Its simple but well-composed symmetrical design is very indicative of the period and charming in character.*” In its Notification of Advice, the DAC made similar observations, noting its simplicity of form, its well-proportioned design and its “... *combination of various architectural features, for example the clean crisp details of the tower, Venetian windows, and finials*”.

⁴ Letter from Mr. Martin Lowe of Historic England dated 18th August 2023.

13. In earlier pre-application advice Historic England wrote⁵ of the Church as being *“... a handsome building, the architectural interest of which derives primarily from the simplicity and elegance of its design. This simplicity is broken only by some embellishments, including the flaming torches that surmount the west tower and corner of the nave, and the pediment and entablature over its west door. It is therefore an attractive and characterful example of eighteenth-century ecclesiastical architecture, which also derives significance from its value as a current and historic centre of community and worship.”*

C. Site View

14. On Sunday 28th April 2024 I visited the Church in order better to understand its architecture, its setting and the impact that the proposed changes might have on the building. I attended without appointment, on my own, and did not meet any of the Petitioners.
15. The weather was clear and dry during my visit, with good visibility. I spent over an hour inspecting the church internally and externally. I viewed the church at ground level from every external aspect.
16. I then walked up the public road (the gated road leading to High Fairbank) that is the spur running roughly south-west off the road that runs through Ings, past the Church. I went a little way beyond the railway line to a high point in a field beyond it. The purpose of doing so was to test the Petitioners’ proposition that there were limited long views of the south facing roof of the church, onto which it is proposed that the contentious PV Panels should be attached.
17. Dr. Hiley produced an Appendix 5 in support of this faculty application that concerns the visibility of the south roof of the Church from land to its south. Having visited the site I can confirm that in my view he has made a careful

⁵ Letter from Mr. Richard Broadhead of Historic England dated 26th August 2022.

and complete study of how the Church sits in its wider setting, when considering the long views towards the Church from land to its south.

18. More specifically, in my judgment the contention at the end of Dr. Hiley's Appendix 5 is correct, where he writes "*Apart from the close-up views of the S-facing roof of the church when standing in Church Lane immediately in front of Church View cottages and the Parish Hall, the addition of solar panels to the S-facing roof of Ings Church is not an intrusion into the landscape.*"
19. That said, it is necessary to say rather more about the view of the Church from Church Lane, immediately to its south.
20. It may be seen that the fenestration in the south facing wall of the Church displays a notable symmetry in the spacing of its 6 windows. This is reinforced by the positioning of the downspouts, which, to my eye, are arranged so as each to be the same distance from each end of this wall. Those downspouts are a strong vertical element to the design of that southern aspect: both on account of their length and their black colour, which stands out against the grey stone of the wall.
21. This design feature of the Church is apparent from two photographs I took during my visit. I took them from the public road running to the south side of the Church. They are reproduced in the Appendix to this Judgment as figures 1 and 2.
22. As the first of these photographs shows, the level of the public road is rather below that of the churchyard. This means that a person walking or driving along that road has a less elevated view of the Church, and its south-facing roof, than would a person standing at the ground height of the churchyard. Nonetheless, and, again as this photograph shows, the roof is clearly visible, at reasonably close quarters from the public road.
23. For this reason I must respectfully differ from the DAC's observations in its Form 2 regarding the visibility of the south-facing roof. The DAC advised that this roof is "*...visible from Church Lane in the village, but only partially...*" (emphasis

added) and that “...*this slope of the roof is only minimally visible from any point at all*” (emphasis added). In my view the entirety of the south-facing roof is clearly visible from Church Lane.

24. Indeed, this is the tenor of the Petitioners’ own “*Location Design and Access*” document. While noting (correctly) that the proposed solar panels would not be visible from the A591, running past the north of the Church, they write that “*The South facing roof is visible from the Village Hall⁶ and the terrace of three cottages in Church Lane*”.
25. All I would add to what I have already said regarding the characteristic symmetry of the south elevation is that there are two design features that are to at least some extent inconsistent with it.
26. The first concerns the glazing of the windows. Reading the windows from left to right in the photographs I took, the 2nd, 4th and 5th contain stained glass, whereas the other three are of the same, simple and mainly clear-glazed design.
27. The second concerns the wall above and below the 1st window. As may be seen from the photographs I took, the pointing is a different colour in this strip of the wall. I understand from the document titled “*Historical and Architectural Heritage – Impact of Solar Panels*” (paragraph 3.3) that this may have been the former position of an entrance door that was abandoned when the vestry was added in 1878. At any rate, in my judgment the feature I have just described has the effect of introducing a vertical element to the design at one end only of this wall: which is not reflected in any similar element at its opposite end.

D. The Proposals

28. I have already briefly described the Proposals. In rather more detail, what the Petitioners have in mind is the installation on the southern-facing roof of the Church of a solar PV installation, with the associated battery storage to be put in

⁶ Which stands on Church Lane.

the tower. The panels in question would be mounted above the existing slate roof, which is in good condition. There would be 28 such panels, being JA Solar 370w All Black Panels.

29. The proposed orientation of the solar panels is shown on the “*Roof Plan and Section*” prepared by R G Parkins. It shows the rectangular panels arranged in two rows of 14 panels each. The panels would be set parallel to the ridge of the roof, and held in place by hook fixings attached to the rafters.

E. Statement of Need

30. The Petitioners identify that the installation of solar panels would complete what they describe as “*the holistic plan for the long-term energy and financial sustainability of Ings St. Anne Church*”. It would continue the work started in 2012, when under-floor heating was installed in association with an air-source heat pump and thermal insulation improvements. Those measures have resulted in building occupation since trebling. Indeed, the Petitioners describe how “*This increased usage, particularly for weekday daytime events, coupled with the increasing cost of electricity and the need to address Climate Change, has led to [consideration of] the benefit to the Church of installing solar panels and a storage battery.*”
31. The Petitioners anticipate that the Proposals, if implemented, would result in two valuable benefits.
32. The first, in short, would be for the Church to become close to carbon zero, thus reducing its environmental impact and assisting the Church of England in its “*Net Zero by 2030*” aims.
33. The second is that the solar panels would impact positively on the financial security of the church, helping safeguard the use of the building for the foreseeable future. Indeed, Dr. Hiley stresses that the church’s bills have, as a result of the energy crisis, now increased to “*an uncomfortably high level*”.

34. It is identified that the monetary value to the church of a solar panel installation would be around £2,040 per annum⁷. The Petitioners have supplied some detailed calculations in support of their case, and I have no reason to suppose that they are incorrect.

F. Planning Application

35. On 27th September 2023 Dr. Hiley, on behalf of the Petitioners, applied for planning permission.
36. The LDNPA as local planning authority refused permission by its Notice of Refusal dated 21st November 2023. The stated reasoning is worth setting out in full, and is as follows:

“St Anne’s Church is a prominent Grade II listed building of high historic significance that contributes to the character of the area, special qualities of the Lake District National Park and attributes of outstanding universal value of The English Lake District World Heritage Site. The southern roof slope of the application building is currently covered in weathered local slate. The proposed solar panels would obscure the majority of the existing weathered local slate roof and replace this with the modern, functional, engineered and often reflective appearance of a solar panel array, its associated framing and installation fixings. This would represent a visual intrusion, disruption and contrast in the consistency of materials displayed in the building and [surrounding] local area resulting in harm to the significance of the Grade II* listed building, an adverse impact on the outstanding universal values of the English Lakes World Heritage Site and adverse impact on the character of the local area. It is considered that this harm amounts to less than substantial harm in the terms of the National Planning Policy Framework, but is not outweighed by the public benefits of renewable energy generation. The proposals would fail to conserve or enhance the significance of the listed building, the special qualities*

⁷ Taking the prices prevalent in May 2023, when the proposal was prepared.

of the National Park and the attributes of Outstanding Universal Value of the World Heritage Site. They would fail to reinforce the importance of local character, fail to maintain local distinctiveness and sense of place and would be of an inappropriate nature for the location in which they are proposed, contrary to Policies 01 (National and international significance of the Lake District), 02 (Spatial Strategy), 05 (Protecting the spectacular landscape), 06 (Design and development), 07 (Historic Environment) and the provisions of the National Planning Policy Framework.”

37. In many cases, the refusal of planning consent would make the pursuit of a faculty application a redundant exercise. I am told that in the present case, however, the Petitioners have it in mind to pursue an appeal against the LDNPA’s decision.

G. Amenity Societies

38. In advance of presenting their petition the Petitioners consulted the Church Building Council (“CBC”), Historic England, Historic Buildings & Places (“HBAP”), and the Georgian Group. The Petitioners later responded to the submissions made by the amenity societies.

CBC

39. The CBC made no objection to the Proposals.

Historic England

40. Historic England commented on the Proposals in the two letters I have already mentioned, above.
41. In its first letter of pre-application advice Historic England, called for further detail of the project, and advised:
- (a) “... [T]he simple form and design of the church means that any intervention on its roof will be highly visible, as there will be no means to hide or screen its

presence. This impact would be made more noticeable by the relative lack of other ornamentation across the exterior of the building, making the installation of the PV panels starker by contrast.”

- (b) *“...[W]hile the area in which the panels would be visible would be relatively small, they would be a significant intervention, as they would affect one of the comparatively limited number of viewpoints from which the church is experienced.”*
- (c) *“The works would result in harm to the significance of the church”*, albeit at that point no view was offered as to the level of such harm.

42. In its second letter, of 26th August 2023, Historic England wrote:

- (a) *“The impact of twenty-eight photovoltaic panels on its main south-facing roof slope would be to visually detract from, in an obvious way, the authenticity of its original design and appearance. It is noted that the visibility of this slope is localised to the adjacent road around the village hall and cottages. The reversibility of the panels is less of a mitigating factor considering the long duration of their use. In summary we conclude that the proposal would adversely affect the special character of the listed building to a moderate degree.”*
- (b) Emphasising the status of the Church, as a grade II* listed building, as being of more than special architectural and historical interest to the nation, that Historic England has concerns about the Proposal’s impact on that status.

HBAP

43. I have seen an email exchange between Matthew Saunders of HBAP and Dr. Hiley, in which Mr. Saunders made the following points:

- (a) He writes of the particular importance of rhythm and balance to the Georgian mind. I accept that is the case. He asked for, but was not supplied with, an elevational drawing of the south side of the Church⁸ so as to gauge whether the

⁸ The plan supplied shows the panels set on the roof, but not their relationship to the fenestration beneath.

solar panels would follow the rhythm of the Georgian windows to the nave. He had explained that the purpose of such a plan was to ensure that the “*placing is complementary, to ensure that the panels are contextualised in relating to the windows below and do not look as if they have just landed*”.

(b) Mr. Saunders enquired whether there might be some other, less prominent and visually damaging, location on which the solar panels might be placed. In response Dr. Hiley emphasised that the south-facing roof is not visible at all from the A591, and explained the Petitioners’ stance regarding the possibility of siting the panels elsewhere. That is a point to which I return in paragraphs 82 to 87, below.

44. Incidentally, I would add that I fully agree with Mr. Saunders when he writes of the correspondence from Historic England as being “*well rehearsed*” in its “*thoughtful and considered*” treatment of the “*tensions inherent in this case*”.

Georgian Group

45. The most strongly expressed reservations about the Proposals were provided by Dr. Thomas Whitfield. He is The Georgian Group’s Conservation Adviser for Northern England. His advice is given in his email to Dr. Hiley dated 13th September 2023 (16:18).

46. The Georgian Group has “*significant concerns*” with the Proposals, given the impact it is considered that they would have for the historic character of the Church and its architectural significance.

47. Although the Georgian Group was unable to make a site visit before offering its comments, it relied on publicly available internet images and photographs. It observes that any intervention on the south roof will be highly visible to the main route of access to the Church. It regards the south elevation as the principal elevation intended to be viewed and appreciated by visitors.

48. Dr. Whitfield then writes that “*Installing solar panels in such a prominent location on the south roof slope must therefore be understood to threaten*

causing considerable harm by introducing an overtly and assertively modern intervention quite at odds with the muted classical design of the south elevation.”

49. He then moots the possibility of siting the solar panels either on the south-west roof slope of the north transept, or on the parish hall opposite the Church on Church Lane (or in its grounds). As I have already said, this question, of whether some alternative site for the solar panels might be found, is one to which I return, below.
50. As to the harm it is considered that would result to the Church from implementation of the Proposal, Dr. Whitfield’s assessment is that it would cause “*considerable harm to the character and classical design of the [Church’s] historic principal elevation*”, when taking account of its designation as a Grade II* listed church.

H. Diocesan Advisory Committee

51. The DAC unanimously recommends the Proposals for approval, without imposition of any conditions.
52. In its Notification of Advice dated 2nd April 2024 the DAC recorded its principal reasons for approving the Proposals. I have carefully considered the whole of that document, and note the following points about it, as follows:
 - (a) The DAC assessed that the Proposals were not likely to affect the character of the Church as a building of special architectural or historical interest.
 - (b) It “*strongly disagrees*” with Historic England’s observation about the way in which the solar panels would visually detract from the authenticity of the Church’s original design and appearance. This is because of (i) the DAC’s assessment that the south-facing roof is only partially visible from Church Lane; (ii) the simple design and configuration of the solar panels; and (iii) their advice that in so far as the panels are visible they “*...will recede and not be read against*

the windows and other details in the south elevation, especially as the stonework above the windows, and the gutter separate the windows from what could be seen of the PV panels. In addition, the left-most (western) window shows changes to the stonework which strike the eye far more strongly than will the PV panels.”

- (c) The DAC’s assessment is that the harm that would result from the implementation of the Proposals “*would be negligible*” and draws attention to the reversibility of the intervention after the end of the 25 year expected lifespan of the proposed solar panels.
- (d) It considers that the green slate roof was part of a Victorian restoration was not itself the reason for the listing.
- (e) The DAC then took issue with the LDNPA’s approach to the planning application, and stressed the benefit to the church and wider community of making this well-used church more sustainable, striving to achieve Carbon Zero, and reducing its energy bills.

I Analysis

- 53. In the first instance, and following the approach required by the decision in *In Re St. John the Baptist, Peshurst* [2015] WLR (D) 115, I must consider what is the special architectural and/or historic interest of this grade II* listed church. This is so as to understand the potential impact of the Proposals for its significance, thus stated.
- 54. In my judgement, the special architectural and/or historical interest of the Church is fairly and accurately stated by Historic England, in the correspondence from which I have quoted in paragraphs 12 and 13, above. This speaks of the relative rarity of a church of this style in this type of rural situation; its simple, elegant design; and its pleasing, symmetrical composition.

55. In this connection, and as I have already observed, the Petitioners and the DAC (and, indeed the Georgian Group) do not dispute the substance of that assessment. They expressly accept that this is “*an outstanding example of a Georgian church*”: citing its “*clear geometric form*” and its notable “*symmetry and classical formality*”.
56. Where there is some difference of view is with respect to the significance of the southern elevation (and, more specifically the south-facing roof) of the Church for its special architectural and/or historic interest. As I have set out already, the Petitioners and the DAC downplay the significance of these features, whereas Historic England and the Georgian Group reach a contrary view.
57. In my assessment, and having visited the Church, its southern aspect makes an important contribution to its character. I agree with Historic England’s conclusion that it is “*one of the comparatively limited number of viewpoints from which the church is experienced.*” In my assessment, this elevation exhibits the symmetry of the simple and elegant design of the Church to the public road at Church Lane.
58. Having in mind the DAC’s views, I have considered whether the degree of significance to the Church’s character of the south-facing roof is different to that of the wall beneath. Specifically, I have considered three facets of the DAC’s advice. First is that the slate roof was not the reason for the listing of the Church: being part of a Victorian restoration. Second is that the roof is said to be only partially visible from Church Lane. Third concerns the way in which the building is to be read, in view of the horizontal elements to its composition and of the differences to the stonework around the westernmost window.
59. As to the first of these points, even accepting that the Church was not listed due to the character of its roof, it is right to say that the listing description specifically mentions the “*graduated greenslate roof and stone ridge*”. In my judgment the design of the roof is to be taken to contribute a simplicity and clarity of form to the character of the remainder of the Church.

60. As to the second point, I have already explained why I do not accept that the south-facing roof is only partially visible from Church Lane. In my assessment both that roof and any intervention fixed to it will be clearly visible at fairly close quarters: albeit I do accept what the Petitioners say about the absence of any significant views of it from a greater distance.
61. I do, however, accept what is said about how the southern elevation of the Church is to be read, given the way in which the stonework above the windows, and the gutter over that, together effect a visible horizontal separation of the wall from the roof above. I also accept that the eye is drawn to the stonework around the westernmost window, and that would likely remain the case were the solar panels fixed to be the roof above.
62. Before I come to the Duffield guidelines I remind myself that the burden of proof rests on the Petitioners to show that the Proposals they make are desirable and meet those guidelines. This is because it has long been settled that “*All presumption is to be made in favour of things as they stand*” (*Peek v. Trower* (1881) 7 P.D. 21 (Court of Arches) per Lord Penzance).

Duffield Questions

63. This application is to be determined by answering the series of questions identified by the Court of Arches in the case of *Re St. Alkmund, Duffield* [2013] Fam. 158 at paragraph 87 (and see *Re St. Peter, Shipton Bellinger* [2016] Fam. 193 at paragraph 35). The questions are:
- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
 - (2) If not, have the petitioners shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted?
 - (3) If the answer to question (1) is 'yes', how serious would the harm be?
 - (4) How clear and convincing is the justification for carrying out the proposals?

(5) 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? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.

64. I will address these questions in turn.

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

65. In my judgment the Proposals, if implemented, would result in some harm to the significance of the Church as a building of special architectural or historic interest.

66. The reasons why I reach that conclusion are as follows. The Proposals entail the introduction of a modern, engineered set of black panels onto a readily visible roof. That will be to change one of the listed features of the Church (*viz.* the “*graduated greenslate roof*”) by altering its characteristic simple, unornamented design and by covering the weathered slate with solar panels. It is also a measure that has the capacity to interfere with the symmetrical character of the southern elevation of the building: although this is point to which I shall return.

67. Given this conclusion the second of the *Duffield* questions need not be considered.

How serious would the harm be?

68. In my judgment the harm that would result to the significance of the Church from the implementation of the Proposals may fairly be described as moderate, and less than substantial.

69. In reaching this conclusion I have in mind that it reflects the considered views of the LDNPA and Historic England.
70. It follows from this that on careful reflection I do not agree that the harm resulting from the Proposals would, as the DAC propose, be “*negligible*”. This is a Grade II* listed building, and it is not in dispute that it is “*an outstanding example of a Georgian church*”. What is being proposed is a conspicuous, modern intervention with the muted simplicity of design of the Church. In my view the proposed solar panel will be, to an identifiable degree, discordant with the existing character of the Church.
71. I take into account that the implementation of the Proposals would not be visible at a distance. Were that not to have been the case then the degree of harm would in all probability have been higher. On the other hand, this is not, in my judgement, a case where the proposed solar panels can scarcely be seen, or where there will be some other design feature, such as a parapet, shielding them from general view, when seen from Church Lane to the south.
72. I also take into consideration the fact that while the roof is, as I have explained, a listed feature of the Church it is not proposed that it is the sole, or even the main, reason for its significance⁹.
73. I should also explain why I respectfully disagree with the Georgian Group’s assessment that the implementation of the Proposals would cause “*considerable harm*” to the Church’s character. This is for three reasons in particular.
74. First is that I agree with the DAC’s view concerning the way that the design of the Church effects some horizontal division between the southern wall, with its symmetrical design, on the one hand, and the roof above it, on the other. In my judgement, the introduction of solar panels onto the roof would be less harmful to the important contribution made to the character of the Church by the wall

⁹ Compare the assessment of the significance of the roof to King’s College Chapel at paragraph 85 of the decision of HHJ Leonard, KC, Chancellor of the Diocese of Ely, reported at [2023] ECC Ely 1.

beneath, than would be the case in the absence of that element of horizontal division.

75. Secondly, I have in mind that the symmetry of the south elevation of the Church is already not undiluted. I refer to those features I discuss in paragraphs 25 to 27, above.
76. Thirdly, and as to the consideration of the symmetry in design of the Church, it does seem to me that it ought to be possible to position the solar panels to the roof in a way that is sympathetic to what Mr. Saunders of HBAP describes as the rhythm of the Georgian windows to the nave. I accept what he says about the virtue of showing that the position of the panels is complementary and contextualised to the windows beneath: rather than looking “*as if they have just landed*”. I return to this question in considering the conditions that will attach to this faculty.

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

77. In my judgment the Petitioners have made a clear and convincing case that the Proposals are justified. Their Statement of Need speaks persuasively of the identified benefits that would result both locally and more widely from adding solar panels to the building.
78. As to the former, the Petitioners have prepared what I am satisfied are careful and complete calculations to demonstrate both the immediate financial benefits that would flow from the implementation of the Proposals. They describe the success they have had to date in their concerted plan to make the church sustainable in its energy use and finance. Indeed, some part of the identified need for installation of solar panels is to sustain the success that the church has enjoyed in increasing the use of this historic building.
79. As to the broader justification proposed for the Proposals, the Petitioners identify their aim of bringing the Church close to carbon zero, thereby reducing its environmental impact and playing a part in the Church of England’s “*Net Zero by 2030*” aims.

80. In my judgement, there is a clear and convincing need for “*all parts of the Church of England*” to show “*a strong, visible Christian response to what is happening to our world*” regarding what it explicitly recognises to be a “*climate emergency*”¹⁰. Indeed, “*... the Fifth Mark of Mission is to strive to safeguard the integrity of creation, and to sustain, and renew the life of the Earth*”¹¹.
81. I do not doubt that there will always be the need for a nuanced and fact-sensitive approach to measures such as those presently proposed. Nonetheless, it does seem to me that the strength of the Church of England’s call to action on climate change issues lends important support to the Petitioners’ case, when they contend that they have made clear and convincing arguments in support of these Proposals.
82. I have also considered whether the Proposals could be amended, so as to see solar panels sited in an alternative, less visible position. This is a something raised by the Georgian Group and HBAP.
83. I am satisfied that the Petitioners have given reasonable consideration to the possibilities that exist. Their conclusions are stated thus by Dr. Hiley in his email of 6th September 2023 (10:03) to Mr. Saunders of HBAP:
- “Locating the solar panels elsewhere would have more of a visual impact. We have no ancillary buildings on which to house the panels. The churchyard is wholly overlooked by the A591 and is anyway to the north side of the building so would be overshadowed. There is no west-facing surface on which to mount panels. The only surface on which solar panels might be mounted is the roof of the tower. This would limit significantly the size of the array and the visual impact there would be unacceptable.”*

¹⁰ “*The Church of England Routemap to Net Carbon Zero by 2030*” (June 2022), Church of England Environment Programme, Executive Summary, page 3.

¹¹ Ditto, in its Foreword at page 2.

84. To this it is necessary to add two further points made by Dr. Hiley in a later document, dated 6th October 2023, in which he responded to the observations of the DAC and amenity societies¹².
85. As to the availability of the west facing roof above the vestry, Dr. Hiley explains that, given its smaller size and its orientation, the expected output of an array in that position would be of the order of only one-sixth of the church's annual needs: whereas the Proposals will produce around 9000kWh per annum, or two-thirds of those needs.
86. Dr. Hiley was also able to explain why the installation of solar panels at the Village Hall opposite the Church would not be a reasonably satisfactory alternative to the Proposals. He writes:
- “The Hall does belong to the Church. It is well used and therefore makes its own demand for heat and light. It currently has a gas boiler. There is indeed a plan to install solar PV panels and a heat pump there too. The hall roof itself is unsuited to a Solar PV installation, but outbuildings, currently in need of renovation, have a suitable (N-S running apex) roof. But, the full output of panels there would be needed to supply the Hall so the additional expense of running a cable to the Church would not be economically sound. In any case, renovation is not imminent. The end of the out-building is close to a river wall which was badly undermined by Storm Desmond. Discussions are in hand with the Environment Agency but we await news of their flood plan and reinforcement of the river wall before we can progress our plans.”*
87. In these circumstances I accept that the Petitioners have carefully considered the possibility of a scheme implemented in an alternative location, and that their reasons for not pursuing those alternative solutions are reasonable ones.

¹² In his document titled “Solar PV and battery installation – St. Anne’s Church, Ings. Responses to questions from DAC and Historic Amenity Societies.”

Will the public benefit resulting from the Proposals outweigh the harm?

88. I now come to the last of the *Duffield* guidelines. In considering it I remind myself again that there is a strong presumption against proposals which will adversely affect the character of a listed building.
89. Given my conclusion that the implementation of these Proposals would cause moderate, but not significant, harm the issue to be considered is whether the Petitioners have made out a sufficient case that such harm is outweighed by the benefits of the implementation of the Proposals.
90. In answering this question I take the approach that the balance test enables missional concerns such as care for creation to be taken into account and weighed in the balance.
91. It follows from this, in my judgement, that the application of the *Duffield* guidelines may properly import a consideration of missional priorities such as the Fifth Mark of Mission, to which I have already referred. Indeed, I take that to have been the approach taken by HHJ Leonard, KC, Chancellor of the Diocese of Ely, in his decision regarding the installation of solar panels at Kings College Chapel¹³.
92. My assessment is that the moderate harm that will result to the significance of the Church from the implementation of the Proposals is outweighed by the benefits of installing a solar panel system. I arrive at this conclusion in view of the magnitude of the benefits that the Petitioners have identified, and from two further specific factors.

Missional Priority

93. The first is that the Church of England expresses its approach to net zero carbon planning principles in immediate and imperative calls to action, directed at “...

¹³ [2023] ECC Ely 1 at paragraphs 59, 73 and 90.

*all parts and levels of the Church of England*¹⁴. This is an approach based in theology and an express recognition “...that the global climate emergency is a crisis for God’s creation, and unjust to the poor and future generations. It is the context into which we are called to live and preach the Gospel.”¹⁵ Furthermore, the Church of England embraces “... the call to net zero carbon as an integral part of our mission; caring for creation, achieving climate justice, ending poverty, creating a viable future for ourselves and coming generations, and increasing engagement with our communities.”¹⁶

94. I should be clear that I do not take this to give a “trump card” to petitioners in every case where a measure to pursue net zero carbon in a listed Church is proposed: but, even so, I do find that the Church’s missional approach on the question of climate change is an important matter that I must take into account.

Reversibility

95. I also take into account that the Proposals are reversible. The Court of Arches in the *Duffield* case held that considerations of reversibility are a factor when it comes to this final stage of weighing the balance between harm and benefit. This is because “*If proposals are readily reversible ... then this makes it easier for petitioners with a clear and convincing case to discharge the burden of proof that lies on them to justify the harm to the special character to the listed building*”¹⁷.
96. It seems to me, and I so find, that where proposals are not only capable of being reversed, but must be (by virtue of a condition) undone after a certain period of time, then that is a way in which harm may be restricted. A fleeting and entirely reversible intervention with a listed building will, in my view, all else being equal, be less harmful to its significance than a permanent, irreversible one. In the present case my view is that a faculty limited in duration to a fixed number of

¹⁴ See the Church of England website’s materials concerning the Net zero carbon routemap at [Net zero carbon routemap | The Church of England](#).

¹⁵ Ditto.

¹⁶ Ditto.

¹⁷ [2013] Fam. 158, at paragraph [93].

years, connected to the expected lifespan of the solar panels, will see the harm to the significance of the Church being reduced by comparison with a permission for the Proposals that was not time limited in this way.

97. In this case I am satisfied that the installation of the proposed solar panels is a completely reversible one. After their expected lifespan has elapsed it will be possible completely to remove them and their associated fixings from the roof so as to leave it just as it is today. The harm to the Church from their installation is thereby, in my judgement, limited to the period for which they remain in place.
98. In any event, after the 25 years that they are expected to last has expired, it is hard to see what good continued justification there could be for retaining redundant panels in place. Moreover, by then it seems quite possible to me that new technology may have emerged whereby another type of panel or other energy generation system could be implemented at the Church with a smaller degree of continuing harm, if any, to its significance than that occasioned by these Proposals.

J/ Conditions

99. In my judgment it is appropriate to make the faculty in this case subject to the conditions set out below, for the following reasons.

Prior Planning Consent

100. Before the Proposals are implemented the Petitioners will clearly need to obtain planning consent.

Symmetry

101. I accept that it will be desirable for the solar array to be so positioned on the roof as to be in sympathy with the rhythm of the Georgian windows to the nave. For that purpose it will be a condition of the faculty that the Petitioners obtain the written advice of an experienced church architect on that point; produce that

advice to the DAC; and only implement the Proposals in accordance with such advice once it has been approved by the DAC.

Removal of the Solar Panels

102. In order to limit the long-term harm to the significance of the Church that might otherwise result from keeping redundant solar panels in place in perpetuity, it shall be a condition of the faculty I propose to grant that they shall be completely removed after 26 years. That period of time reflects the DAC's advice as to their probable useful lifespan, and some extra time in order to allow for installation, having first obtained planning consent. Should it transpire that the solar panels' useful lifespan exceeds the permitted period then it will be open to the local church to seek a variation to the time allowed, by making an application supported by proper evidence.

K/ Decision

103. In these circumstances, and for the reason I have given, I direct that the faculty sought should issue. In my judgment the Petitioners have discharged the burden of proof that rests on them.
104. Subject to what I say in paragraph 104, below, the faculty shall be subject to the following conditions:
- (a) That no works shall be carried out until after planning consent is granted. A copy of a planning consent permitting the implementation of the Proposals shall be lodged with the Registry before works begin.
 - (b) Prior to implementing the Proposals the Petitioners shall (i) obtain the written advice of an experienced church architect on the issue of the optimal position for the solar panel array so that it is in sympathy with the rhythm of the Georgian windows to the nave; (ii) produce that advice to the DAC; and (iii) only implement the Proposals in accordance with such advice and once it has been approved by the DAC.

- (c) By no later than 1st May 2050 all solar panels and associated fixings shall be completely removed from the Church, and any resulting damage to the roof made good to the reasonable satisfaction of the Archdeacon.
105. I have formulated these conditions without having had any submissions from the Petitioners on them. This being so, I direct that they may make any such submissions in writing by no later than 4pm on 22nd May 2024.

JAMES FRYER-SPEDDING

Chancellor

8 May 2024

Appendix – Photographs



(Fig. 1)



(Fig. 2)