

IN THE CONSISTORY COURT AT BIRMINGHAM

IN THE MATTER OF THE CHURCH OF ST JOHN THE BAPTIST SAINTS LAWRENCE AND ANNE, KNOWLE

1. By Petition dated the 26 September 2014 the Vicar and Church Wardens of St John Baptist and Saints Lawrence and Anne Church at Knowle seek a faculty authorising *“the permanent continued use of the existing GRP gutters and downpipes fitted to the unadorned north aisle side of the church.”* It is acknowledged that GRP stands for Glass Reinforced Plastic.
2. The Petition is not recommended by the Diocesan Advisory Committee, nor is it supported by the relevant Heritage Bodies, Historic England, the Church Buildings Council and the Society for the Protection of Ancient Buildings. However no body (nor any individual) has sought to become a Party Opponent and those consulted have indicated that they are content that the matter be dealt with by me upon the written information before me. Similarly the Petitioners have indicated that they do not require a formal hearing and are content that I should deal with the matter in this way.
3. Before I consider the Petition in detail, it is important that the chronology of events is set out, to give a better understanding as to the reason why it has taken so long to determine the Petition.
 - (a) Summer 2009; the lead rainwater goods on the north side of the church were stolen and were replaced with like material which was “smart water” marked.
 - (b) 7/8 November 2011; the replaced rainwater goods were stolen.
 - (c) 31 January 2012; the Parish wrote to English Heritage (as they then were) seeking their views about the replacement of the lead rainwater goods with goods made of GRP. EH indicated that they would not support such an installation. Although when new the appearance of the material is similar to cast iron *“it had not the same durability and*

lacked the historic authenticity of metal rainwater systems for use on a listed building of such special architectural and historic interest as the Grade I Listed Church at Knowle.”

- (d) On the 26 April 2012 the DAC met and noted that because no rainwater goods had been replaced there was damage to the fabric of the building by virtue of water ingress and in particular damage to the walls of the Soldiers' Chapel.
- (e) On the 12 June 2012, the Parish petitioned for replacement of the rainwater goods with those made from GRP.
- (f) 19 June 2012; the DAC supported an alternative to lead (recognising that the temptation and opportunity for theft of lead goods was too great in the particular circumstances that the Church found itself in). However the DAC confirmed that the replacement should be of metal as there were concerns about the durability and lifespan of GRP. They noted that the cost of GRP was some £5,700.00 against approximately £15,000.00 of cast iron.
- (g) In July 2012 the DAC recommended an application for an emergency licence because of the state of the fabric and accepted that on a temporary basis GRP should be used.
- (h) On the 25 July 2012 the Deputy Chancellor granted a licence for the immediate installation of GRP rainwater gutters, downpipes and transfer pipes to the north aisle of the Church subject to the lodging of a Petition as soon as practicable, the Parish complying with DAC advice and obtaining DAC approval and the complying by the Parish of any conditions attached to the Faculty. The emergency licence was conditional upon a full Petition for the Faculty to implement a permanent solution, with the Parish undertaking a crime audit to establish the vulnerability of cast iron rainwater goods, the Parish securing planning permission for the temporary installation of GRP from Solihull Metropolitan Borough Council and the Parish obtaining three quotes for the installation of cast iron rainwater goods. (It appears that the GRP guttering was accordingly installed though I do not have details of the date of installation).

- (i) April 2013; the Parish applied to Solihull MBC for planning consent for GPR rainwater goods.
- (j) 28 June 2013; planning consent refused for GRP rainwater goods.
- (k) 1 June 2014; the Church Building Council objected to the GRP rainwater goods (on similar grounds to that previously advanced by English Heritage and by the DAC).
- (l) 26 September 2014; the Parish lodged the present Petition.
- (m) 14 October 2014; DAC indicated that their view is unchanged.
- (n) 11 December 2014; The Society For The Protection of Ancient Buildings indicated their opposition to GRP citing concerns about the technical performance and life expectancy of GRP. *"We note that Knowle St John Baptist is a Grade I Listed place of worship and as such any proposals to change its character or appearance deserve close scrutiny. The aim of any repair or alteration project for a highly significant building should be to follow best conservation practice; any deviation from best practice needs to be extremely convincingly argued and in the best long term interest of the building"*.
- (o) 7 January 2015; the Chancellor and the Registrar visited the Parish where it was informally made clear to the Parish that it would be unlikely that a Faculty would be granted in circumstances where the Planning Authority had refused planning consent. The Chancellor was told that further discussions were taking place with Solihull MBC.
- (p) 26 August 2016; Solihull MBC issued an Enforcement Notice requiring the removal of all the unauthorised GRP guttering and rainwater downpipes together with their fixtures and fittings from the north side of the Church and making good of any damage using suitable traditional materials. That notice was appealed against.
- (q) 6 March 2017; the Planning Inspector, John Braithwaite visited the site.
- (r) 28 April 2017; decision of the Planning Inspector quashing the Enforcement Notice made and upheld the Parish's argument that the works that are the subject of the Enforcement Notice do not constitute

a breach of planning control because they do not amount to "development" as defined in Section 55 of the Town and Country Planning Act 1990. The Inspector referred to Section 55 (2) of the Act which states that development of land does not include the carrying out of operations that do not materially affect the external appearance of the building. After reviewing the history of the Planning Application the Inspector made these findings; *"the Church is monumental in scale and, apart from its stone walls, its many arch windows and its tower are its principal features. These features draw the eye and rainwater goods are, as they are intended, practical and necessary secondary elements. The GRP rainwater goods have appropriate profiles, the downpipes are square and the gutters are ogee, and are grey to reflect the colour of the lead goods that they have replaced. The brackets that support the gutters and fix the downpipes to the walls have a sufficiently historic form. In themselves the GRP gutters, downpipes and brackets are unobjectionable in scale, design and form.*

The GRP rainwater goods do not match the rainwater goods above the aisle but there is (sic), all around the building, many different forms of rainwater goods in a variety of materials including cast iron and steel. In this context the material used, in itself, is not inappropriate. The principal difference between the GRP rainwater goods and the lead goods that were stolen, for instance, is their patina, which is largely uniform whereas the patina or metal goods tends to be varied, which increases over time. But in views from the footpath through the churchyard the uniform patina of the GRP rainwater goods is not apparent.

The uniform patina of the GRP rainwater goods is visible, though probably only to a trained eye, from the footpath that is parallel to the north elevation of the Church and in other close views from nearby. But it is easy to concentrate on these recently added features of the building and it is necessary to consider their effect on the appearance of the building as a whole. This is a central determining factor for a case such as this ...

When assessed against the building as a whole, given its monumental scale and its principal features and notwithstanding its listed status and its location within a conservation area, the GRP rainwater goods, given their limited extent and notwithstanding their patina, have affected the external appearance of the building but not, as a matter of planning judgement, to a material degree.”

- (s) 31 May 2017; the Chancellor and the Registrar visited the Parish to view the GRP rainwater goods.
- (t) 6 June 2017; copy of the Planning Decision sent by the Registry to Historic England for any further observations. None received.

4. That then is the context against which I have to consider the Petition.
5. As can be gathered from the above the Church at Knowle is a Grade I Listed building which is largely medieval in origin. The original Church, consisting of a nave, chancel, north aisle and a wooden bell-cote was completed and consecrated on the 24 February 1403. The Church was under threat at the time of the Dissolution of Monasteries but was saved because of its distance from the Church in Hampton and because of the need of Parishioners to pass the River Blythe which nowadays is relatively insignificant but in 1547 was described as a "great and daungerowse water wch in winter at euye Rain so rageth and outflowath all the Cuntrey theare abowte that neyther man nor beaste can passe withowte ymmynent daunger of peryshing". The Church is described in the Warwickshire edition of the Buildings of England (Pevsner and Wedgwood 1966) as "a perp church of some ambition". Having had the opportunity of visiting the Church on two occasions I find that such scant reference hardly does justice to a magnificent medieval building although its importance must have been recognised by the authors as they include in the volume at Plate 13 (a) a photograph of the Church taken from the south side. The Church itself is set in a conservation area and is readily visible from the road and the village, particularly to the south side. The north side looks out onto the graveyard although there is a public footpath running through. Otherwise it is largely shielded from public gaze by trees in the churchyard. It is certainly not the most prominent side of the Church. The south side is ornamented with battlements, pinnacles and gargoyles while the north side has only two gargoyles. Although originally the north side did have pinnacles (and the bases can still be seen) and

more gargoyles, it never had battlements, so the design of the church has always been irregular.

6. I have not received any detailed information about the date of installation of the rainwater goods elsewhere on the Church, but I note that they are not uniform. Some of the rainwater goods are of lead, some are of cast iron and some are of zinc; in no sense can the goods be described as a "set" and I anticipate that they have been installed at different times of the Church's 600 year existence.

THE POSITIONS OF THE VARIOUS BODIES

The Petitioners

7. I have before me a number of documents that were submitted to the Planning Inspector; I have a report prepared by Cotswold Archaeology and by Tyler Parkes, who are planning experts and were instructed by the Parish to make written representations before the Inspector. In addition I have a supporting paper prepared by Professor Derek Sheldon, the Chairman of the PCC Fabric Committee which, although dated the 15 December 2013 presents fully the arguments advanced by the Parish which have not changed during the course of the events I have described above. Some of the submissions relate to the question as to whether the replacements to be used should be of lead but it seems common ground, and I accept this, that given the prevalence of thefts none of the Heritage Bodies are "insisting" on the replacements being made of lead but would be content with either cast iron or some other form of suitable metal. The Parish argues that if it is accepted that the same material as previously used need no longer be used the criteria for the replacement material should be that it is durable in the long term, that it does not have a propensity to cracking, does not have a potential to distort under temperature changes and will not fail when ladders are used to lean against the gutters/downpipes. Professor Sheldon is able to draw attention to a judgment in the Consistory Court of Worcester where GRP was permitted to be used to re-roof a church and he points to a number of observations from DAC's in the Midlands about the use of GRP. I have to say that it does not seem to me that the views of DAC's in other Dioceses are particularly persuasive; I have to decide this Petition on the basis of the submissions made from bodies who are aware of the circumstances of Knowle Church and make submissions in the light thereof. It is furthermore claimed by the Petitioners that GRP has a lifespan of 50 years although I note that the

manufacturers apparently give a warranty of 25 years. It is common ground that the lifespan of GRP is less than that of metal alternatives and is significantly less than lead. The Parish also indicate to me that the Ecclesiastical Insurance Group (EIG) have declined to provide cover were lead to be used as a replacement material. In his conclusions Professor Sheldon points out that the Parish are not rich in financial resources and were anticipated to run a deficit budget in 2013 and 2014. He goes on to say that if the ultimate decision was to insist that metal rainwater goods instead of GRP are installed then the PCC are minded to pay the cost of any future metal replacements out of the Common Fund to the Birmingham Diocese. I am sure that Professor Sheldon with the advantage of time to reflect on what I regard as an intemperate attempt to manipulate the process by issuing such threats would not stand by that statement in 2017. I do not have information about the finances of the Parish but I would be surprised if the cost of instructing the planning experts for the purpose of appealing against the Enforcement Notice was much different from the difference in cost between cast iron rainwater goods and GRP rainwater goods. The question of cost is obviously relevant but I find that it is a secondary consideration to the legal principal.

The DAC

8. One of the unfortunate things that have emerged from this process is that it seems there is a widespread view that the DAC make decisions; the DAC in Birmingham is a body comprised of in many cases international experts in their field. It provides invaluable help to me as the Chancellor in deciding matters but it is not there to determine applications and the question as to whether I accept or reject its recommendation is entirely for me. Deriving guidance from other jurisdictions, a Court will only reject expert evidence (and hence expert advice) if there are good reasons to depart from that advice. Thus the views of the DAC are persuasive but not determinative. The position of the DAC is that they have consulted the relevant conservation bodies and are advised that GRP rainwater goods on a Grade I Listed building in a conservation area is contrary to current good practice for all listed buildings (ecclesiastical and secular). They are not able to endorse the permanent installation of GRP rainwater goods because they are not able to reconcile the proposals on that basis and they feel that the installation of cast iron would constitute a more suitable long term replacement solution for the stolen rainwater goods. They acknowledge the Parish's fear that any metal is at risk of theft but point

out that the value of cast iron is approximately one third of that of lead, that the inflexibility of it made it more difficult to steal and carry away and that there have been no recorded theft of cast iron from the a Diocese of Birmingham Church building from the 4 January 2007 until 2014 (when they considered the Petition). Furthermore cast iron had been installed successfully as an alternative to lead on at least two Diocese of Birmingham Grade I Listed Churches.

The Heritage Bodies

9. The three Heritage Bodies consulted oppose the application on the basis that whilst they accept that lead replacement is not necessary and are sympathetic to the problems of the theft of lead experienced by churches generally and in particular by Knowle, they believe that it is more in keeping with conservation practice that a metal substitute should be used. In a submission to the Planning Inspector from Tylor Parks dated February 2017 at paragraph 3.7 there is contained the following information; *“as a general point to note, the letter from the Church Buildings Council is nearly three years old (it was dated the 1 May 2014) and pre-dates the response of the local MP, Dame Caroline Spelman, who is also the Second Church Estates Commissioner and a member of Knowle Parish Church who has recently confirmed that due to problems with theft, the Church Buildings Council of the Church of England is considering changing its guidance to Diocese permitting the use of a metal substitute to deter crime.”* Other than the statement contained in this report I have not been providing with any further information. I do not know whether the Church Building Council will change its guidance but if it was to do so it may well alter the views taken by the respective Heritage Bodies. However at this stage all three Bodies who have been consulted make representations which are accurately summarised by the response of the DAC.

The Applicable Principals

10. All are agreed that it is inappropriate in the circumstances that the rainwater goods should be replaced using lead. I have to consider whether the installation of GRP rainwater goods (and their continuation) would affect the special character of the church and must consider the guidance in **RE: Duffield: St Alkmund [2013] 2 WLR 854**. I have also looked for help in decisions made by Chancellors in other Diocese. There are a number of decisions in relation to GRP but all of them seem to be dealing with the question of replacement of a lead roof with a GRP roof. I have paid particular attention to the judgment of Eyre CH in the Consistory Court of the

Diocese of Coventry when considering a Petition in respect of All Saints Church Leamington Hastings. He carries out a detailed analysis of previous decisions and in particular that of Mynors CH when dealing with St John the Baptist, Bromsgrove (2012) 14 ELJ 319 which was cited by the Petitioners in support of their application. I find however that it is possible to distinguish between the replacement of a leaded roof with a GRP roof, as appeared to be the case in Bromsgrove, and the case advanced in the present Petition. No two set of circumstances are the same and thus decisions elsewhere whilst helpful are not binding upon me. A significant basis of the decision was that the roof in Bromsgrove was not visible, and was thus vulnerable to theft. Furthermore Mynors CH was only asked to decide between lead and GRP; a solution involving alternative metals was not before him. Sadly history has shown that even where rainwater goods are visible, this does not protect them from thieves. In his judgement in All Saints, Eyre CH considered the nature of GRP. He considered the guidance then before him in 2013 (which has not so far been altered), in which the Heritage Bodies point out the very substantial benefits of lead and of terne-coated stainless steel as roof coverings. He was not considering the position of rainwater goods but the views of the Heritage Bodies before me in this matter are the same as they were before him. Metal, whether cast iron or stainless steel has proven longevity. At this stage the evidence before me does not satisfy me that GRP has such proven longevity although, if the Petitioners are right, the Heritage Bodies may be revisiting this. At the moment however the advice that I have received from all the expert bodies who have been consulted, supported by the DAC, is that GRP is not an appropriate substitute for metal.

11. In St Alkmund (*supra*) the Court of Arches at paragraph 87 suggested that Chancellors should approach the matter by asking a series of questions;
 - (a) Would the proposals, if implemented, result in harm for the significance of the Church as a building of special architectural or historic interest?
 - (b) If the answer to question (a) is "no", the ordinary presumption in Faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily depending on the particular nature of the proposals.
 - (c) If the answer to question (a) is "yes", how serious would the harm be?

- (d) How clear and convincing is the justification for carrying out the proposals?
- (e) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit outweigh the harm? In answering question (e), the more serious the harm, the greater will be the level of benefit needed before the proposal should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II* where serious harm should only exceptionally be allowed.

MY FINDINGS

- 12. It is not necessary that the rainwater goods should be of lead. However the evidence before me is that metal (be it cast iron or stainless steel) will have a longer life expectancy than GRP and is a preferable alternative to GRP.
- 13. The suitability of GRP is still being assessed and the views of the Heritage Bodies as to the appropriateness or otherwise of it as a material in listed buildings may be under review and may change.
- 14. I am mindful of the findings of the Planning Inspector that notwithstanding the patina of the GRP rainwater goods presently installed, their limited extent had not affected the external appearance of the building, in planning terms, to a material degree.
- 15. I accept the advice of the DAC that the risk of theft of cast iron or stainless steel rainwater goods is low and that no incident of theft of these materials occurred in the Diocese of Birmingham in the 7 years prior to their advice being given. I have no reason to believe that the situation has changed since 2014. I am satisfied that the insurance position adopted by the EIG namely that they would not provide cover if lead rainwater goods were in place is irrelevant because it is not suggested that they should be.
- 16. I am satisfied that the presence of the GRP goods does not at the present time adversely affect the appearance of the Church, given the fact that there are at least three other materials used on the building but that the appearance and suitability of

GRP in the medium to long term is uncertain. From a subjective point of view it seems to me that the suggestion from the DAC that the rainwater goods should be replaced with cast iron would, in an ideal situation, present a more harmonious appearance to the church building as a whole.

17. I find that the cost of replacing the GRP with cast iron would be significant but I have to measure that against the huge significance of the Church as a building. I also have to bear in mind that the Parish like all other Parishes should not incur unnecessary expenditure and should not be forced into expenditure unless the applicable legal authorities require it to do so.
18. My approach is that the advice given to me by the Heritage Bodies and endorsed supported by the DAC should be accepted unless there are good grounds for going against it.

MY DECISION

19. I have considered this matter in the light of the questions set out in "St Alkmund".
 - (a) I find that on the evidence presently available to me the longevity and appearance of GRP rainwater goods is uncertain. Set against the background of the importance of Knowle as a Grade I Church I find that the GRP rainwater goods may well result in long term harm to the significance of the Church as a building of special architectural or historic interest. In making this finding I bear in mind the views of the Heritage Bodies. I also bear in mind the decision of the Planning Inspector that the external appearance of the building is not as a matter of planning judgment affected to a material degree. The present appearance of the installation is not however the only matter that I have to take into account. I have to consider whether such appearance will materially alter in the future and I also have to consider the historical context of Knowle as a listed building.
 - (b) Having answered "yes" to the first question I then have to consider how serious that harm would be. The true position is that I do not know on the evidence before me how serious the harm would be. I am guided by the advice from the Heritage Bodies as to what is an appropriate substitute material for lead. At the moment, for the

reasons set out above, they say that GRP is not suitable. However that may change as time passes and a better appreciation of the appropriateness of GRP is gathered.

- (c) When considering how clear and convincing is the justification for carrying out the proposals I have to bear in mind that the GRP was installed pursuant to an emergency licence and that I am not approaching the matter from a blank canvas and it may be that at some stage in the future it will be accepted that GRP is appropriate. I bear in mind the financial position of the Parish. It seems to me that it would be a significant waste of money for a Parish who has already suffered financially through the theft of lead on two occasions for the Parish to be made to remove the GRP only to find that with the benefit of hindsight such removal was unnecessary. I say this in the light of what I am told about the reconsideration by the Heritage Bodies of the appropriateness of GRP. In the light of that it seems to me that there is a level of benefit to the Parish in allowing the GRP to remain but for a limited period of time. Given the information before me it seems to me that the most appropriate outcome, given the uncertainty, is that I should grant an interim Faculty authorising the existing GRP rainwater goods for a limited period of five years. If the present evidence before me continues and the advice of the Heritage Bodies remain the same then I would expect the GRP rainwater goods to be replaced with some form of metal goods but that of course would be subject to a further Petition. If on the other hand there becomes an increasing acceptance that GRP is an appropriate material to be used, there would be nothing to stop the Parish in submitting a further Petition seeking a permanent faculty for the present material.
- (d) I have given considerable thought as to the length of period for which I should grant an interim faculty. Given what I am told about the question of the suitability of GRP material in connection with listed buildings and given the concerns expressed about the potential for GRP material to deteriorate in its appearance, I consider that a period of ten years from the initial installation (2012) would be a sufficient time for there to be clarity about the suitability of GRP rainwater goods in the context of Knowle church. It is for that reason that I

grant the interim faculty for what is effectively the balance of ten years.

20. In the circumstances I therefore grant a faculty to the Petitioners for a period of five years from the date of this judgement allowing them to continue to use the existing GRP gutters and downpipes fitted to the north aisle side of the church of St John Baptist and St Lawrence and Anne in the Parish of Knowle.

Mark Powell QC,

Chancellor

21 August 2017