

**IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY**

C5513/2015

**STOCKTON: ST MICHAEL & ALL ANGELS**

**JUDGMENT**

- 1) The church of St Michael and All Angels has a grade II\* listing. It dates from the Fourteenth Century and there are some parts of the original fabric remaining although the bulk of the current fabric dates from a mid-Victorian rebuilding and restoration. Substantial repairs are needed to the southern slope of the roof of the chancel and on 15<sup>th</sup> September 2015 a faculty issued pursuant to my direction authorising re-roofing works.
- 2) The roof is tiled and the faculty was subject to conditions which had been proposed by the Diocesan Advisory Committee. The effect of these conditions was to require that the existing roof tiles be removed with care; that they be assessed for re-use; that good tiles be re-used; and that the shortfall be made up of tiles matching the existing ones in colour, shape, size, and texture.
- 3) The Petitioners have applied for amendment of the faculty by removing those conditions so as to permit the installation of a roof composed entirely of new tiles. The Diocesan Advisory Committee has advised that I should retain the existing conditions and should dismiss the application.
- 4) I concluded that it was expedient to determine this issue on the basis of written representations subject to the consent of the Petitioners. That consent has been given and I gave directions for the submission of such representations from the Petitioners and for a report from the Diocesan Advisory Committee setting out its position.
- 5) The Petitioners' submissions have principally be made in correspondence from the architects engaged on the project though the Petitioners have confirmed their

agreement with the submissions made and, as I will explain below, there has been an indication of the view of the Parochial Church Council.

- 6) My power to amend the faculty derives from **Rule 20.3 (1) of the Faculty Jurisdiction Rules 2015**. It follows that I have wide discretion to make an amendment where I conclude that it is "*just and expedient*" so to do. In the context of this grade II\* listed church the proper exercise of my discretion requires me to have regard to the need to ensure that there is a sound roof properly performing its function but also to the high desirability of preserving historic fabric.
- 7) The initial contentions in favour of the amendment were that no more than 50% of the existing tiles would be suitable for re-use; that even such tiles would not have nibs or would not have nibs in a fit condition for use so that it would not be practicable to fix them by way of the nibs; and that drilling of the tiles to create nail holes would be likely to shatter such of the tiles as were fit for re-use. In addition it was said that compliance with the conditions would markedly increase the cost of the project taking that cost beyond the available grant funding.
- 8) The response of the Diocesan Advisory Committee to these contentions was to say that the Committee would expect 85 or 90% of the existing tiles to be fit for re-use. The Committee believed that it would be possible to re-fix many of these by the use of nibs. In addition it believed that even if drilling was required then provided this was done with ceramic drill bits then the tiles would not be damaged thereby. Moreover, the Committee's assessment is that the tiles on the southern slope of the chancel roof are hand-made clay tiles which pre-date the Victorian rebuilding. It advises that a wholesale replacement of these tiles would involve a significant loss of historic fabric in circumstances where this is not necessary.
- 9) Matters have moved on somewhat from the initial submissions. Further funding has been obtained and so it will be possible for the Petitioners to pay for the works being performed in the manner required by the existing conditions. The architects helpfully arranged for test drilling to be undertaken on a sample set of removed tiles. Mr. Clews of Acanthus Clews Architects has provided details of the outcome of the test exercise and has set out the Petitioners' current arguments.

10) Twenty-one tiles were removed. Of those twelve were found to be of a sufficiently sound condition to be drilled. They were drilled and that exercise did not further damage the tiles. Accordingly, it is now accepted that those tiles which are in a reusable condition can be successfully drilled with a ceramic bit to create nail holes without shattering. However, the removal and examination of that sample set of tiles also demonstrated that virtually none had nibs which were still functional. Many had never had nibs but had been fixed by torching and such nibs as there had been had been damaged. It follows that drilling will be needed in the case of all or almost all of the re-usable tiles. Mr. Clews says that the test exercise showed that the tiles were of a variable condition with almost all having been warped. The tiles were of varying sizes with widths varying from 160 – 170mm and heights varying from 285 – 310mm. Mr. Clews suggests that this indicates that they had been obtained from different roofs or other differing sources. The contractor remains of the view that of the order of 50% of the tiles will need to be replaced. In addition Mr. Clews reports that the contractor is strongly of the view that the use of new tiles will provide the most effective long-term repair. This is a view which Mr. Clews shares.

11) It follows that the Petitioners' arguments in favour of varying the conditions have changed to a degree as a result of that test exercise. They accept that it will be possible to drill those tiles which remain usable and to fix them by nails nonetheless they remain of the view that wholesale replacement is appropriate. They say that the proportion of tiles which will be usable will be markedly less than that anticipated by the Diocesan Advisory Committee. It follows, in the Petitioners' contentions, that the roof will lose its historic integrity because there will be a large number (perhaps approaching one half) of the tiles which will be modern. Moreover, the old tiles which remain will have been altered by drilling and the use of nails. In addition the Petitioners contend that the variations in the size of the old tiles and the quality even of those which can be reused is such that the course proposed by the Diocesan Advisory Committee would be the most effective long-term repair. The Petitioners make the point through Mr. Clews that the approach required by the conditions and proposed by the Diocesan Advisory Committee involves a greater expense than the use of new tiles while giving, in the view of the contractors, a less effective roof.

- 12) The Petitioners' arguments have been set out by Mr. Clews but they are supported by the Petitioners. This has been confirmed by Revd Gillian Roberts, the curate with responsibility for St. Michael's, and by Wendy Turner on behalf of the Parochial Church Council. It is apparent that the Petitioners are understandably reliant on the advice of their architect. However, Wendy Turner does make some powerful points in support of the removal of the condition. She says that the old tiles have given good service but that what is needed now is a roof which will keep the church watertight and in a sound condition for future generations. In order to achieve that she contends that the best course is a new roof.
- 13) The Diocesan Advisory Committee has considered the report prepared by Mr. Clews but remains of the view that the condition should not be varied. It points out that its view as to the practicability of drilling the tiles has been vindicated. It does not accept that the variation in size of the tiles means that they have come from different sources or from different roofs. Rather it says that such variation is to be expected from hand-made tiles. Those tiles which remain in sound condition are said by the Diocesan Advisory Committee to have shown that they are durable. The Committee also says that the preservation of even 50% of the historic fabric is worthwhile and that as additional grant funding has been obtained the heritage considerations should prevail.
- 14) I have concluded that it is not appropriate to vary the conditions so as to permit the installation of a new roof and, accordingly, the application is dismissed. I understand the force of the Petitioners' contentions that the priority should be the provision of a sound roof in order to preserve the church for the future and that the best way of achieving that is the installation of a new roof. Nonetheless, I have concluded for the following reasons that wholesale replacement is not appropriate:
- a) This is a Grade II\* church. It follows that I must attach considerable importance to the preservation of its historic fabric particularly where that fabric relates to the external appearance of the church. The importance to be attached to the historic fabric of listed churches was made clear by the Court of Arches in *Re Duffield: St Alkmund* [2013] 2 WLR 854.

- b) I must attach considerable weight to the expert assessment of the Diocesan Advisory Committee as to what is appropriate in terms of aesthetic matters and heritage considerations and also in terms of structural and architectural matters. The considered view of the Committee as to what is best practice when dealing with historic buildings must carry real weight. The assessment by the Diocesan Advisory Committee cannot be conclusive but I cannot disregard it. Such advice should be heeded by a chancellor unless sound reasons for taking a different approach are established. In the context of this case it is of significance that the initial view of the Petitioners' contractor was that drilling of the tiles would not be practicable and that the Diocesan Advisory Committee disagreed. The testing exercise has vindicated the Committee's assessment in that regard.
- c) Even on the view of the Petitioners' contractor some 50% of the historic tiles will be capable of reuse and it is possible that the Committee's assessment will also prove right in this regard with a greater proportion being capable of reuse.
- d) The approach advocated by the Diocesan Advisory Committee will result in a sound roof albeit one which the contractor does not believe will last as long as a wholly new roof. However, it will be a sound roof in which a substantial part of the historic fabric has been preserved. That is a very potent consideration.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
9<sup>th</sup> May 2016