

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of Brailes: St George

2024-094019

Petition to fit a new external heating boiler (and control system).

JUDGMENT

1. The Petitioner is the Incumbent of the Parish, but he acts on behalf of the whole PCC and The Heating Group sub-committee. The Parish seeks a faculty to install a replacement heating boiler, after what can only be described as the debacle that followed a List B permission for installation of like-for-like heating boilers that was granted in 2019 by the (then Acting) Archdeacon. The Parish has already used a considerable amount of available funds to pay for a boiler system that does not work, as will be explained below, and which has virtually no scrap value if sold.
2. In this matter the church building is Grade I listed. It is situated at the Southern end of the Diocese and at the North of the Cotswolds. I am told that there is no gas supply in the area and the church building only has a 60 Amp single-phase electricity supply, which has been somewhat prohibitive in the readily available

power sources for heating without a considerable financial outlay. Since 1878 the church building has used a Baker Perkins water filled pipe and coil heating system, at first using coal then coke as a fuel, that being replaced in 2001 with an oil-fired boiler system. There are also additional small electric heaters in various locations. The 2001 boilers failed in 2019, at which stage a like-for-like replacement was authorised under List B (so, prior to the specific ‘due-regard to achieving net-zero’ requirement concerning heating systems). Unfortunately, the contractor engaged in the installation of the new boilers progressed very slowly and the results were far from satisfactory. Without going into all the unnecessary details, the heating system was partially working by December 2022, but on a Sunday in March 2023 the church building was filled with blue fumes from the heating system and was unusable that day. The Parish acted swiftly in commissioning a report from an independent OFTEC engineer who made numerous recommendations and requirements for reconfiguring the installation works for the new boilers. The contractor was given about half a year to correct the defects in the installation, but failed to achieve the requirements set, so the Parish dispensed with his services. Ultimately it was found that the greatest problem was the existing chimney used as a flue was inadequate and needed to be replaced.

3. There has been extensive discussion between the Parish and the Diocesan Advisory Committee, most particularly the very experienced heating adviser. It would be fair to say that all obvious heating solutions have been considered in

detail. For example, it is agreed that a purely electrical heating system would be impractical and prohibitively expensive at present for the large church building. Even though there is a large South-facing roof arguably suitable for individually-switched photovoltaic cells, those could not be used without a new three-phase electrical system being installed for the Church building. It is the aim of the Parish to seek the three-phase electrical supply in the coming years and to expand the use of additional heating from an electrical source, including under-pew heaters and/or heated pew cushions. The electricity supply is already from a tariff using 100% renewable sources. I have seen extensive information of the considerable efforts made by the Parish to explore a low carbon alternative, so I have no doubts the Parish can be said to have had due regard to the net zero guidance in formulating the proposal for heating. Indeed, at a meeting in March 2024 the members of the Coventry Diocesan Advisory Committee certified the following : *“The works or proposals involve matters to which net zero guidance applies (that is, guidance issued by the Church Buildings Council under section 55 of the Dioceses, Pastoral and Mission Measure 2007 on reducing carbon emissions). In the opinion of the Committee, your explanation of how, in formulating the works or proposals, you have had due regard to net zero guidance is adequate”*

4. The already permitted and installed oil-fired boilers would require considerable works to be safely and satisfactorily used. The installed boilers could not be used in their current site without excavation of the boiler room floor so they could be

moved to a lower position. They would ideally need to be relocated to the former coal/coke storage room, and at least one, if not two, large flue(s) would need to be installed or constructed, requiring quite some alteration to the structure of the Grade I listed building. However, in a secluded area outside the NE Chancel area of the church building is a fenced-off concrete area where there used to stand a supply tank for the old oil-fired boiler. A free-standing external low level balanced flue high efficiency condensing 70kW oil boiler could be sited in this area without causing an eye-sore, as the proposed boiler is only 1.24m in height, and the proposal includes planting a suitable hedge to supplement the existing fence. There would be no need to install an unsightly flue on or through the listed building as the proposed boiler has a flue that terminates directly out of the casing with a simple grill. Without making any substantial alterations to the listed building the proposed boiler could then be connected to the existing Baker Perkins water filled pipe and coil heating system. The information provided shows that efficiency of the condensing boiler would help towards assisting in reducing the current carbon footprint of the church, albeit still being run by a fossil fuel. The proposed boiler also has the advantage that it can be easily switched to using biofuel when that becomes readily available for supply to the Parish.

5. At the previously mentioned meeting in March 2024 the members of the Coventry Diocesan Advisory Committee agreed to issue a certificate of recommendation for the proposed installation. It was considered that the

proposal selected was that least likely to cause harm to the significance of the church as a building of special architectural or historic interest. I have to agree and would answer the first question/step under the framework set by the Court of Arches in *Re St Alkmund, Duffield* (1 October 2012) with a ‘no’.

(The Duffield framework is, of course, as follows:

Step 1: *would the proposals, if implemented result in harm to the significance of the church as a building of special architectural or historic interest?*

Step 2: *if the answer is ‘no’, the ordinary presumption ‘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.*

Step 3: *if the answer to step 1 is ‘yes’, how serious would the harm be?*

Step 4: *How clear and convincing is the justification for carrying out the proposals?*

Step 5: *Bearing in mind the very strong presumption against proposals which will adversely affect the special character of the listed building, will any resulting public benefit (including liturgical freedom/ pastoral well-being/ mission opportunities/putting the church to viable use consistent with its primary role as a place of mission and worship) outweigh the harm? The more serious the harm the greater will be the level of the benefit needed before an application can succeed. In a Grade 1 or 2* building, serious harm should only exceptionally be allowed).*

6. When the public notice for these works was displayed the Diocesan Registry received an email of objection from a Henry Jervis, a resident of the Parish. He stated :

“I wish to register my Objection to the proposal. I can also confirm that I live in the village and used to be a regular bell ringer at the church until and (sic) unrelated injury occurred.

As you may be aware this debacle has been going on for some years and there was hope that a resolution had been reached but I’m afraid what I have read in the application documents, sadly in my opinion, make a very poor and inexperienced proposal/application for a Grade 1 listed building, and this is my point of objection.

I don't think anyone would disagree with the principle of the application and that it needs to be resolved, but the addition of a green box might seem minor to some or even a temporary measure, but is it the best solution? I would strongly disagree.

No professional third party evidence is given in this proposal, it's all based on contractors quotes, the statement of significance and statement of need in this application, whilst making some relevant social points, are a joke and unacceptable for a Grade 1 listed building. The applicants aren't following the protocol for a building of its significance, and it reads like a committee in panic,

rather than doing what is best for the building and the long term setting and its use.

The applicants panic for having to restrict the churches use in the winter months is not a reason to make a poor choice now, there are temporary heating options which were used 3 or 4 years ago to warm the space for the moments of funerals, weddings and christenings during the winter months but these have long since fallen away and a choice to not heat was taken. Making the wrong long-term choice now for 40 people for 6 months of the year is not a public benefit argument for an external alteration to a grade 1 listed building. They should really also be addressing the point of letting buildings heat up and cool down as this is often worse for the Historic fabric and contents, this building was not designed to have heating or be draft (sic) free, it is extremely easy with listed buildings to cause significant long term harm by accident whilst in the pursuit of a small and simple upgrade for modern requirements (see Historic England guidance), none of this has been addressed.

If this application was not under a faculty but a planning application it would not be treated this way, all Historic England guidance applies as it is still a grade 1 listed building.”

7. Following receipt of the objection the Diocesan Registry issued the appropriate directions under the Faculty Jurisdiction Rules and supplied a copy of Form 5 to

Mr Jervis, inviting him to become a Party Opponent. Mr Jervis did not respond within the required time frame (or, indeed, at all) so the Petitioner was invited to make comment on the objection, which he did in a lengthy (8-page) closely-typed response dealing with six specific factors raised in the objection:

- A. The addition of a green box - is it the best solution?
- B. No professional third-party evidence was collected.
- C. The Statement of Significance and Statement of Need are a joke.
- D. The Faculty Applicant is not following the protocol for a Grade 1 listed building.
- E. The Applicant has shown panic in their actions and decisions.
- F. Significant long-term harm could result by accident.

It would not seem necessary to here repeat the response to the objection, which was very full and entirely to the point. Instead, it may be more succinct to include comment from the Coventry Diocesan Advisory Committee hearing adviser which was sent to the Registry by the Petitioner, along with his response to the objection:

“There are three main points to the objection:

Process / lack of documentation

Potential for damage

Visual

The points I would be inclined to make are:

1. *The existing heating system has been in place for over 100 years. The proposal will result in continuation of this method of heating for the lifetime of the new boiler, perhaps 10-15 years*
2. *The heating system is of low power output, providing some localised heating without causing rapid changes in the internal temperature / relative humidity which can cause harm to sensitive materials in historic buildings. Some heat input to a building is helpful in reducing average relative humidity, which restricts the risk of mould and insect damage.*
3. *A part of the objective has been to respect the highly significant interior of the building and the proposal involves no changes internally. Alternative means of heating will involve internal changes, which will inevitably result in some level of damage to the fabric. Most of those forms of heating involve upgrading the power supply which is additional expense and disturbance.*
4. *All available options for re-using existing chimneys have been exhausted.*
5. *Installing a new flue from the boiler house will result in a more visually intrusive change to the building than the proposed external boiler*
6. *The change as proposed is entirely reversible and involves no new damage to the historic structure.*
7. *There is some small visual intrusion from the new boiler, but this is considered the least impactful of the potential options at the present time.*
8. *The church recognises the need to move towards a lower carbon form of heating, but the challenges involved in doing this within such a historic*

and significant space require a great deal of careful consideration as indicated in the objection letter, and the proposal buys time for that consideration to be properly made.

9. *The objection letter acknowledges that usage of the building has reduced in recent years and that lack of heating has almost certainly been a factor in that decline. The greatest threat to historic buildings is for them to fall into disrepair through lack of use. Re-establishing heat to the space as soon as possible is an important factor in avoiding this scenario.”*

8. Of particular note in the email of objection was suggestion that the Statement of Significance and Statement of Needs prepared in this matter should be regarded ‘as a joke’ and was accompanied by no third-party material. The document was apparently amended after discussion with advisers from the Diocesan Advisory Committee and currently is eight pages in length, setting out not only the needs and aspirations of the Parish but giving suitable detail as to the history of the heating problems in the Church building and relating the considerable number of heating options discussed. It was made clear the Parish had sought a detailed report from an OFTEC engineer and there were associated documents showing discussions with, *inter alia*, the Diocesan Advisory Committee and the heating adviser on the various feasible and affordable options, both with and without the likelihood of harm to the significance of the church as a building of special architectural or historic interest. I did at first wonder whether Mr Jervis had understandably ceased reading when there was a page break inserted at the end

of the second page of the combined Statement of Significance and Statement of Needs, but regardless I cannot find that the given criticism of the document is justified. Equally, I cannot find the suggestion the Parish has failed to have regard to applicable guidance is justified. The objector is perhaps also unaware of the involvement of Historic England and the amenity societies in the faculty process, nor that traditionally a representative of Historic England has been a member of the Diocesan Advisory Committee for Coventry Diocese. Nevertheless, I am required by the Faculty Jurisdiction Rules to take account of any letters of objection, and any comments on them received from the petitioner, in reaching a decision on the petition, which I shall do.

9. Regardless of the recommendation of the members of the Diocesan Advisory Committee, any decision on this matter must rest with me, particularly having regard to the stated aim of the Church of England to achieve net zero carbon emissions by 2030. I have been helped by a judgment from the Consistory Court in Carlisle. In **Re All Saints, Scotby** [2023] ECC Car 2, a set of principles derived from the net zero guidance was suggested, which set out a useful framework for addressing the questions I must consider. These five principles were helpfully summarised in another judgment, **Re St Mary, Stalbridge** [2024] ECC Sal 1:
 - a. Churches need to be properly heated;
 - b. The proposed and likely uses of the building must be considered in assessing its needs;

- c. Any proposed heating system must be affordable;
- d. A proper appraisal of heating options will generally involve placing all possible systems in order of merit in terms of meeting the net-zero target; and identifying the highest-placed system which meets the needs (and, I would add, resources) of the church;
- e. The court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.

Having applied those principles, and again having regard to the second **Duffield** question, I find the Petitioner has satisfied me that the proposal is justified in the circumstances of this matter, despite the issues raised in the email of objection from Mr Jervis. Although a fossil fuel system is proposed I acknowledge the intentions of the Parish to explore and move forward with more ecologically-friendly heating in the future, and willingness has already been shown by ensuring the electricity supply is sourced only by renewable means and by choosing a system that can be changed to use biofuel. Given that, and the considerable wasted financial outlay on two effectively defunct Mistral boilers, I will not require the Parish to fund offsetting of emissions, although I commend the issue as something the members of the PCC would be sensible to consider. I shall limit the duration of the faculty, but give permission for the Parish to seek extension.

The faculty will be granted as requested, subject to the following conditions:

Conditions

- 1) the faculty authorises the use of the oil condenser boiler only until 31 December 2029. The petitioner(s) may apply before the expiry of that period for an extension. When such an application is being considered the court will naturally take into account all the circumstances, including whether the Parish has advanced the intent to install a three-phase electrical supply, so that some further forms of electrical heating can be installed, and whether the intent to move to biofuel has been realised;
- 2) the Petitioner shall ensure that the fenced area surrounding the concrete area where the new boiler will be sited has gated access that is kept secure;
- 3) the installation of the boiler cannot take place until the PCC has either obtained any necessary planning consent or has been informed in writing (an email will suffice) by a suitably qualified officer of the relevant planning office that no planning consent is required for the installation of the boiler;
- 4) the Petitioner must ensure that full details of the works have been entered in the Church log book within one month of completion

The fact of the objection in this matter has necessitated additional work and the preparation of this judgment. Regrettably, it is the PCC that must pay the costs and fees arising. The Parochial Church Council must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with

the application. I shall limit the certified time spent in preparing this judgment to four hours, albeit that considerably more time than that has been spent.

I must express my thanks to the members of the Coventry Diocesan Advisory Committee, especially the heating adviser, for the work put in to assist the Parish and the Court in this matter.

Glyn Samuel
Chancellor
30th May 2024