

Neutral Citation Number: [2025] ECC Win 1

In the Consistory Court of the Diocese of Winchester

In the parish of Chineham

In the church of Christ Church

Judgment

1. The Petitioners (Olumide Ojo-Oratokhai, Katie Garner and the Reverend Jonathan Clark) seek a confirmatory faculty to authorise the installation of two replacement gas boilers at Christ Church, Chineham.
2. The case presents a cautionary tale in respect of the difficulties that can arise when proper consideration is not given at an early stage to the Church Buildings Council’s net zero guidance (“the Guidance”). The Petitioners compounded those difficulties by also deliberately proceeding with works which they knew to be unauthorised. The combined result is most unfortunate.
3. I gave directions for the Petitioners to produce more evidence and to address me at a hearing. The hearing proceeded remotely, the Petitioners assuring me at the outset that everyone with an interest in attending had details which would enable them to attend if they wished – although in the event, none did. The Petitioners helpfully and directly answered my questions, and took the opportunity to address closing comments to me.
4. In this judgment I first set out the approach to be applied, before making findings of fact based on the evidence available to me. I then consider whether a faculty should be granted.

The correct approach

5. The Petitioners helpfully referred me to the case of *All Saints’*, *Scotby* [2023] ECC Car 2 for the approach I should take. I am not bound by that decision but, for the reasons given there, adopt the same approach. In short, that approach requires me to consider

in substance whether the Petitioners have followed the Guidance (or given cogent reasons for not following it).

6. The court in *All Saints'*, *Scotby* at [40]-[45] also gave a helpful summary of five key points that can be distilled from the Guidance – which the Petitioners further distilled as follows:
 - a. Churches need to be properly heated;
 - b. The proposed and likely use 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 resources) of the church;
 - e. The court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.
7. Finally, although these applications seek confirmation for unauthorised works, I have not allowed that fact to influence me against the grant of a faculty.

Findings of fact

The church

8. Christ Church, Chineham is run as a Single Congregation Local Ecumenical Partnership between the relevant parts of the Baptist Church, Church of England, Methodist Church and United Reformed Church. This makes it somewhat unique. However, the Anglican Vicar (Mr Clark) is also the lead and only minister, and decisions taken by the Joint Church Council (“JCC”) are also taken simultaneously by the Parochial Church Council. There is no dispute that the church building is subject to the faculty jurisdiction.
9. The building is relatively modern, being built in 1987 and extended in the early 2000s. The congregation is not affluent, and the church is dependent on hires for much of its income. The building is used intensively throughout the week for a mixture of direct church and community hire uses. I am told that the majority of users each week are

pre-schoolers, primary school aged children and people aged over 70. I accept this, and have taken full account of it in my decision.

The proposal to replace the gas heating system

10. Previously, the church was heated by 3 gas boilers of varying ages. Each was responsible for heating a separate part of the building. The two older boilers heated the 1987 part, the newer boiler (which remains in place today) heated the newer extension.
11. In November 2023 it was clearly apparent that there was a problem with the older boilers, as following servicing of the boilers the Petitioners sought quotations “for boiler replacement”. In February 2024, one of the older boilers did indeed fail. At the JCC meeting on 19 February 2024, authorisation was obtained to replace the two old boilers. The JCC was asked to and did commit £14,000 from an available ‘development fund’ of £40,000. The figure of £14,000 was based on estimates for replacement with two new gas boilers.
12. At this time, the JCC was aware that an energy audit by ESOS Energy (subsidised by the diocese of Winchester) was due to be undertaken. As such, its decision was “subject to the energy audit and quotations”. However, when the Petitioners generated a case on the online faculty system in March, the description of works they provided specified that, whilst they were looking at other options than gas boilers, they could “commit up to £14k towards our heating systems upgrade” – in other words, they could commit only the sum calculated by reference to replacement with two gas boilers.
13. By March 2024, the Petitioners had sought three quotations for replacement gas boilers.
14. An options appraisal document generated in April 2024 by a member of the congregation with considerable professional experience as a mechanical engineer dismissed heat pump options as being unsuitable without “extensive and intrusive works”. It presented a “verbal summary” of the outcome of the ESOS energy audit, which (wrongly, as it turned out) suggested that the assessor was supportive of the use of new gas boilers with consideration of heat pumps only “if budgets allow in the long-term future”.

15. I do not question for a moment the professional skills and integrity of the person who produced this one-page options appraisal document. However, it was not supported by detailed analysis or calculations in respect of heat pumps or other options, and does not appear to have been informed by any quotations or input from, for example, heat pump suppliers or installers.
16. It therefore seems to me that replacement with gas boilers was the Petitioners' first thought; that this was the option they pursued most enthusiastically; that the assumed costs of that option set the terms against which other options were considered; and that those other options were dismissed at an early stage before any independent advice had been taken.

Air source heat pumps

17. The ESOS audit was, in fact, very positive about heat pumps, and air source heat pumps ("ASHP") in particular. The following are the pertinent points:
- a. It featured "replace gas fired heating system with heat pumps" as an action to take before 2030;
 - b. It observed that installing new gas boilers "would lock the building into fossil fuel use for another 20 year period" (i.e. well past the target date for carbon neutrality of 2030);
 - c. It noted the risk that gas prices would rise in the long term;
 - d. It concluded that the building was suitable in principle for heating by heat pumps as it was heavily used for 50 hours a week, and was an unlisted building, considering both air to water and ASHP as "viable";
 - e. It recommended the use of multiple ASHP units, each heating a separate zone. As these units resemble air conditioning units, there would be no need to connect them to radiators;
 - f. It contained detailed calculations, based on the assessor's observations on a site visit, as to the relevant insulation factors for the different parts of the building, and the consequent heating requirement;
 - g. It recommended that quotations be obtained for the installation of ASHP;

- h. Separately, the ESOS report recommended that cavity wall insulation be installed in the 1987 part of the building, but with measures “to ensure that the space does not overheat because of the additional insulation”.

18. Despite this independent report, prepared on their behalf, the Petitioners continued to insist at the hearing that ASHP would not be suitable for the 1987 part of the building, because they would not generate sufficient heat. They told me that the ESOS assessor had assumed that part of the building was insulated. It is clear from what he said about insulation that that was not the basis of his assessment. It seems to me that this is an indication that the Petitioners’ minds were effectively closed to other options by the time they received the ESOS report.

19. The Petitioners did not follow up the suggestion of obtaining a quotation for the installation of ASHP until September 2025, effectively in response to my directions. They sought that quotation from the company that had already installed the replacement gas boilers the subject of these proceedings. That company reported second hand the opinion of another company that ASHP would not be suitable for the premises; it is not clear who formed that view, or whether it was informed by a site visit on the part of the second company (evidently, the company which installed the gas boilers can be taken to be familiar with the site). It is clear, however, that it was formed without the benefit of the detailed assessment and calculations of necessary heat output set out in the ESOS report – because the Petitioners did not provide that to either company.

20. There is accordingly little evidence before me as to the cost of installing an ASHP. The ESOS report gave an indicative price at £62,000. This, of course, would have been to replace the whole system, whereas in fact only two out of the three boilers required replacement in 2024. The zones heated by those boilers could have been switched to ASHP, leaving the remaining zone heated by gas – in effect allowing a phased transition to low carbon heating. Notably, this would also have avoided any need to replace or renew the c40 year old radiators in the 1987 part of the building (the Petitioners’ Statement of Needs notes that some of these are “obsolete”), which would have provided a cost saving to net off against the cost of ASHP. The option of partial replacement has unfortunately not been explored at all.

The decision to proceed without a faculty

21. Returning in the chronology to March 2024, there was a period of engagement between the Petitioners and the DAC. The Petitioners saw the need to replace the boilers as urgent and were aggrieved at delays in receiving responses from the DAC and its M&E advisor, and by the fact that the advisor did not carry out a site visit.
22. It is undeniably the case that the DAC's stance evolved over time. The DAC was reported as being "largely supportive" on 3 May 2024, and the specialist adviser on 23 May 2024 was said to have had "no real objections" – beyond asking if the Petitioners had considered a bio-LPG option. This latter email was answered immediately by one of the Petitioners with the response that the necessary facilities for bio-LPG would cost some £30,000 - £40,000. It was not until 24 July 2024 that it was communicated to the Petitioners that the adviser was "not satisfied with the answers provided" as "he does not feel the costs should be as high". On 4 October 2024 it was further communicated that the adviser would like to see a fuller review of all alternatives, including heat pumps.
23. I have recounted this history not in order to pass judgment on the DAC or its members. That is not my function. The DAC is composed of expert advisers who volunteer their time to assist petitioners and the court. It remains the responsibility of petitioners to ensure that their proposals are properly formulated and justified.
24. The chronology does however help to explain the Petitioners' decision to proceed with the works on 22 July 2024. As at that date, they had not received any indication of a substantive objection to their proposals from the DAC. As such, they seem to have believed that the authorisation they were asking for would inevitably be granted in due course, so that they were breaching 'due process' but not any substantive requirement of the law. At the hearing, the Petitioners aptly characterised this approach as "naïve"; and it is not in any sense a precedent for other churches to follow.
25. The Petitioners sought to justify their decision on the basis that it was imperative that the boilers be replaced in time for winter 2024/25. However, the work was poorly specified and executed. The installers sought to reconfigure the system so that all three boilers heated the whole space, rather than each one heating a specific zone. This was

however done ineffectually such that the heating system did not function, and ultimately a second contractor had to be brought in to remedy the situation in February 2025, at a total extra cost of some £5,600.

26. These are just the sort of problems that can be avoided where the DAC's advice is taken. The irony of the situation is as unavoidable as it is unfortunate.

LPG

27. The option of installing an LPG boiler was not considered in the ESOS report, but was raised by the DAC adviser, as I have said.
28. The Petitioners were concerned that an LPG system would not keep the church warm. They referred to another church where an LPG system did not provide effective heating. I was puzzled by this given that LPG boilers heat radiators in just the same way as gas boilers do. On questioning at the hearing, it turned out that the installation of the LPG system at this other church had also involved changes to the radiators. I therefore do not find any substance in the Petitioners concerns; as long as the radiators and boilers are adequate, there is no reason why LPG should not provide adequate heating.
29. At times, the Petitioners have appeared to maintain that no above-ground LPG tank could be installed on their site. I did not understand that to be their position by the time of the hearing. Certainly, they had secured a quotation (again, in September 2025, and in response to my directions) for installing LPG boilers and tanks, which did not mention any insuperable difficulty. Some degree of compromise would be required, whether by sacrificing some parking spaces and/or felling some of the trees surrounding the site (as was done when the extension was built in 2003). The extent of these compromises is not clear, as there was no specific proposal before me.
30. The main objection to LPG pursued by the Petitioners was on the ground of cost. As I have related, they told the DAC adviser that an LPG system would cost £30,000 to £40,000. By the time of the hearing, calculations submitted by the Petitioners (based in part on the quotation obtained in September 2025) suggested to me that £30,000 would be a conservative estimate to install three new boilers and tanks. This compares to an estimate of £12,600 for just two new gas boilers (and that estimate may have been

too low, given that the actual costs turned out to be £5,600 more). The implication is that the third gas boiler will have to be replaced too, driving up the total capital costs of staying with gas. Equally, if the Petitioners had obtained three quotes for LPG (as they did for gas) they may well have been able to drive down the £30,000.

31. Looking at running costs, the Petitioners' calculations purported to show that these were roughly equivalent. However, those calculations:

- a. Assumed that gas prices would stay at the levels seen in 2023 and 2024, which does not seem a safe assumption given the remarks in the ESOS report; and
- b. Assumed a price for LPG mid-way between that for 'full bio' and 'bio mix'. If instead it is assumed that the Petitioners would buy 'bio mix' (thus achieving some carbon savings, but not the maximum amount of carbon saving possible) the same calculations show a saving on running costs of £24,300 over the assumed 17.5 year life of the new gas boilers.

32. In reality, therefore, the Petitioners' figures appear to me to show clear potential in an LPG system to make significant savings in *both* costs *and* carbon emissions over the lifetime of the new system.

Should a faculty be granted?

33. In its notification of advice of 6 February 2025, the DAC did not recommend the grant of a faculty, for the following principal reasons:

The Committee felt that the parish had not adequately explored more sustainable options for heating, with the building being unlisted and more modern it was felt that a more sustainable heating would be more achievable especially in conjunction with other plans the parish have for introducing solar panels as per a separate application. The committee felt that the options presented including figures and data were not accurate.

The committee were disheartened that this was now a retrospective application despite the parish engaging with the DAC prior to the works commencing.

34. For substantially the same reasons the DAC also was not satisfied with the explanation for how the Guidance had been taken into account.

35. Returning to the summary of the Guidance set out above, my conclusions are as follows:

- a. Churches need to be properly heated;
- b. The proposed and likely use of the building must be considered in assessing its needs;

The building is in intensive use and needs to be kept warm throughout the week, particularly in view of the vulnerable nature of many of its users. Gas, ASHP and LPG options would be capable of heating the building adequately.

- c. Any proposed heating system must be affordable;

I have insufficient information to determine whether ASHP would be affordable. As to LPG, the evidence before me indicates clear potential for significant financial savings over the lifetime of the equipment. The Petitioners have capital funds in hand sufficient to meet the greater initial costs.

- 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 resources) of the church;

ASHP would be the best option, particularly if linked with the installation of solar panels. LPG would be the second best option, as (depending on the fuel used) it would not mark a full move away from fossil fuels. A new gas system would deliver some benefits (as the Petitioners were keen to stress) as the new equipment would be more efficient than the old. It remains, however, undesirable as it locks the church into significant fossil fuel use well beyond 2030.

It follows that, on the admittedly incomplete evidence available, the Guidance indicates an LPG boiler is probably the best option. Certainly, it is not possible to dismiss either LPG or ASHP at this stage.

- e. The court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.

I return to this point below.

- 36. It follows from this, and from my findings at paragraph 16 above, that the Petitioners have not given “due regard” to the Guidance, in that they have not in substance followed the approach it requires.
- 37. They have not provided any good reason to depart from the Guidance in this case (and, to be fair, they did not seriously seek to do so). Whilst I accept that the Petitioners face financial challenges, the fundamentals are that they have one minister (and potentially soon a further member of staff) responsible for one unlisted church building, and access to a significant income stream from hires. That places them in a more advantageous financial position than the majority of churches under the jurisdiction of this court, particularly those in rural areas. If the 2030 objective means anything, it is in churches such as this that sustainable heating solutions need to be installed now, not in 2045 or thereafter.
- 38. Had a faculty been sought for the works under consideration on the information before me, I would therefore have followed the recommendation of the DAC, and would not have granted it.
- 39. That leaves me in the difficult position of having to decide what to do now. I have considered, and warned the Petitioners that I was considering, making an order to require the immediate removal of the unlawfully installed gas boilers.
- 40. That would, however, be a drastic course of action. Particularly so, in circumstances where I do not have any sufficiently detailed scheme before me to order a different form of heating is installed. Winter is again approaching and it would evidently impose a further heavy burden on the Petitioners if they had to do more work on an expedited basis to explore different options. That is in no-one’s interests.

41. I have therefore concluded that the gas boilers should be allowed to stay for the short term. Having reached that conclusion, I am minded to grant a faculty for them to remain for three years. That will give the Petitioners sufficient time to consider matters without any undue pressure or hurry, whilst also allowing for the installation of a more sustainable form of heating before the 2030 target date.

42. During that three year period I will also impose a condition, as suggested by the Guidance and referenced by the Petitioners, requiring that any carbon emissions from the operation of the gas boilers be offset.

17th October 2025

**Cain Ormondroyd
Chancellor of the Diocese of Winchester**