

**IN THE CONSISTORY COURT  
OF THE DIOCESE OF CARLISLE**

**RE ST GEORGE MILLOM**

**JUDGMENT  
delivered on 2 May 2016**

*Introduction*

1. By their Petition dated 16 April 2015 Barry Crawford and Ray Cole, the Churchwardens, and Geoffrey Brunskill, the Treasurer of the Parochial Church Council [‘PCC’] [‘the Petitioners’] seek a faculty to replace the central heating system at the Church of St George Millom at an estimated cost of £97,000 inclusive of VAT.
2. St George Millom is a grade 2 listed church was dates from 1879. It was designed by the eminent Victorian architects Paley and Austin and is a landmark building in the centre of Millom whose spire can be seen from miles around. In 2013 the north porch was extended to provide toilet facilities and a refreshment area in the north aisle and in 2015 that refreshment area was extended by the removal of further rows of pews.
3. At its meeting on 2 March 2015 the PCC had unanimously supported the proposed works.
4. That meeting was told by Mr Cole that the central heating pipework around the church was antiquated and it had been recommended some 20 years earlier that it should be changed; that the heating system had failed on numerous occasions in recent years resulting in expensive repairs; and that at an inspection of the boilers in December 2014 one of the two boilers had been condemned so that the heating system was now working at half capacity.
5. Without a fully functioning hearing system the church would not be usable in cold weather and, given that there have been advances in adapting the building for a variety of uses by all sections of the local community, a reliable heating system was necessary.
6. So it was that a PCC sub-committee had arranged for the instruction of David Eley Associates, consulting heating engineers, who, having considered various options such as bio-mass, solar panels and oil, had strongly recommended the installation of a new gas fired

system and the removal of redundant pipework. Of the cost of £97,000, some £30,000 plus VAT related to the boilers and £40,000 plus VAT related to the pipework and radiators.

7. At its meeting on 26 March 2015 the Diocesan Advisory Committee ['DAC'] recommended the proposed works for approval by the court.

8. The Public Notice was displayed between 19 April 2015 and 17 May 2015 and there were letters of objection dated 14 and 18 May 2015 from Jonathan Gray, a member of the PCC, who had not been present at the PCC meeting on 2 March 2015.

9. Mr Gray elected to become a party to the proceedings and on 24 June 2015 filed Particulars of Objection which stated that his grounds of objection were:

1. The Petitioners have not followed the correct procedure.
2. No report seeking approval from the DCC and PCC has been produced or discussed.
3. The proposed solution has not sufficiently taken into account the Archbishop of Canterbury's (approved by Synod) commitment to reduced the Church's carbon footprint.'

10. Such objection prompted the Standing Committee of the PCC, at its meeting on 3 July 2015, to be unwilling to proceed with the application for a faculty and to withdraw the Petitioners' Petition. Such decision was communicated to the Diocesan Registrar.

11. In so communicating that decision to the Diocesan Registrar, Revd Clive Shaw, on behalf of the Petitioners, made it clear that the Petitioners did not accept the validity of Mr Gray's objections. The purpose was simply to avoid the legal costs of contesting Mr Gray's objection and that the intention was to re-present the Petition at the earliest possible opportunity once the PCC had been fully consulted. It was hoped to satisfy Mr Gray with regard to the objections he had raised so that they would not continue to be pursued by him.

12. At its meeting on 27 July 2015 the PCC gave an opportunity to Mr Gray, who was then present, to explain his objections to the proposed works, but then decided, notwithstanding such objections, to proceed with a further application for a faculty by 20 votes in favour, 1 against and 1 abstention.

13. So it was that the Petitioners made a further application dated 13 October 2015 to replace the existing gas heating system with the new gas boilers and to replace the existing pipework with new pipework at an estimated cost of £73,200 exclusive of VAT.

14. I have seen a detailed specification for the works which comprises the installation of two high capacity condensing boilers and new radiators at various locations around the church.

15. The petition was further considered by the DAC on 29 September 2015 and again it recommended the proposed works for approval by the court.

16. I have seen a copy of a report to the DAC by Mr Mumford, the DAC Building Services Advisor, which considered the alternatives to a gas fired heating system but concluded that such was preferable, both in terms of both finance and practical viability, to the alternatives of using electricity and solar panels. The DAC minute records:

'The DAC considered Mr Mumford's report on the scheme which stated that it was technically fine and appropriate for the Church's requirements. He was satisfied that the applicant had provided sufficient information for him to advise the committee. An electrical heating system even with the offset of roof-mounted solar panels would not be economically viable or a practical solution to meeting the heating needs. The position of the radiators was as set out in the plans previously submitted and available to the meeting. Approval was recommended subject to the design being in accordance with those plans.'

17. There was a further Public Notice displayed between 13 October 2015 and 10 November 2015. Such notice expressly stated that copies of the relevant plans and documents may be examined at the church.

18. There was a further objection from Mr Gray.

*The objection by Mr Gray*

19. In his letter dated 9 November 2015 he stated that the outline basis for his objection was:

- that the replacement of gas boilers with gas boilers is in direct contravention of the policy of both the Church of England and the Diocese of Carlisle to reduce their carbon footprints
- that the heating sub-committee has acted unconstitutionally
- that the Public Notice (Form 4A) applying for permission to the Consistory Court for permission to replace the church heating system has not adequately displayed the relevant plans and documents for 28 days
- investigations have been hampered into whether money has been spent on the implementation of the heating system before Certificate of Publication has been submitted to The Diocesan Registrar and formal approval to proceed has been given by the Registrar to the Church for the first Application made on 19.04.15. In an attempt to establish this, a further investigation has also been hampered into whether there has or has not been misappropriation of the Heating Fund and also whether a contract has or has not already been placed for Heating work to commence

- that an expensive heating proposal has been put forward for which St George's has inadequate funds to pay
- money may have been spent by or on behalf of the Petitioners in direct contravention to your instruction to the Petitioners to take no action following their first Form 4A dated 19.4.15
- no attempt has been disclosed by the Petitioners as to the running costs of the proposed heating system over the next 25 years or where the funding will come from to pay for it.'

20. Again Mr Gray elected to become a party to the proceedings and on 9 February 2016 filed Particulars of Objection which stated that his grounds of objection were:

- '1. The Petition is contrary to the policy of the United Nations, the British Government, the Church of England and the Diocese of Carlisle regarding the reduction of carbon emissions.
2. No clear costings have been provided for the system installation now and running costs for years 0-10 and 11-25, nor updated figures for February 2016.
3. The proposed heating system is based on technology first used in 1710 to 1714 and shows little consideration for heating technology changes after 2012.'

21. It may be observed that such Particulars of Objection were somewhat different from those originally filed on 24 June 2015.

22. On 23 February 2016 the Petitioners filed a Reply to the Particulars of Objection. Such Reply stated, inter alia, that:

- [a] Mr Gray remains a member of the PCC and had been present when the issue of a replacement heating system has been discussed and had had the opportunity to express his views at PCC meetings. With the sole exception of Mr Gray, the District Church Council ['DCC'] and the PCC have unanimously supported the proposals for a gas fired system.
- [b] The Petitioners' first application was withdrawn to enable Mr Gray to express his views at a further meeting of the PCC which, having heard Mr Gray's views, decided again, with Mr Gray as the sole dissident, to unanimously support the proposals.
- [c] Following Mr Gray's objection to the Petitioners' second application there was a meeting between him and the incumbent at which he expressed his insistence that only an all-electric heating system would meet current environmental targets as well as being cheaper to install and run, although he gave no specific figures. The DCC heating group has further considered Mr Gray's views but did not feel that an all

electric scheme should be pursued further. It may be noted that such was also the substance of the DAC's conclusions on 29 September 2015.

- [d] The DCC has considered the issues relating to the possible reduction of emissions, cost and carbon footprint. It has visited other churches in the Diocese, sought professional advice with the encouragement of the DAC and Mr Eley, their consulting heating engineer, had produced a comprehensive report which examined the relative merits of various sources of energy but concluded that a gas fired system was preferable. Such report was made available to Mr Gray. Mr Eley's conclusions accorded with those of Mr Dunphy.
- [e] Mr Dunphy had estimated the costs of installing an electric system as up to £60,000 but had cautioned that such a scheme might not receive DAC approval because the works would necessitate the removal of pews and the digging of trenches in a listed building which could add significant costs.
- [f] The cost of the proposed works had been quantified but it was difficult to assess future running costs for any new system given the variability and volatility of energy costs.
- [g] The proposed works would make use of recent developments in gas-fired heating systems. The Petitioners were unaware of any similar sized building heated effectively by electric panels of the type advocated by Mr Gray. It does not seem to be suggested that Mr Gray had identified any such similarly sized building

#### *Directions*

23. On 28 February 2016 I gave directions administratively. Such directions were that:
1. Pursuant to Rule 14 of the Faculty Jurisdiction Rules 2015, being satisfied that the determination of the proceedings on consideration of written representations is expedient, it is ordered that the proceedings be determined on consideration of written representations instead of by a hearing provided that on or before 4 pm 18 March 2016 each of the parties agrees in writing to such a course.
  2. In the event that each of the parties consents to the determination of the proceedings on consideration of written representations each party may on or before 4 pm on 1 April 2016 file with the court and serve on the other party any further representations which each party wishes to make in support or in opposition to the granting of the faculty sought and as soon as possible thereafter the Chancellor will determine the application for a faculty.
24. I reserved the question of costs.

25. By email sent to me on 29 February 2016 Mr Gray asked me to delay the fixing of a hearing of the consistory court for 3 months `in order that we may resolve our differences out of court`.

26. In a separate email to the Diocesan Registrar on the same date Mr Gray raised a number of issues relating to the benefice and contended, inter alia, that a contract for a new heating system had already been placed. I do not know whether such contention was accurate but, having considered all these matters, I instructed the Diocesan Registrar to issue the directions which I had made on the preceding day.

27. In fact in the event all parties have consented to my determining this second Petition on consideration of written representations and I now do so.

*Further Submissions*

28. Although paragraph 2 of my above Directions gave the parties liberty to file any further submissions, the Petitioners did not file any further submissions and instead relied upon what they had already stated in respect of the Petition.

29. On 1 April 2016 Mr Gray filed lengthy further submissions together with a number of documents. In fact his submissions were filed a few minutes after the deadline [at 4.12 pm] but before the deadline he had explained that he had a new computer and was having difficulty scanning in documents. In all the circumstances I am satisfied that it is fair and just that I should consider such submissions, even though they were filed slightly out of time.

30. Although I have carefully considered all his submissions and each of the documents produced, the points made by Mr Gray seem capable of being summarised thus:

[a] In recent times there have been `green shoots of recovery` at the church and more attention has been paid to the management, development and use of church buildings. There is also a need to undertake more ecumenical activities in the church.

[b] The church is heated by a wet system of cast iron pipes and radiators powered by two gas boilers working in tandem which urgently requires replacing. Although one boiler was `on its last legs`, a freely available replacement boiler used to heat the Hall was not utilised.

[c] The Heating sub-committee which began its investigation in October 2013 [four retired men, average age over 65 who all heated their houses with gas boilers and water filled radiators] had not considered new available technologies for heating and took `no account of advances of solid state (dry) heating systems invented very recently, nor does it answer the call and commitment to reduce our carbon footprint by 42%.`

- [d] He doubted `whether there had been sufficient examination of the strategic needs of the church and whether the proposed gas fired fixed pipe and radiator system is suitable in the circumstances that now prevail.`
- [e] The Petitioners had agreed to place a contract for the proposed works.
- [f] Mr Mumford`s report was never presented to St George`s congregation, the DCC or PCC.
- [g] Moreover the DAC had not asked for a presentation of Mr Gray`s objection before deciding to recommend the proposed works to this court and instead allowed itself `to be persuaded by a report that not been verified as to its veracity and which, upon examination, is untruthful, misguided, erroneous, ill-informed and full of guesses`. He then identified nine major ways in which he believed the report to be discredited. I will not repeat them here but they are set out in detail in paragraph 17 of Mr Gray`s further representations and I have had regard to them.
- [g] Mr Gray stated that if I granted the faculty I would set the church back at least 10 years in that:

`The elderly people in charge will install two gas boilers and a series of fixed water pipes leading to fixed radiators around the building. This is the type of system they understand and have in their homes. However, because of the size of the building, heating will not be zoned, it will not be controllable from a Smart Phone anywhere in the world, the fixed radiators will not be easily adapted or moved to accommodate new self contained or re-allocated areas, there will be annual maintenance costs, the emission of noxious fumes will continue and there will be a limited one year guarantee on the installation. No heed will be given to the Government`s and the Diocesan requirements to reduce carbon emissions by 42% in five years. Heating will be switched on before events, as at present, and we will not be able to afford to keep the building warm for the recommended 80% of the time. Gone, at a stroke, will be many of the opportunities for the building`s future use that are being discussed in the St George`s Building Report.`

#### *Determination*

31. Mr Gray plainly believes that to install a gas fired heating system is merely replicating old technology and that it represents missed opportunities for the future heating of the church building. He is entitled to his view and is entitled to express it. However, I regret that he does so in terminology which might cause offence, particularly when describing the Petitioners, the Heating Sub-Committee, the DAC and Mr Mumford.

32. The Petitioners withdrew their first Petition so as avoid the unnecessary cost of a consistory court hearing and, in particular, to allow Mr Gray, as a member of the PCC, to explain to a further meeting of the PCC why he did not believe that the proposed gas fired

heating system should be installed. Mr Gray had that opportunity but failed to persuade even a single member of the PCC to support him in his objection to what was proposed.

33. This application is supported unanimously by the PCC and recommended by the DAC. No other person except Mr Gray has objected to what is proposed.

34. I am satisfied that there has been a thorough and detailed examination by the PCC of the available options for replacing the existing almost now defunct heating system. There have been visits to other churches in the Diocese and Mr Gray does not suggest they should have visited other churches. If he had, I am confident that there would have been other visits to fully comprehend the Mr Gray's objections.

35. Mr Gray criticises the fact that Mr Mumford's report was not put before the congregation or the PCC but fails to acknowledge that it was not written for production to them. It was written to assist consideration of the Petitioners' application by members of the DAC.

36. Both the heating engineers retained by the PCC and Mr Mumford have comprehensively considered the various options for heating the church and have concluded that the installation of a gas fired system is recommended. In turn the PCC, and subsequently the DAC, have considered the available options for heating the church and have reached the same conclusion. Moreover, following the objection made by Mr Gray to the Petitioners' first application:

[a] after Mr Gray had met the incumbent and put forward his proposal for an all-electric heating system as meeting current environmental targets as well as being cheaper to install and run, such proposal was considered by the DCC heating group but they did not believe that it was appropriate to pursue such idea any further.

[b] the DAC had considered all the options for heating the church but had concluded that a gas fired heating system was preferable in terms of both finance and practical viability and its minutes recorded that such conclusion.

37. Mr Gray's letter dated 9 November 2015 raised a number of issues which I reject.

38. I do not accept that the DCC heating group acted unconstitutionally or that the Public Notice did not display the relevant plans and documents, given that such notice expressly stated that copies of the relevant plans and documents might be examined at the church. I note that Mr Gray gives no further particularity of these complaints.

39. It is said that the church does not have the funds to pay for the installation of what is proposed. That may well be true but it is plain that the PCC is hoping to obtain grants to in part fund the cost of the works and that it has concluded, in my view correctly, that it has no alternative but to replace the existing heating system.



40. It is also said that a contract has been entered into for the proposed works. No evidence has been produced by Mr Gray to that effect. Were it true that such had taken place, it would be very unwise for any person to enter into such a contract without the agreement of the PCC and without the proposed works being authorised by faculty.

41. It is also said that no attempt has been made to calculate future running costs. Whilst this is true, I accept what the Petitioners say by way of explanation, namely that running costs would be difficult to predict given the variability and volatility of energy costs.

42. I am satisfied that the Petitioner's application should succeed and that I should grant the faculty sought. In short I am satisfied that all realistic options for the heating of the church have been considered and that the best option is a gas fired heating system. Moreover I am not persuaded by anything that Mr Gray has said that I should not grant the faculty sought and in particular do not conclude that granting the faculty sought will have the consequences set out in paragraph 30[g] above.

43. Mr Gray has had many opportunities within the PCC and the congregation to persuade others that a different heating system should be installed. He has failed to do so. I am sure that some members of the PCC and the congregation may believe that he has unreasonably pursued his objection to a determination of the Petition on consideration of written representations and in so doing has caused very significant delay in replacing a now almost defunct system. On that issue I would share their view.

44. It thus follows that I grant the Petitioners the faculty sought.

45. Notwithstanding what I say above, I am not *currently* minded to make any adverse order for costs against Mr Gray because I believe that it is a time for the parish to move on and look forward rather than reflecting on past difficulties about these applications. Thus in accordance with the usual practice of the court the Petitioners will be responsible for meeting the costs of the court.

46. However, I give liberty to the Petitioners to make an application for costs against Mr Gray within 3 months from the date of this judgment but If he decides to accept my decision, thus allowing the works to proceed, I would very much hope that the Petitioners will not make any such application.

**GEOFFREY TATTERSALL QC**

Chancellor of the Diocese of Carlisle