

Neutral Citation Number: [2024] ECC New 3

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

His Honour Simon Wood

In the matter of an Application to replace the existing convection gas heaters with nine new convection gas heaters within Holy Cross, Newcastle upon Tyne and in the matter of a Petition by Craig Waggott, PCC Administrator/Parish Administrator dated 25 June 2024

JUDGMENT

Introduction

1. Holy Cross, situated in the west Newcastle suburb of Fenham, was constructed of reused C19th bricks from Heaton Hall in 1935-1936 and, on the northwest corner, its slender tower, surmounted by a gilded cross, is a conspicuous landmark in the west of the city.
2. Pursuant to a need to replace the heating system, in February 2024 the parish obtained a quotation in the sum of £33,795.60 from Vulcana Gas Appliances Limited to remove the existing convection gas heaters and replace them with a contemporary equivalent.
3. Having been in discussion with the DAC about, and in anticipation of, this project since at least November 2023, at its meeting on 6 June 2024, the DAC indicated the need for further evidence as to the steps taken to consider and evaluate alternative options as it concluded it could not recommend the proposal for approval. However, it then became clear that the parish had already committed the sum of £17,000 to the contractors by way of deposit, thus causing the Archdeacon of Northumberland to approach the registry with a view to urging the court to take a sympathetic view of the church's position given the financial embarrassment that would inevitably follow if permission to replace as proposed was refused. The court indicated that a faculty be applied for without delay.

Facts

4. The Statement of Needs sets out the necessity to replace expired and obsolete gas heaters which no longer comply with current safety regulations. The plan is to

remove and replace nine existing heaters and remove, relocate and replace the existing gas carcass which was inefficient and beyond refurbishment or upgrading. This would also necessitate new and, in places, upgraded pipework and the introduction of a new isolation valve. The outcome would be a more cost effective, modern, energy efficient system of heating. The Statement of Needs, dated 21 May, is conspicuously silent on the Church of England's commitment to net zero and the need to have "due regard" to this: see CBC Guidance issued pursuant to s. 55 of the Dioceses, Pastoral and Mission Measure 2007, (hereafter "Net Zero") and rule 4.4(2)(b) of the FJR 2015 (in force since 1 July 2022). If any regard was paid to the 2021 Church of England guidance to be found at https://www.churchofengland.org/sites/default/files/2023-05/heating_options-appraisal.pdf there is nothing to evidence it.

5. In not recommending approval, the DAC pointed to concerns regarding the justification of the decision to replace the heaters with another fossil fuel system, the lack of consideration of the impact of installing a system with a shelf life of 30 to 40 years (noting that an electric system had a potentially longer lifespan and required much less maintenance) and the availability of contractors who could offer a variety of sustainable alternatives. It recommended taking the opinion of an independent consultant.
6. So far as can be told, that latter recommendation was not followed. The court has been provided with the quotation of the contractors mentioned who, as their name suggests, manufacture gas fired powered flue heaters (the only UK manufacturer). They claim a particular expertise in the heating of churches since 1966 with a reputation as an industry recognised church heating specialist. They note the importance of lowering carbon footprints and offer to help achieve this goal with their energy efficient heaters. Whilst this subject is touched upon on their website, no mention is made of the Net Zero commitment. There is nothing on their website to suggest that alternative green systems are offered.

Justification

7. On being consulted regarding the difficulty that had arisen, I directed that the parish address the justification for this apparent failure to consider Net Zero. Further justification documents emerged in July. They state that other options, including the use of electricity "were floated" but discounted due to "the unsuitability of the product, and the constraints on the footprint and architecture of the church", with specific reference to the internal vertical supports in the

church being too narrow to support radiators adequate to heat the church. The following had been considered and rejected:

- (I) Pew heaters: there are no pews;
- (II) Heat pumps: the quantity and size would contravene a covenant prohibiting placement on green belt, with an additional risk of vandalism. The cost would be “prohibitive” and far exceeded the available budget (the church could not afford to wait to complete the necessary fundraising) and the current cost of electricity would outstrip the running cost saving created;
- (III) Biomass: cost, the volume of wood chip, low calorific output and maintenance all contraindicated this option;
- (IV) Electricity: the entire church electricity supply would require upgrading to cope with the additional load of electric heating and the cost was prohibitive;
- (V) Solar power: “industry advice” suggested it would be unsuitable for the scale of heat required;
- (VI) LPG: too expensive, not renewable and lack of space for storage tanks;
- (VII) Under floor heating: not practicable given solid concrete floor throughout;
- (VIII) Wet radiator central heating (“CH”): would need a gas boiler, very invasive and expensive;
- (IX) Heating pipes: not practical;
- (X) Gas: the preferred choice in terms of its heating properties, efficiency and cost compared with electricity. “Super economical” heaters would reduce the church’s need for gas with a resultant fall in carbon emission for the six months of operational use annually. The heating can be zoned and the impact of the installation minimal;
- (XI) Oil: a last resort if there was no gas supply.

8. The minutes of the PCC meeting held on 24 March reveal that another church specialist contractor had been approached for a quotation and that the options of electric radiators and a wet CH system would cost in the range of £59,000 to £86,000 which were beyond budget and compared unfavourably with Vulcana, hence the decision to accept its quotation and arrangements to put the funds in place to pay the deposit.

Law

9. In *Re All Saints, Scotby* [2023] ECC Car 3, Lander, Dep Ch, applied to the Net Zero issue the Church of England Legal Office interpretation of the meaning of “due regard” in the context of the statutory requirement to have due regard to safeguarding guidance:

Where legislation – whether an Act of Parliament or a Church Measure – imposes a duty on a person to ‘have due regard’ to guidance of this sort, the law understands that duty in a particular way. The legal duty to have due regard means that the person to whom the guidance is directed is not free to follow the guidance or not as he or she chooses. As a matter of law, the guidance should be given great weight and must be followed unless there are ‘cogent reasons’ for not doing so...

Discussion

10. In declining to recommend the proposal for approval, the DAC plainly had this principle in mind when recommending using the services of an independent consultant. The evidence suggests that, in so far as advice was taken, it was from contractors who had an interest in securing a contract from the parish and, aside the quoted cost of electric radiators and a wet CH system recorded in the PCC minutes, there is no independent evidence in support of the other rejected options. Having regard to a Statement of Needs which is silent in the issue of Net Zero, the court shares the DAC concerns, struggles to conclude that the guidance has been given the required weight and finds there has been a too ready willingness to find “cogent reasons” for not doing so. The outcome has been to make a financial commitment that the parish simply cannot now afford to lose.
11. In *Re All Saints, Scotby* the court helpfully extracted five “common-sense” principles from the guidance and they are of assistance here:
 - (i) Churches need to be properly heated;
 - (ii) The proposed and likely uses of the building must be considered in assessing its needs;
 - (iii) Any proposed heating system must be affordable;
 - (iv) A proper appraisal of the heating options will generally involve placing all possible systems in order of merit in terms of meeting Net Zero, identifying the highest-place system which meets the needs of the church;
 - (v) The court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.
12. The court is faced with a wholly avoidable problem. Quite apart from the fact that there was an apparent failure to follow what is now longstanding Church of England guidance, a failure to take the steps preparatory to obtain the appropriate faculty before committing the church financially, had those responsible for this project not jumped the gun but followed the guidance and accepted the advice of

the DAC the outcome might have been no different but they would have been beyond reproach and the DAC would likely have accepted the conclusion of properly researched independent advice. Whilst it is disappointing that a contractor claiming significant experience in heating churches appeared to fail to address the Net Zero question, the responsibility rested on those in the parish responsible for this project to ensure all proper steps were taken to ensure compliance.

13. All that said, Holy Cross needs to be properly heated. Apart from regular worship, the church is a busy building used by a variety of organisations of all age groups – including the very young and the elderly – for whom proper heating is essential. Although the court is critical of the lack of independent analysis, the heating system chosen appears to be the only realistic one that is affordable even though the court is handicapped by the lack of analysis of the longitudinal consequences in terms of cost and carbon footprint of the alternatives. In considering the question of affordability the court cannot ignore the very substantial financial commitment already made for which there would be no obvious contractual or other remedy to recover it.
14. Accordingly, whilst the court deprecates the actions not taken (especially the failure to follow guidance and to follow the DAC advice to obtain independent analysis) and taken (committing without having obtained permission to do so) and endorses the approach of the DAC, it has reached the conclusion that in the circumstances that have arisen here, it will on this occasion grant the faculty sought. The court needs cogent reasons for not accepting the advice of the DAC. It can fairly be argued that the reasoning here does not reach that high standard but, in the final analysis, the need for heating alongside the financial penalty that refusal would entail requires a pragmatic approach. This affordable proposal will meet the needs of the church going ahead. Refusal, in financial terms at least, would almost certainly delay those needs being met because the loss thereby occasioned, together with the time that it would take to accumulate the extra funds required for a likely more expensive alternative, would be substantial and hinder the ability of the church to fulfil its mission.
15. The court requires, as conditions of granting this faculty, the church must first enter into a green gas tariff or a separate arrangement with a carbon offsetting scheme to offset as best it can the emissions from the non-renewable gas that will be used over the lifetime of the new system and, secondly, draw up, with professional advice a plan to identify steps open to it to make a meaningful contribution to Net Zero, setting out those it will adopt and how it will maximise

the available savings, such plan to be sent to the Registry no later than 28 February 2025.

16. This has been an embarrassing episode in the governance of Holy Cross which it is hoped will not be repeated. This judgment must not be taken as a licence to be indulgent and should serve as a warning to any Newcastle Diocesan parish that is inclined to act in a like manner that the outcome will likely be less benign. The petitioner will pay the costs of the preparation of this judgment limited to 60 minutes.

Simon Wood, Ch
2 September 2024