

Neutral Citation Number: [2024] ECC Chd 1

**IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD**

**IN THE MATTER OF STEBBING, ST. MARY THE VIRGIN (NO. 2): PETITION NO. 2023-091408**

**JUDGMENT**

1. By a judgment handed down on 21 September 2023 (reference [2023] ECC Chd 2; the “2023 Judgment”), I granted a Faculty (“the 2023 Faculty”) in respect of a re-ordering of the Grade I listed church of St. Mary the Virgin, Stebbing (“St. Mary’s”). Reference should be made to the 2023 Judgment, which sets out, amongst other things, details of St. Mary’s and the thinking behind the re-ordering. (I have, since the handing down of the 2023 Judgment, authorised a number of small amendments to the scheme permitted by the 2023 Faculty; none of those amendments is material to this Petition.)
2. Happily, this judgment can be much shorter. It concerns a Petition for Faculty lodged at the Registry on 30 November 2023. The Petitioners are the Rev. Sue Hurley, Priest-in-Charge of St. Mary’s; Mrs. Catherine Elliott, the churchwarden; and Mrs. Rhoda Herbert, a member of the PCC.
3. The present Petition forms part of the re-ordering scheme authorised by the 2023 Faculty, but relates, this time, to a single element: the installation of a buried LPG tank in the churchyard, with pipes leading to the church building. This is intended to power an LPG boiler, which will in turn power the new underfloor heating system which formed part of the works authorised by the 2023 Faculty.
4. I am handing down a public judgment in relation to this Petition principally because the works proposed are innovative and may be of interest to other parishes.

**The proposed works**

5. The parish has known for some time that it will require an alternative heat source for St. Mary’s. As I noted in the 2023 Judgment, the church’s old oil-fired system failed some time ago, and the infra-red heaters that have been installed pursuant to an interim Faculty have only ever been seen as a temporary solution. Underfloor heating was seen as the way forward (and authorised by the 2023 Faculty).
6. The parish is conscious of the need to reduce its carbon footprint and to seek to meet the wider Church’s target of net zero carbon emissions by 2030. To that end, the parish sought advice from consultants, Chris Reading Associates Limited, as to the possible sources of

heat, in particular using alternative sources of energy, that could be used to power the new system.

7. The recommendations, in summary, were as follows:
  - (i) A ground source heat pump was unlikely to be suitable for archaeological reasons.
  - (ii) An air source heat pump would be expensive, noisy, might not provide sufficient heat, and would be electrically powered – whilst electricity is a “greener” source of power than oil or gas, it still has a significant carbon footprint, as well as being costly.
  - (iii) A bio-mass boiler would be unlikely to be satisfactory: recent experiments with this source of fuel in other churches have been disappointing, principally because most churches do not have the expertise to be able to handle the system properly.
  - (iv) The parish should consider installing an LPG system, with the intention of sourcing “bio-LPG” (now known as Futuria Liquid Gas), and should review the position in 5 years’ time, when further alternative sources of fuel may have become available. The experience of the consultants is that a bio-LPG system results in significant savings in emissions at relatively low cost.
8. It is on the basis of that advice, which is endorsed by the architect appointed for the re-ordering, Mr Michael Garber, that the Petitioners seek permission for the installation of an LPG tank and associated equipment. The tank will be installed, and the LPG supplied, by Calor Gas Limited (“Calor”).
9. The intention is to conclude a contract with Calor for the supply of LPG for five years. Depending on how successful the system is found to be, the parish can either renew that contract, or not.
10. The original plan was for a tank that was only partially buried. That required permission from the local planning authority, which was granted, though subject to conditions. But reservations were expressed by the statutory consultees, principally because of the impact that the installation in the churchyard would have on St Mary’s itself, and on a neighbouring dwelling, Rose Cottage, which is also a listed building.
11. The proposals have, however, been revised, and a Faculty for a fully buried tank is now sought. Advice has been taken from The Morton Partnership, a firm of structural engineers. They propose that the new tank be placed (in the hole dug to house it) on a concrete slab, which should in turn be positioned on a layer of compacted hardcore. They

are confident that there will be no structural impact on either St Mary's or on Rose Cottage.

12. On 21 December 2023, the local planning authority granted a variation of the planning permission, so as to allow for a fully buried tank. Once again, that grant is subject to conditions. These include:
  - (i) That the works will be carried out within three years.
  - (ii) That there will be a programme of archaeological works including monitoring, which accords with a written scheme of investigation that has been submitted to and approved by the planning authority.
  - (iii) That various steps will be taken to protect the biodiversity of the area, including landscaping after the tank has been put in place.

#### The position of the consultees

13. As has been noted above, Historic England expressed concern over the proposal for a partly buried tank. However, they have indicated that they have no objection to the revised scheme, provided that the recommendations of the Morton Partnership report are followed.
14. The Church Buildings Council, Historic Buildings and Places and the Society for the Protection of Ancient Buildings have also been consulted. They have all indicated that they are content to defer to the advice of the DAC.

#### The position of the DAC

15. By a Notification of Advice issued on 28 November 2023, the DAC has recommended the proposed works for approval by the Court, but on two conditions. First, they suggest that Calor be required to remove all equipment from the site once the supply contract comes to an end (this assumes, of course, that it is not renewed). Secondly, they invite the parish to consider the reservations expressed by the DAC's heating advisor, Mr Oliver Clarke, in relation to a fully buried tank.
16. Those reservations had been expressed by Mr Clarke in an email to the DAC dated 11 November 2022. He said:

*"The underground tank would potentially tie in future PCC members to a particular biofuel when there is a likelihood of lower electricity prices making alternative technologies (already under development) more competitive.*

*An overground tank would be easier to remove at the end of a contract term. The fact that it would be smaller only means a more frequent top up and with the fairly low fuel demand for background heating this would not be onerous.*

*The procurement of 100% biofuel in the future is complex and the source cannot be guaranteed. It would be unlikely to come from the UK or near neighbours."*

17. On 5 December 2023, Mr Garber responded to two of these concerns. He pointed out that burying the tank would eliminate its visual impact, that at least one of St. Mary's neighbours was in favour of it, and that Calor regarded the proposed location as the only sensible one. So far as the return of the tank was concerned, Mr Garber pointed out that the cost of excavation, at £1,300 plus VAT, would be relatively modest.
18. Mr Garber did not respond on the point relating to security of fuel supply and, on 10 January 2024, at my request, the Registry wrote to the Petitioners seeking their response to this reservation.

#### The objection

19. During the period when Public Notices in relation to this Petition were displayed, one objection to the Petition was received by the Registry. It is from Mr Patrick Going, a resident of Stebbing whose property is adjacent to St Mary's churchyard.
20. Mr Going is clearly an "interested person" for the purposes of rule 10 of the Faculty Jurisdiction Rules 2015. He has not, however, opted to become a Party Opponent to these proceedings. Nevertheless, I have (as I must) taken his letter of objection into account in reaching my decision in this matter.
21. Mr Going objects to the proposal on three grounds:
  - (i) He considers that the installation of an LPG tank in the position proposed is too close to other buildings and would be unsafe.
  - (ii) He is concerned that the use of LPG to heat the church does not conform with the Church's net zero guidance and the aim to be carbon-neutral by 2030.
  - (iii) He expresses concern over the need to comply with the conditions that were imposed by the planning authority on the original scheme – in particular the need to have an archaeological monitoring programme in place, and the question of whether "*anybody from the church in authority [will] be present at all times to make sure that due respect is paid to the burials that undoubtedly will be disinterred, and need reburial*".

### The Petitioners' response to the DAC's suggested conditions and to Mr Going's objection

22. By a letter to the Registry dated 23 January 2024, Mr Garber wrote on behalf of the Petitioners, responding both to Mr Clarke's outstanding reservation and to Mr Going's objections.
23. In summary, Mr Garber said:
  - (i) The cost of excavating the tank and associated landscaping is now £5,000, but that compares favourably with the cost of alternative options (in particular any upgrading of the church's electricity supply).
  - (ii) Whilst the continued supply of bio-LPG cannot be guaranteed, given the targets which the LPG industry (in particular Liquid Gas UK) has set itself, there is a reasonable probability that supply can be maintained and that domestic supply will become available.
  - (iii) There is no reason to suppose that the siting of the tank is unsafe. The local planning authority raised no concerns. Building control inspectors are also content. The tank is to be sited at a greater than the minimum distance from adjacent buildings. It will be installed in accordance with industry best practice.
  - (iv) The choice of LPG, and in particular bio-LPG, will provide an immediate carbon reduction. If bio-LPG can be supplied, the carbon footprint will, according to the Chris Reading Associates paper, be less than that of electricity.
  - (v) Mr Going's concerns about archaeology are addressed by the archaeological brief produced by the Diocesan Archaeologist which was used to tender the services of the Colchester Archaeological Trust who will be producing a Written Scheme of Investigation. The proposed site of the LPG tank was also chosen because it lies on previously disturbed ground.

### Discussion and determination

24. St Mary's new heating system has to be powered. I am satisfied that the Petitioners and the parish have given careful thought to the different options available to them. They have alighted on LPG, and in particular bio-LPG, as the best solution. It is apparent from the material before me that they have considered with some care the Church of England's guidance towards achieving net zero. Whilst their proposals do not achieve an immediate net zero position for the heating system, that is not realistically attainable: no system would do that. But LPG will have a lower carbon footprint than oil; and bio-LPG will

have a lower footprint still. The nature of proposals is also such that if, in five years' time, a "greener" alternative is available, the LPG tank can be removed.

25. So far as security of supply is concerned, I accept that a continued supply of bio-LPG cannot be guaranteed. But there is a reasonable prospect that it will – and security of supply is, alas, a potential issue in relation to many sources of fuel (not just bio-LPG). I consider it likely that increased demand is likely to result in increased supply. And if it does not, conventional LPG will be available – and any lack of bio-LPG will be a reason for reviewing matters in five years' time. In view of the cost of alternatives (e.g. an air source heat pump), and even taking into account the cost of excavating and removing the tank after five years, if this proves necessary, I agree with Mr Garber and the Petitioners that concerns over security of supply are not a reason for refusing to authorise the works.
26. I am not persuaded that there are any serious safety concerns, so long as best practice is followed in the installation of the tank and so long as the system is operated in accordance with the contractor's instructions.
27. I agree that it is better for the tank to be fully buried. If above ground, the tank would be unsightly. Although burying the tank means that removal is harder, I agree with the Petitioners that this difficulty is offset by the significant gains from an aesthetic perspective.
28. As for the archaeological considerations, these have already been taken into account by the local planning authority in their grant of permission. The conditions imposed by the local planning authority must in any event be complied with. There will be a written scheme of investigation; I will also make this a condition of Faculty and will impose the standard conditions used in this Diocese relating to the discovery of human remains. I note that Mr Garber says that the ground at the site of the proposed tank has not been disturbed previously. It may therefore be that the risk of disturbing previous burials is less than one might think. There is no evidence of recent burials.
29. Having taken the various concerns into account, I am of the firm view that this is an innovative proposal for which a Faculty should be granted. The concerns that have been expressed can be met by the imposition of appropriate conditions.
30. For these reasons, I allow the Faculty that is sought. I do so subject to the following conditions:
  - (i) The parish and the contractors are to comply with the conditions imposed by the local planning authority in the amended grant of planning permission dated 21 December 2023;

- (ii) The parish and the contractors are to comply with the recommendations set out in The Morton Partnership's letter dated 21 September 2023;
- (iii) The parish and the contractors are to comply with the written scheme of investigation prepared by the Colchester Archaeological Trust, which scheme is to be approved by the DAC Archaeological Adviser before the commencement of works;
- (iv) In the event that any human remains are disturbed during the works, they shall be immediately covered from public view and must be treated decently and with reverence at all times;
- (v) The discovery of any human remains shall be notified immediately to the Incumbent;
- (vi) Any human remains shall be labelled and preserved as an entity in locked premises until they are reburied in the churchyard at the direction of the Incumbent, in a place as close as is practicable to the location in which they were uncovered;
- (vii) Following the installation of the tank, the ground above it is to be re-turfed/ landscaped or otherwise made good;
- (viii) The parish should use their best endeavours to source bio-LPG for the purposes of the new heating system, to the extent that it is possible to do so;
- (ix) The parish are to comply with any safety recommendations made by the contractor with regard to the storage and use of LPG, and with any servicing arrangements;
- (x) In the event that the contract for the supply of LPG is terminated, or at the end of the contract term and assuming that there is no renewal, the tank and all associated equipment is to be removed from the site and the area landscaped and made good.

Philippa Hopkins, K.C.  
Chancellor

6 March 2024