

Neutral Citation Number: [2023] ECC Lon 2

IN THE CONSISTORY COURT

Diocese of London

IN THE MATTER OF ST JOHN-THE-BAPTIST, HOLLAND ROAD

-and-

IN THE MATTER OF FACULTY NO 4340

Improvements to the security of the west elevation including a new CCTV installation and the alteration and addition of external LED lighting, with switching and sensors all mounted internally, including new in-ground LED luminaires to highlight the north and south entrances and the road-facing crucifix; decorative bulkheads to replace the lighting in the outer doorways; the upgrading of existing lanterns using LED with their positions adjusted to avoid restricting the operation of the main doors; architectural LED spotlights to 'wash' the main façade and gables; internal backlighting of the Rose Window to illuminate the stained glass during darker hours and the control of the lighting by light sensors and timeclock to ensure that it switches on at dusk and turns off at a given time (depending on local authority guidelines), with the integration of the lighting of the Rose Window into the internal lighting controls to ensure that the lighting is only operational when the main church is not in use.

-and-

**IN THE MATTER OF A PETITION FROM THE REVEREND JAMES BARRIE HEARD,
LINDSAY ANNE FULCHER and KATHERINE MARY CULLINAN**

Judgment of the Chancellor

Etherington Ch:

April 26, 2023

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1. This Petition for works set out in the introduction is submitted by the incumbent and churchwardens. It is recommended to me by the Diocesan Advisory Committee (DAC). Appropriate insurance cover is in place. The Royal Borough of Kensington and Chelsea (RBKC) has confirmed that planning permission is not required.
 2. The church is Grade I listed and dates from 1872. It is in a conservation area.
 3. In its Statement of Need the Petitioners say that the position of St John's on a major highway leaves it particularly vulnerable. There have been regular cases of fly tipping outside the church, graffiti damage; and low-level occasional drug dealing. The church is regularly asked (at least once a month) for CCTV footage by the Metropolitan Police for accidents and incidents occurring outside the church. There are no other local authority cameras along this part of Holland Road. The door to the flower room along the north side of the church is an area of particular vulnerability,

being screened from the street and not overlooked by neighbours. It is also the closest door to the vestry with its valuable plate and vestments. The door is due to be replaced shortly, but it is said that CCTV will significantly increase the security of this area of the church. I am told RBKC are supportive of cameras being installed and have provided funding under their NCIL programme to cover the whole cost of works. The authority is giving advice on GDPR, as some of the images will fall within protected categories. The church also wishes to illuminate various aspects of the church, as described, for aesthetic reasons including backlighting the Rose Window, using controls to restrict the time the church will be lit. The aim is to improve and focus the lighting effects, although there are security considerations as well.

4. In my judgment the enhanced *Duffield* test is not engaged.
5. Ms Heathcote-Drury became an Objector on January 23, 2023. She has been the freeholder of the property next door to the church for the last 20 years. She explained she had not been able to view the plans as of that date through no fault of hers and sought the assistance of the Registry. The Registry forwarded a set of the supporting documents (the DAC Schedule) to her by email on January 24, 2023. She writes in the plural of "our concerns" and I take her to be speaking of other leaseholders/tenants/sub-tenants in that building. Hers is the only Objection that has been received and I cannot take into account her views as to what others think. On the other hand, she is the freeholder and is entitled in that capacity to speak of her concerns about all parts of her property.
6. Part of her objection relates to the behaviour of the licensee of the crypt and other existing arrangements including the present lighting. These complaints fall outside of this application save and in so far as they can be read as a) suggesting the Petitioners cannot be trusted with this project by reason of prior conduct and b) their adding in an unacceptable way to the volume and intensity of artificial light from the church.
7. Ms Heathcote-Drury claims there is no interest in her issues on the part of the church and its clergy. Her principal complaints are about their intention to provide further CCTV in the area (which she says is already adequately covered) and what she suggests will be additional light pollution. She notes that the church was built next to residential buildings including her address, although she is, in fact, the sole Objector.
8. She submits photographs showing what she describes as "antisocial light disturbance". She says this affects those trying to live and sleep in her house and details those flats which she says are most adversely affected, particularly in the very early hours of the morning.
9. She points out that there has also been an upgrading of council lighting on the street to daylight-balanced LEDs which she regards as more intrusive than the original street lighting. She says this lighting creates direct light pollution into the windows of private buildings as well as adequately lighting the church.
10. Ms Heathcote-Drury also complains about lighting of the area in and around the crypt which she says encourages drug-dealing by lighting a path into a "mysterious" passageway and cloister, which she says is never attended and which is also left open for 15 hours or more without supervision. Her second photographic image shows the position through the cloister. She says that its location illuminating the walkway is on almost an exact horizontal plane with the bedroom windows at the rear. She complains that this light is on throughout the night and she describes it as very bright, unfocused and unshielded. In her opinion, either it has no timelock or

sensors or that these are being overridden by the licensee. In her view, this draws opportunists, burglars, vagrants and alcoholics to it and causes anti-social drug dealing within its precincts.

11. In her opinion, it is a misconception that very dark areas attract crime and are dangerous – she says that illuminated areas attract attention, especially when people find the area empty for hours at a time.
12. Ms Heathcote-Drury says that the Garden Flat is particularly affected with this high strong fixed light without flare, curtailment or consideration, on the rear cloister, and spilling over the wall and across its garden but says that “we” welcome the slight glow from beautiful stained-glass windows when the church is illuminated inside, i.e. backlit. Her objection is to what she describes as strong white external security-style lights as a cheap illumination option chosen by the tenant who is using the crypt to obtain income from a commercial concern for some 15 hours per day.
13. This causes her to find troubling the comment in the petition that “architectural LED spotlights shall wash the main facade and gables”. She asks if there is a lighting designer or “just a builder hoping nobody will object retrospectively”.
14. Her view is that an inattention to security invites trespass and curiosity, including drug dealing, with consequent police involvement inside the church grounds, affecting the security and safety of the residents of her home. In particular, she comments about gates that are left open.
15. Ms Heathcote-Drury’s next area of complaint is that there is a recently erected audio-visual high camera outside the church intended to record and prosecute cars racing on the roads with “pimped engines” that create unnecessary noise disturbance in relay through the night at weekends and on some week-nights. She does not object to the church having its own CCTV inside its own structure or contained grounds, but objects to the erection of more cameras on the street or involving the community in the open air or which is outside the church which she regards as unnecessary and says it would represent an abuse of the privacy of those living in the area, especially either side of the church, which was “intended when built, to fit into the community and serve it, not increase surveillance”.
16. There are other complaints she makes as to what she sees as existing problems which are too remote from this petition to justify recitation by me.
17. Ms Heathcote-Drury was asked in writing in early March if she wished to become a Party Opponent (a formal party to the proceedings) or instead to remain as an Objector and have her views taken into account. The time allowed for her reply expired on March 27, 2023. She replied promptly, in fact, to say that she was currently receiving hospital treatment at Moorfields Hospital and due to return to the hospital on March 10. She did not answer the question as to which of the two options she wished to take. On March 6, 2023 I directed the Registry in these terms: “I am a little unclear how the eye condition may affect her ability to see and write. I suggest you write to her to say that we would accept her decision on whether or not to become a Party Opponent from someone acting on her behalf such as a friend or a neighbour.” She has not contacted the Registry since then.
18. I declined to extend the time for her to respond to the correspondence setting out her options (March 27) as I concluded that most of her written objections related to alleged past conduct of the Petitioners and their licensee which, in so far as it was relevant to this Petition, I could take into account. Her observations were made

plainly and could be responded to by the Petitioners. I would very likely have concluded, even had Ms Heathcote-Drury opted to become a Party Opponent, that the petition could be decided upon the papers.

19. The Petitioners responded to her Objection as follows:

a. In respect of the issues with the licensee:

- i. The light in the passageway/pathway has been left on occasionally by the licensee, who has been warned about this. It is doubted that any light pollution to the Objector's flat can be very great because it is shielded by a high wall. The installation of the light itself pre-dates the present licensee. The Petitioners are prepared nevertheless to request that the licensee installs a timer that will make the likelihood of the light being left on all night a remote possibility.
- ii. The door to the north side of the church is kept locked except when the physiotherapy business has a client. They are not aware of any drug taking on this side of the church and aver that it has almost exclusively been in the unlocked (and ununlockable) passageway between the church and 176 Holland Road.

b. Turning to the complaints about anti-social behaviour, CCTV and lighting:

- i. It is pointed out that Ms Heathcote-Drury appears to say both that the lights attract drug dealing but also help to prevent it. The Petitioners say that in consultation with RBCK and the Metropolitan Police, the considered view is that the proposed CCTV will discourage drug use and anti-social behaviour. It is accepted that this has recently been a problem, but the Petitioners argue that they are acting to deal with it in a timely manner.
- ii. The CCTV proposals have the support and funding of the council and the police. The newly installed camera referred to by the Objector is one installed by Transport for London (TfL). It is very new and is an acoustic camera, only triggered by loud noises from traffic and directed towards the road for obvious reasons. It is said that the TfL camera is not a CCTV camera in the usual sense of the term.
- iii. The CCTV in the proposals before the court would not be focussed on the road or pavement, but instead on the forecourt of the church. It would also carry protected status, as it would show people engaged in or about to join public worship which is a defined characteristic. It is not intended to record visitors at neighbouring houses.
- iv. The lighting is designed to be on a timer. The Petitioners had proposed that it be illuminated up until a time no later than 1am but they are prepared to consider this again with reasonable negotiation and are not intending that it should be on all night. They intend also to consult local councillors about this issue. A light pollution assessment has been undertaken, and the lights were specifically chosen with the dangers of light pollution in mind. The Petitioners say that a test has been carried out by the contractors to optimise the position of the lights, and they

have supplied two images following the test which they say show that very little (if any) light will spill outside the intended area of illumination.

- v. The Petitioners remind me that the initial documentation addresses the issue of light pollution, demonstrating that their concern to avoid it was in their minds from the very beginning. Furthermore, the lights will be on a timer.

c. Accessibility of the proposals:

- i. The Petitioners say that they are not aware of any request by Ms Heathcote-Drury to see the proposals, that the church is open, outside of divine service, for a minimum of two hours from 1500-1700 each Monday and Thursday and say that many local residents call in and all have been supportive of the proposals.
- ii. It is also pointed out that the telephone number for the office, and the email address are displayed next to where public notice was given.

Decision

20. First, I am satisfied that public notice was given appropriately and that Ms Heathcote-Drury has had sufficient opportunity to ask to see the detailed proposals. Most of her objections relate to her prior history with the church. I am, of course, very sorry indeed to hear that she has been unwell, but she has been able clearly to express her fears and I am able to take these into account without any injustice to her.
21. Light (and noise) pollution is well known to anyone living here, as are air pollution and anti-social behaviour by road users, including speeding and other anti-social activity such as fly-tipping. London also has a very high degree of surveillance by CCTV – there is legitimate debate about the scope of this – which attracts majority approval for the purposes of protecting citizens against crime and anti-social behaviour. Although Ms Heathcote-Drury speaks of shared concerns with others in her house, she is, in fact, the sole Objector. That does not, of course, invalidate her points which depend on their own merits.
22. Having considered carefully the points made both by Ms Heathcote-Drury and the Petitioners I do not consider that her complaints about the past (which I am not adjudicating) bear much on the proposals before me now. The Petitioners say that they do not recognise what she describes as the behaviour of the licensee, nor do they accept its geographical accuracy in all respects. They do accept there have been occasions when particular lights have been left on by the licensee and that they have addressed this and will continue to monitor them. There were other issues historically with the licensee (particularly over planning permission) which were resolved.
23. Arguments over whether light or dark (or both) attract vagrants, drug users, drug sellers and so on seem to me to be incapable of sensible resolution, although, generally, light at least illuminates illegal activity. I cannot see that it is relevant to the proposals before me here.
24. I understand that some people find CCTV intrusive, but they cannot have it both ways. If they wish to minimise anti-social and criminal behaviour it can be a useful deterrent

and evidential tool. It does not surprise me that the local authority not only supports the CCTV proposal but also will meet the cost. The new acoustic cameras relating to the road do not have any relevance to the Petitioners' proposals. The location of the camera is intended to protect the church and I do not accept that they pose any unreasonable interference with anyone's rights to privacy. I would have thought that Ms Heathcote-Drury would actually welcome this proposal.

25. I have looked very carefully at the lighting aspect of the petition. I do understand the problem of light pollution and how it can be very annoying to those it affects. I am satisfied, however, that the Petitioners have had this in the uppermost of their minds from the beginning and have also tested the likely effect of their proposals. They are also prepared to place this lighting on a timer and to negotiate over the time at which it should end each night.
26. Both the lighting proposal and that for the CCTV are reasonable, necessary, justified and proportionate in my view. The Petitioners have behaved responsibly from the outset and thought about the likely issues very carefully. The DAC recommends the proposals to me and there is no objection other than that from Ms Heathcote-Drury. I have considered what she has said that may have any relevance to this petition very carefully, but having reviewed all of the evidence in light of the respective contentions of Ms Heathcote-Drury and the Petitioners and for the reasons I have given, grant this faculty.
27. I impose one condition: the Petitioners must consult with near neighbours and ward councillors about the appropriate time or times at which the lighting, the subject of this petition, is to be switched off in the evening or early morning – as they have undertaken to do.
28. I make no separate order as to costs.