

Neutral Citation Number: [2024] Nor 1

IN THE CONSISTORY COURT

DIOCESE OF NORWICH

In the Matter of:
NORWICH, ST PETER MANCROFT

-and-

In the Matter of:
THE PETITION OF THE REVEREND EDWARD CARTER (Vicar), HELENA CARR
(Churchwarden) and JAMES HUGHES (Churchwarden)

-and-

In the Matter of:

A proposal to install clamp-fixed arrays of solar panels to the roof of the south-aisle, to install six storage batteries in the former organ blower room, to install two external heat pump evaporator units and to allow associated cabling and wiring alterations to the main church electrical distribution boards

JUDGMENT OF THE CHANCELLOR

1. St Peter Mancroft ("SPM") is seen as Norwich's civic church. It is a Grade I listed mediaeval building founded in 1075 during the reign of William I (the Conqueror) with its current building constructed between 1430 and 1455 during the reign of Henry VI. Externally, it exists in the same form as it did then save for the tower pinnacles and fleche added in the late Victorian era and the Octagon extension of 1983. This extension sits below the level of the church plinth in the south-eastern corner providing lavatories, vestries, a church room and a kitchen. It is a very well-known landmark in the centre of Norwich with a prominence on the city's skyline. It appears to the eye as a backdrop to other well-known features: the Haymarket, Forum Plain, the civic memorial gardens and, indeed, the market. It is close to City Hall.
2. In common with many churches, SPM reviews on a continuing basis how it can reduce its carbon footprint to net zero by 2030 in line with the Church's target so to do. It rightly sees it as more than simply a question of cost-effectiveness, but principally a much wider moral issue in an effort to avoid catastrophic climate change or, at the very least, to mitigate it.

3. The changes necessary to achieve this are often easier to envisage from a distance, particularly when they need to be made by others, but seemingly more difficult and less attractive the nearer they come to oneself. Churches, particularly in a diocese such as Norwich which has both a very large number of churches which are Grade I or Grade II* listed buildings and also limited (sometimes very limited) resources.
4. This petition, therefore, to install solar panels is an interesting example of the difficult calculation that often has to be made between reducing carbon footprint to a meaningful degree and the conservation issues which inevitably arise when considering a building such as this very old and particularly significant parish church.
5. The PCC had considered the issue of solar panels in 2020 when it was renovating the lead roof but rejected the idea then because of the church's energy output and the likely limited benefits of solar panels without storage batteries. The church in 2023 re-evaluated the potential that solar panels might offer if combined with storage batteries. The use of these has increased in the last three years, as has the availability.
6. The Petitioners now consider that the conjoined use of solar panels and storage batteries will, in fact, provide significant advantages for the church. They reason that, since the church is well lit by natural daylight and that the electrical output will be mostly used for lighting which can be stored, the viability of solar panels is greater now than they had concluded it was in 2020. They also contend that the storage would enable higher power demands (kettles/organ etc) without needing to draw power from the Grid. If, as they expect, there will be this additional capacity, they hope that this may assist in supporting air-source heating when their gas-enabled system reaches the end of its useful life.
7. The plan is to install 48 solar panels with associated clamps and wiring, as well as the evaporators, and three locations were initially identified for their placement: the southern slope of the nave roof, the south-facing slopes of the south-aisle roof and the flat roofs of the Octagon. They had been advised that panels on the north-facing roof slopes, whilst feasible, were likely to produce insufficient energy to make them economically viable.
8. They then considered the south-facing locations in turn. They judged that the southern slope of the nave roof, whilst an ideal place in terms of energy capture, would have too great an impact on the character of the building. It could, however, receive 74 solar panels. The Petitioners mused as to whether the balance between the character of the building and the need for the carbon reduction may tilt the balance in favour of this location at a future date, but considered it was not an acceptable cost to the character of the building at present. The flat roofs of the Octagon extension do not raise any heritage issues but are more difficult for placement, could only accommodate ten panels and would allow the capture of less energy so were unsuitable for this purpose.
9. The southern facing aisle roof is slightly lower than desired for the most efficient energy capture but it is, nevertheless, above the level of nearby trees and is said to raise far fewer heritage issues. The roof has recently been repaired so should not require maintenance for a substantial number of years. There are already what are described

as a number of items of functional plant on its surface, some of which would be removed to make way for the panels. It can house 16 panels east of the transept and 32 to 36 to the west. Accordingly, the Petitioners believe that this location is the only viable one and certainly represents their preferred site. It is therefore their preferred option (“PO”).

10. The Petitioners have made an assessment of the impact the solar panels of the PO would make on the building as a whole in terms of its architectural and historical significance.
11. In terms of fabric, the Petitioners believe this surface to be contemporary with the construction of the building in Henry VI's reign, but it has (understandably) been the subject first of renewal (late Victorian structural repairs), second as part of major structural stabilisation (1962-4) and third there have been more minor repairs in 2021. It is said to be in good structural order: weather-tight and maintained.
12. There have been in recent years the introduction of various projections and other items which detract from its original visual appearance. These include: floodlights (c. 1980s – replaced by LED luminaires in 2021) cable channels for internal wiring and external lighting ballast boxes (1983-4), roof security cameras and transmitter (2021) and new lead mushroom vents (2021). The PO would see the solar panels using screw-lamps onto lead rolls meaning that the panels would not be affixed into the fabric and would be completely reversible. The bearing capacity of the roof has been ascertained and found to be sufficient for these proposals.
13. In respect of visual aspect, the Petitioners have already highlighted the significance of this building and have assessed its significance on the city of Norwich itself and, in particular, the Norwich City Centre Conservation Area.
14. Although the building is a prominent feature of the Norwich skyline, the Petitioners contend that views of it are limited due to its low pitch and parapet, the existence of other buildings and the topography of the city and surrounding land.
15. The Petitioners state that the actual roof (deck) can only be seen from the first floor gallery of the *Pizza Express* associated with the forum building to the west and from ground level in the area between Millenium Plain and Theatre Street to the south-west. In the south-western corner of the Haymarket outside *Macdonald's* and William Booth Street – which is a pedestrian cut-through and service road – the Petitioners assess that anything projecting significantly from the deck might be visible.
16. I do not intend to rehearse the Petitioners' careful assessment of the view from *Pizza Express* which seems to me to have minimal significance to the questions I have to decide. The area between Millenium Plain and Theatre Street may allow the roof deck at the western end of the south aisle to be visible at some limited points, but the view from Theatre Street (due to natural elevation in the ground) may be greater when the trees are without their leaves. Again, I consider this to be of low significance. In the Haymarket area, it is said that some visibility may be afforded (subject to seasonal alterations in foliage). The Petitioners assess this as neutral. The Petitioners also point

out that some relatively subtle sighting of the panels may, in fact, be a *good* thing. It is said that no church in the diocese yet has solar panels.

17. The Petitioners carefully assess through their professional advisers the impact on the interior of the church in respect of the storage batteries and cabling, but neither of these feature in the comments of the consultees, nor in the advice of the Diocesan Advisory Committee (“DAC”). The DAC is, I know from previous petitions, very exercised about the effect that poor cabling can have on an otherwise worthy project and frequently adds provisos to its Advice relating to that issue. I can with confidence, therefore, assess that there are no adverse heritage issues engaged in this aspect of the petition.
18. The Statement of Significance has been prepared with great care and I have seen and read the accompanying plans, specifications and very clear photographs, all of which I have found very helpful. The Petitioners have also provided answers to those questions helpfully posed in the Church Building Council’s (“CBC”) helpful checklist of relevant considerations.
19. The Petitioners engaged in formal consultations with the CBC, Historic England (“HE”) the Society for the Protection of Ancient Buildings (“SPAB”) and the Victorian Society (“VS”).
20. A consultation response from the CBC is supportive of the petition in general but queries whether the Petitioners are being bold enough in the number of panels they are seeking to deploy. It queries also whether the effect of solar panels on the nave roof would necessarily be harmful provided the need was clearly set out.
21. HE produced a particularly helpful response in which the significance of this church was emphasised: “an exceptionally lavish example of late mediaeval architecture...the finest of Norwich’s parish churches...a peerless essay in English Perpendicular art of the highest order...” HE also emphasises the point made by the Petitioners, namely that its external features have been little altered since the date of its construction and stress that its significance in terms of location is also very high. They point out that the installation of photovoltaic panels on the south aisle roof would to a degree detract from an appreciation of the church and from its architectural and historic interest.
22. HE concludes that the principal impact of the proposals will be on people’s appreciation of its architectural interest. The harm to the significance of the church is caused in HE’s view by the visibility of the solar panels and the difference between their character and that of lead. The architectural harm would leech into creating damage to the historical significance of the church. In short, the solar panels would be discordant and alien to the church’s historic materials in turn eroding its authenticity and integrity.
23. HE does not make any adverse comments on any other aspect of the proposals except to note that the wiring will impact the historic fabric and create visual clutter.

24. HE suggests that I carry out an assessment as to whether the proposal strikes a reasonable balance between the conservation of the significance of an exceptional church on the one hand and responding to the climate crisis on the other.
25. SPAB in its initial observations required more technical information in order to assess the benefit (or otherwise) of the solar panels and set out how this information might be provided. The Petitioners complied with this request. As a result of this, SPAB felt that the limited harm to the historic asset had been justified by the public benefit in terms of carbon reduction and had no objection to the proposals.
26. The Victorian Society had no observations to make on the application.
27. In their responses to the consultees the Petitioners, through the Fabric Officer Nicholas Jackson, *AssocRICS*, made the following points.
 - a. A large, historic church of great significance has relatively few options to improve thermal performance. The church is in use on a continuous basis meaning that a warm air and warm fabric form of heating is more effective than intermittent heating, such as the radiant variety. The PCC has done what it can already to improve the thermal efficiency of the fabric with effective draught-proofing and internal porches at the north and south doors. The separation of the 'outside' from the 'inside' of the church is 3 mm of glass in over 40% of the wall area of the main church and 1 inch of simple butted timber ports and a sheet of lead when it comes to the roof.
 - b. All accessible light fittings and lamps are LED fitted and, additionally, the main church lighting will be replaced with LED lighting in April 2024. This is expected to reduce electricity demand for lights by 75% as well as improving the presentation of the interior.
 - c. The energy requirement for other appliances is very much less, with the exception of the main boilers.
 - d. The installation of the heat pumps will reduce the energy required to heat the church by two-thirds.
 - e. This means that the best option is to use 'greener' power sources. The church already has an 100% green electricity tariff, but in light of the target of Net Zero by 2030 which is the Church of England's stated ambition, the Petitioners believe that it is incumbent upon them to generate what energy the church can and it submits that sensitively positioned and entirely reversible solar panels are one of the (few) ways this can be achieved in respect of a listed building.
 - f. The Petitioners are reliant on suppliers' and manufacturers' energy efficiency data to calculate the generation of energy via the solar panels and this data suggests that the solar panels should generate 16,500kWh electricity per year. The precise effect of the LED lighting and heat pumps will become apparent when, taken together with the solar panels (if granted), they are all in place.
 - g. In respect of HE, the Petitioners feel that more emphasis should have been given to how little visual interference the panels will actually present and that an impression of general harm to visual appreciation of the building would be wrong.
 - h. The Petitioners' comment on the CBC's observation (that they could have been *more* ambitious in their plans by siting solar panels on the roof of the nave) is

that they consider that this would have created a much more substantial visual interference as well as requiring more intrusive mounting because of the steeper roof pitch and be considerably more difficult to access and maintain.

28. The law

I am required to apply the test known colloquially as *Duffield*, stemming from *In Re St Alkmund, Duffield* [2013] Fam 158 and reaffirmed by the Court of Arches in *In re St John the Baptist, Penshurst* [2015] WLR (D) 115, in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. The test is this:

- (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
- (2) If the answer to question (1) is in the negative, then the presumption is said to be in favour of the *status quo*, but it can be rebutted more or less easily depending upon the nature of the proposals.
- (3) If the answer to the first question is in the affirmative, then it is necessary to ask how serious the harm would be;
- (4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
- (5) Generally, the greater the harm, the greater will the benefit need to be to justify the proposals and, importantly, in the case of a building that is listed grade I or II*, if serious harm would result then the justification would need to be exceptional.

29. The *Duffield* test has been refined by subsequent case-law in the following way: even if the works were found to be justified applying the principles above, might the harm be removed or mitigated by a different or modified solution which substantially addressed the need.

30. In reaching my decision, I recognise that the target of reaching Net Zero by 2030 will cause painful decisions to have to be made. In the short term, and in the context of modifications to listed buildings, this may look like a battle between attempts to lessen, halt or reverse climate change on the one hand and the proper conserving of listed buildings on the other. A little thought shows that this is a fallacy. The effects of global warning are likely, unchecked, to lead to catastrophic climate change within perhaps a shorter time-frame than we realise. Severe climate change has the potential to cause untold damage to listed buildings amongst other adverse effects and should it lead to economic collapse as well, then the money will not be there to protect and maintain them in any reasonable condition.

31. My decision has been made much easier by the detailed, professional and balanced way in which the Petitioners and their advisers have presented the application and by the constructive and helpful observations of the consultees.

32. Turning then to the issues I must decide: would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest? The answer to that question is 'yes'.

33. How serious would that harm be? The harm I have identified is to the visual appreciation of the church which in turn damages architectural and historical

significance. This is a Grade I listed building. It is a magnificent example of late mediaeval church architecture. I am excluding from my consideration the view identified from *Pizza Express*. I consider that the very minimal area of vision that would be affected in this area does not establish harm.

34. The other areas identified are the views from Millenium Plain, Theatre Street and the area around the Haymarket. These are limited areas and do not create a more general harm, but I would place the harm that is caused there in a category that is more than just minimal. Whereas the trees block the view there when in season, they do not when bare of leaves as I can see from the photographs.
35. I judge the level of damage to the architectural and historical significance of the church, however, as low to very low.
36. I find that the justification for the proposals is clear and convincing. No consultee has suggested otherwise with SPAB withdrawing its initial concern over lack of detail after receiving a detailed response from the Petitioners and the CBC suggesting that it might have been advantageous to have installed additional solar panels on the nave roof.
37. The Petitioners have addressed the question of whether they could achieve the same or similar results by other methods not damaging to the church's significance at all. The Petitioners have done all they reasonably can do to reduce the church's carbon footprint already and this proposal is to realise further energy saving.
38. One concern that the court sometimes has when changes are proposed resulting from technological advances is how permanent the technology being introduced will be. We live in an age of extremely rapid technological development. These solar panels will doubtless be improved upon or even become redundant in favour of even more inventive techniques to capture solar energy over their lifetime. The fact that they are wholly reversible without causing damage to the fabric of the church is in my judgment an answer to that particular concern.
39. Accordingly, I grant the faculty as prayed.
40. I make no Order as to costs for this judgment.

Etherington Ch:

19th January 2024