In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Bromsgrove: Church of St John the Baptist
Urgent works to re-roof of the north and south side aisles and the south porch

Judgment

Introduction

[1] This petition is for a faculty to authorise the re-roofing of the north and south side aisles and the south porch of the church St John the Baptist, Bromsgrove with Dryseal® glass reinforced plastic ("GRP"). Those areas of roof were historically covered with lead sheeting.

[2] The petition was the subject of an objection by English Heritage.

[3] The works were said to be very urgent. I therefore sought to have the faculty petition processed as rapidly as possible, consonant with complying with the relevant procedural rules (in particular the Faculty Jurisdiction Rules 2000). I issued my decision, authorising the proposed works, in a letter dated 5 October 2011, in which I set out my reasons briefly. I said in that letter that I would in due course issue a fuller judgment setting out the basis for my decision.

[4] I regret that it has taken so long to issue this fuller judgment. However, I have in the meanwhile had the benefit of seeing the helpful judgment of the Chichester Consistory Court in the case of *Bexhill, St Michael and All Angels (and others)*, handed down on 16 November 2011 (hereinafter referred to simply as "*Bexhill*"). I appreciate that this judgment, like that one, is to some extent academic, in that the authorised works are now underway, if not complete. But I hope that it may be of assistance to other parishes in the diocese (and possibly elsewhere) and their advisers, who may be facing problems similar to those encountered in Bromsgrove.

Description of church

[5] The Church of St John the Baptist, Bromsgrove is an important building in the centre of a large historic churchyard, at the heart of the town.

[6] It was listed by the Secretary of State in April 1952, as a building of special architectural or historic interest, Grade I, under the Town and Country Planning Act 1947 (the predecessor to the Planning (Listed Buildings and Conservation Areas) Act 1990, referred to below simply as "the Listed Buildings Act 1990"). The list description reads as follows:

> "From C12, but predominantly C14-C15. Large sandstone church with fine west tower and spire, mostly perpendicular, with panelled parapet. Perpendicular aisle windows, battlements,

pinnacles and embattled clerestorey. Inside, the four-bay arcade is perpendicular and carved timber roof to nave.

Very fine C13 and early C16 monuments in north chapel, and alabaster effigy of 1517 in chancel.

Restored 1858.

The Council Offices, Church of St John's, The Lych Gate and No 12 form a group."

[7] As to the roofs to be re-covered, I consider them in more detail below.

Recent history

[8] In 2006, the Church raised over £650,000 to complete the full replacement of its nave roof with lead, and stonework repairs to the tower, with grant assistance from English Heritage.

[9] In 2007, the quinquennial survey (by Hook Mason, the architects retained by the parish for that purpose) noted the need to carry out yet further repairs, to replace the lead roof of the south aisle, to repair the roof of the vestry, and carry out various further stonework repairs; these works were costed (in 2010) at £250,000. Grants have been offered by English Heritage towards the latter works, but that still leaves a balance of £180,000 to be found by the Parish.

[10] In May 2011, there occurred a series of thefts of lead from the north aisle roof. £5,000 compensation – the maximum allowable – has been claimed from the Parish's insurers (the Ecclesiastical Insurance Group: "Ecclesiastical") towards the cost of repairing this. Pending a permanent new roof, temporary covering has been fitted, to prevent water ingress. It is likely that the cost of dealing with the north aisle roof would be of the same order of magnitude as that of the south aisle. More recently, lead has been stolen from the roof of the south porch. So far, approximately 20 per cent of the roof surface lead sheeting has been stolen on a total of six occasions over a period of five months.

[11] In June 2011, investigations were carried out by Hook Mason to examine the roof of the south transept. These revealed problems with the detailing of the lead roof, which would be expensive to rectify. They also led to the discovery under the south aisle roof of a major gas leak, due to the corrosion of an old pipe, which in turn resulted in all the heating in the church having to be turned off.

The initiatives by the parish

[12] On the assumption that all the roofs in question were re-covered in lead, that left the Parish with a need to find in the region of £400,000, relatively soon after another large appeal. And there remained the problem that, if lead were used, it might well be stolen in future, leading to the whole process having to start all over again – whilst coping with a leaking roof. Further, as pointed out by the Parish, Ecclesiastical would now no longer provide insurance cover in such cases.

[13] The Parish, advised by Hook Mason, accordingly sought alternatives to lead. English Heritage indicated that, in the circumstances, it might countenance the use of an alternative

material. However, it principally encouraged the use of terne-coated stainless steel; and, whilst this was less attractive to thieves, its cost was on a par with that of lead.

[14] In particular, the Parish considered both GRP and asphalt. Mr Stollard, the project manager for the Parish, who is also a chartered builder, with a number of years' experience in the building trade, and now with his own consultancy company, recommended Dryseal GRP.

[15] The thefts of lead from the south porch roof had necessitated stripping that roof, and installing a temporary cover. The Parish considered that the lead remaining on the north and south aisles could be stripped and sold to generate extra income; approximately £600 had been raised from this already; and Mr Stollard estimated that the remaining lead would be worth around £6,000.

[16] The cost of the proposed works using Dryseal, taking account of the sale of remaining lead and the maximum payment from Ecclesiastical, and assuming no grant was available from English Heritage, would thus be around £40,000. This compared with around £380,000 for the use of lead (taking account of the promised grant). Even with this reduced cost, it would still be necessary for the Parish to dip into its reserves, and possibly forego paying some of its contribution to the Diocese.

[17] Alarms were put in place, but lead continued to be stolen. According to the Police, deterrence systems were likely to have a minimal effect in practice. And even though there were some strong indications of who might be responsible, the Police were apparently unwilling to prosecute.

[18] The parish accordingly sought a faculty for "replacement of stolen lead roofing with an alternative material".

The submission of the petition

[19] I was initially notified of this matter by the Archdeacon (in emails dated 26 and 31 August and 1 and 2 September 2011), and by the Registrar (in an email of 6 September from his assistant Mr Alexander). I was also supplied with the views expressed to the Archdeacon by Mr Stainburn and Mr Joyce, on behalf of the Diocesan Advisory Committee ("the DAC"). In the light of those initial representations, I discussed the matter at some length on the telephone with the Archdeacon and with Mr Stainburn. I also discussed the proposal, again by telephone, with Mr Stollard, since everyone else at the time was unavailable – to find out the precise extent of the works proposed, and whether any views had been expressed by English Heritage.

[20] As to the extent of the works, Mr Stollard confirmed that the roofs to be recovered were the whole of the north and south side aisles and the south porch, and that the "alternative material" to be used was Dryseal GRP, which is a modern substitute for lead. He also drew attention to the supposed advantages of this material – which I consider further later in this judgment. And he explained that the intention was to finance the proposed works in part by selling the remaining lead on those roofs.

[21] As to the position of English Heritage, Mr Stollard indicated that he had had a conversation with someone there (not Mr Taylor, the case officer). I understood the position expressed in that conversation to have been that English Heritage was unhappy

with the proposal, and would certainly not grant aid it; but I was not given the impression that it was formally opposing it. At that stage I had not seen any communication from Mr Taylor.

[22] On the basis of what I had read in the papers, in view of the urgency of the position, and in the absence of any objection from the DAC – and in particular having regard to the fact that the three roofs in question were said by almost all to be invisible from ground level (being behind substantial parapets) – it seemed to me that:

- the roofs in question were such that re-covering them with a different material would make no difference to the appearance of the church as viewed from anywhere other than the air;
- on that basis, the proposal would not affect the character of the church as a building of special architectural or historic interest; and
- it therefore did not need to be notified under rule 13(3) of the 2000 Rules or advertised under rule 13(4) (see below).

[23] In all those circumstances, I indicated that I was minded to authorise the works without further ado.

[24] However, I was then sent an email, dated 6 September 2011, from Mr Taylor, in which he made it plain that English Heritage was formally objecting to the proposed works. He pointed out in particular that:

(a) the church was listed Grade I;

(b) the roofs were visible from the ground;

(c) lead was historically authentic, and had well-proven performance and longevity;

(d) the proposed GRP was different in terms of appearance, thermal performance, and malleability; and

(e) the Parish architect had not been involved.

[25] On that basis, it was clear that I was unable to proceed as rapidly as I had hoped and intended. Nor was the position as straightforward as I had thought.

[26] I accordingly made it clear, in a preliminary letter to all concerned, that I would myself visit the church in the next few days, and that I would then proceed to dispose of the petition as rapidly as possible, in accordance with the 2000 Rules.

Threat of pre-emptive action by Parish

[27] The Parish responded by purporting to call a special meeting of the PCC, at which members were advised by Mr Stollard that proceeding with the proposed works to the roof without all due authority would leave them open to prosecution, with the ultimate sanction of jail sentences for individual members. That was considered, and a unanimous decision reached to progress with the work without further ado, fully accepting the risk of prosecution. That decision was communicated to me by email. I say "purporting", because a meeting of a PCC can only be summoned, even in an emergency, after three clear days' notice has been given; and I rather suspect that that was not done in this case.

[28] In fact, of course, a breach of the provisions of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 or the 1992 or 2000 Rules would not lead to a prosecution as such, although a breach of the corresponding provisions of secular historic buildings legislation (now in the Listed Buildings Act 1990) would.

[29] Be that as it may, I noted that there might have been delays in the past, resulting in the Parish feeling aggrieved. I therefore urged all concerned (particularly the Parish, the DAC and English Heritage) to make their representations as soon as possible, by email, to enable me to proceed as I had indicated.

[30] However, I made it clear to the Parish that – even in circumstances such as these, where works were said to be urgently required – I would regard it as a very serious matter if it were to proceed with works in breach of the faculty jurisdiction, as had now been threatened. In particular, I explained that if there were to be any further suggestion that it was intending to proceed with works before receiving at least a preliminary indication in its favour, the court would not hesitate to issue an injunction of its own motion, under rule 8(2) of the Faculty Jurisdiction (Injunction and Restoration Orders) Rules 1992 – breach of which would have serious consequences for those responsible.

[31] Happily, and not surprisingly, the Parish responded by indicating promptly that it was willing to await my decision before proceeding with the works.

Procedure: general problems

Introduction

[32] This petition raises in an acute form a problem that arises also in the case of a number of more or less similar cases each year, where parishes wish to carry out works that are said to be urgent. This has recently been a particular problem in the case of the replacement of roof coverings following theft; but it arises in other contexts too. It may therefore be helpful to indicate the approach of this court in such cases, which may also be of use more generally.

[33] The problem is that no works of any consequence can be carried out to a church without a faculty, obtained from the consistory court. Canon F13(3) thus provides as follows:

> "It shall be the duty of the minister and churchwardens, if any alterations, additions, removals or repairs are proposed to be made in the fabric, ornaments or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same."

Such faculty or licence is obtained from the chancellor or, in minor cases, the archdeacon.

[34] The one exception to that requirement is where proposed works fall within a category in the list of minor matters issued from time to time by the chancellor, under section 11(8) of the 1991 Measure, following consultation with the DAC. There is no restriction on the categories of works that may be included in such a list. However, it is noteworthy that the chancellor may not delegate to an archdeacon any faculty petition for works that affect the character of a listed church as a building of special architectural or historic interest (see rules 7(1), 13(3)); and it would seem to be undesirable that such works should be exempt from the faculty jurisdiction altogether, other than in extreme cases.

[35] The requirement to obtain a faculty thus generally applies in the case of those that are urgently required just as in any other case. There is in particular no equivalent to section 9(3) of the Listed Buildings Act 1990, which provides as follows:

> "In proceedings for an offence under this section [carrying out works to a listed building without listed building consent] it shall be a defence to prove the following matters—
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> (a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
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> (b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
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> (c) that the works carried out were limited to the minimum measures immediately necessary; and
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> (d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable."

That provides, in effect, that works urgently necessary in the interests of safety or health or for the preservation of a listed building may be carried out without the need to obtain consent from the planning authority, providing the specified conditions are met.

[36] This is in contrast with the faculty system as it operates in Wales, whereby works may be carried out in advance of a faculty being obtained, in the circumstances outlined in section 9(3) of the 1990 Act.[1] In England, oddly, it is possible for a chancellor to authorise (without the need for a faculty) works for the demolition of a church, under section 18 of the 1991 Measure, but not works for its alteration.

[37] To overcome this apparent lacuna, I have today issued for consultation with the DAC an appropriate amendment to the list of minor matters that may be carried out in this Diocese without a faculty, to include the carrying out of emergency works such as are these subject of section 9(3) – but subject to safeguards equivalent to those provided in that section. However, it should be noted that this would not cover works of the kind that are the subject of the present petition, as they are not the minimum measures immediately necessary.

[38] Apart from such emergency works, therefore, the normal faculty procedure applies to all other alterations to churches, including those in this case. However, unfortunately, that normal procedure is designed to allow involvement by all who may have a legitimate interest, and can therefore be very slow. Normally, the delay involved is justified by the improvement to (or abandonment of) the scheme that may result from such consultation, but that may not apply in the case such as this.

[39] Alternatively, it is possible for a Parish to carry out works without a faculty, at its own risk, and then seek retrospective authorisation in the form of a confirmatory faculty. That too is unsatisfactory, as there is little incentive to go through the full procedure after the works have been completed; and it is in practice unlikely that the court will require them to be reversed.

[40] On the other hand, underlying all such considerations, it is important to avoid works being carried out that seem desirable, or even essential, in the heat of the moment but

[1] Constitution of the Church in Wales, Rules of the Diocesan Courts, rule 4.

which may be subsequently regretted – either because they lead to technical problems later on, or because they are unsatisfactory in historic buildings terms. Indeed, it is concern as to just such problems that has led to the objection in the present case.

The normal procedure: faculty determined only after consultation and publicity

[41] The usual procedure is that "before submitting a petition for a faculty in the consistory court, intending applicants should seek the advice of the advisory committee in respect of the works or other proposals for which a faculty is required." (2000 Rules, rule 3(1)). In other words, a Parish should first discuss with the DAC what it wishes to do, and finalise its proposals in the light of any advice received. This is in part necessary because, until such discussions have taken place, the Parish and its advisors may not be able to formulate precisely what it is for which they are seeking approval. It also reflects the fact that, once a faculty petition has been submitted for a particular proposal, those who are consulted can only express views on that proposal; they cannot seek to have it amended.

[42] In addition, where the DAC gives advice on a proposal under rule 3, it may recommend that intending applicants seek the advice of English Heritage or other amenity bodies. This usually saves time since, if one or more of those bodies has to be consulted anyway, and may make suggestions that lead to a proposal being amended, the sooner that consultation starts the better. And of course rule 13 require those bodies to be consulted in particular cases, set out in the unhappily drafted Appendix B; see below.

[43] It is true that rule 4(4) provides that a petition may be submitted at any time, even where rule 3 has not been complied with – that is, even where the DAC has not been involved at all, and no amenity societies have been consulted. However, in many cases, this procedure may not save any significant time, since the chancellor must normally seek the advice of the DAC, before determining a faculty petition,[2] and the archdeacon may only determine a petition where he or she knows that the DAC recommends the proposal in question (or at least does not object to it).[3] But it may be appropriate where, for example, a quotation for non-controversial building works is about to expire.

[44] Secondly, petitions almost always need to be publicised by the erection of a site notice for at least 28 days, so that anyone who wishes to object has a chance to do so (rule 6). And In some cases falling within rule 13(3) (below), the petition will need to be advertised in the local press, providing a period of 14 days within which those seeing the advertisement may respond, by virtue of rule 13(4).[4]

[45] Thirdly, where petitions are for works of any consequence to listed churches, they normally have to be notified to appropriate amenity bodies, as provided for by rule 13(3):

> "Subject to the generality of rule 13(1), where it appears to the chancellor on preliminary consideration of the petition that the works for which a faculty is sought
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> (a) involve alteration to or extension of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest, or

[2] 1991 Measure, section 15(1); 2000 Rules, rule 14.
[3] 1991 Measure, s 15(2); 2000 Rules, rule 7(1).
[4] Recently considered by the Court of Arches in *Eccleshall, Holy Trinity* [2011] Fam 1 at para 50.

(b) are likely to affect the archaeological importance of the church or archaeological remains existing within the church or its curtilage, or

(c) involve demolition affecting the exterior of an unlisted church in a conservation area

then, unless it appears to the chancellor from the available information that each of the following bodies has previously been consulted about those works and has indicated that it has no objection or comment to make the chancellor shall direct that English Heritage, the local planning authority and such of the national amenity societies as appears to be likely to have an interest in the church or the works shall be specially notified in accordance with the criteria applicable to consultation set out in paragraphs 2, 3 or 4 of Appendix B as appropriate."

[46] The wording of rule 13(3)(a) reflects the wording of section 7 of the Listed Buildings Act 1990, which requires that, in the case of a secular listed building, listed building consent is required for the carrying out of:

"any works:

[i] for the demolition of a listed building or

[ii] for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest."[5]

[47] The bodies notified as a result of that requirement then have 28 days in which to respond. As for what works can properly be said to affect the character of a listed church as a building of special architectural or historic interest, I consider this further below.

[48] The person making the final decision on the petition – whether the archdeacon or the chancellor – will not be able to do so until after the outcome of that exercise of publicity and notification is known. This has the desirable result that proposals for works are properly publicised, so that all those with a legitimate interest may comment on them, and reflect the similar provisions applying to applications made to planning authorities for listed building consent under the 1990 Act. Indeed, the exemption of works to Church of England buildings from the need for such consent is predicated on the basis that the faculty system provides an equivalent measure of protection for those of special interest – and that includes publicity for applications.[6]

[49] However, the other result of these statutory provisions is that the process can be very slow. Thus a proposal in most cases will be submitted to the DAC, and may then be the subject of gradual refinement, possibly involving several visits by DAC members to the church. It is then considered formally at a meeting of the DAC, which may recommend the Parish to consult one or more of the amenity groups – even if it is itself entirely content with the proposal. The Parish then has to advertise the petition at the church for 28 days, and possibly in the local press. It may then submit a petition to the registrar, who will refer it to the archdeacon or the chancellor, as appropriate, who will make a decision. From the formulation of a proposal until the final issue of a faculty may therefore take several months or even, occasionally, years.

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[5] Numbering in square brackets added for clarity.

[6] *The Operation of the Ecclesiastical Exemption and related planning matters for places of worship in England: Guidance*, Dept of Culture Media & Sport, July 2010, para 9.

Urgent works: submission of petition

[50] In the light of the problems outlined above, it is perhaps not surprising that the 2000 Rules make special provision for petitions submitted in relation to urgent works. The first of these is that, as already noted, there is nothing to stop a Parish submitting a petition to the registry, for determination by the archdeacon or the chancellor, at the same as sending it to the DAC for it to consider (under rule 4(4)). Indeed, the Parish may decline to send it to the DAC at all. As already noted, in some cases this may not save any time; but it clearly may be useful in an emergency.

[51] If therefore a Parish has decided (no doubt on the advice of an architect, surveyor, or builder, and following consultation with its insurers) that particular works are urgently required, it can simply submit a petition to the registry without further ado. However, in practice, it is helpful for such works to have been discussed as early as possible with the archdeacon and the secretary of the DAC, and as fully as time allows, since they may be able to provide useful advice, and will be involved later in the process anyway.

[52] Unfortunately the usual, lengthy petition form – Form 2 in the Appendix to the Rules – still has to be employed, although that will alert the registrar to any issues (such as a church being listed, or the presence of bats) that might later cause delay if not appropriately dealt with as a matter of urgency at the outset. Where a Parish does not already have a copy of the form, the registry can send a copy by email. And the form has to be accompanied by sufficient details to explain precisely what is intended. In the case of urgent works, it may not be necessary (or indeed possible) to submit a full set of drawings; but there must be enough detail – whether measured drawings, sketches, photographs, manufacturers' literature, specifications or other descriptive material – to enable anyone who is interested to understand both what is proposed, and why it is urgent.

[53] The Parish (or its architect or other adviser) can then send or deliver the completed form with any supporting material to the registry. If the petition contains details of someone who can be contacted by email, that will speed up the process if there any queries – and enable the Parish to be informed as soon as possible once the decision to issue a faculty has been made.

[54] As noted above, if the DAC has not had a chance to express a formal view on proposed works, it will not be possible for the archdeacon to grant a faculty for them. It follows that, where the degree of urgency is such that this may occur, it will almost always be appropriate for the petition to be referred automatically to the chancellor rather than the archdeacon. And if the chancellor is to be absent for any significant period, the registrar can send urgent petitions to the deputy chancellor.

[55] The archdeacon and the secretary of the DAC will nevertheless be copied in on all correspondence, as they may be able to supply the chancellor with useful background information and advice, possibly as a result of communications with the Parish (see above). The archdeacon will in any event be responsible for ensuring that any faculty that does issue is properly complied with; and the DAC will need to consider whether any further works are required once the immediate crisis has been resolved.

Decision by the chancellor that works are urgent

[56] As noted above, proposals that form the subject of a faculty petition normally have to be the subject of publicity (under rules 6 and 13(4)) and notification (under rule 13(3)), which can take four or five weeks following the receipt of the DAC's views. The second special provision relating to urgent works (in rule 13(10)) is therefore as follows:

> "In any case where the chancellor is satisfied that a matter
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> [i] is an emergency that involves the interests of safety or health, or the preservation of a church or part of it, and
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> [ii] is of sufficient urgency to justify the grant of a faculty without obtaining the advice of the advisory committee,
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> the chancellor
>
> (a) may dispense with the display of a notice under rule 6, and
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> (b) having regard to all the circumstances, may direct that a short period of notice may be given to the persons or bodies identified in the directions,
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> and thereafter the chancellor may order the issue of a faculty immediately."[7]

[57] The first of the preliminary requirements echoes the provisions of section 9(3) of the Listed Buildings Act 1990, mentioned earlier. It does not (as that section does) obviate the need for the appropriate authorisation to be obtained in advance; it merely enables it to be obtained more quickly. But it does mean that the fast-track procedure cannot be used merely to enable a Parish to jump the queue and obtain a faculty more quickly (for example, because the vicar is about to go on a sabbatical). There has to be an element of genuine emergency – where, for instance, a door or window has been broken by burglars and the opening boarded up, or where (as in the present case) lead has been stolen from a roof and replaced with a tarpaulin, in either instance on a temporary basis; or where it is discovered that wiring is dangerous and needs to be replaced urgently; or where an outbreak of dry rot is discovered when it is at an advanced stage, requiring the affected timber to be removed more or less immediately.

[58] As to the second preliminary requirement, which is duplicated in rule 14, it is up to the chancellor to decide that works are sufficiently urgent to justify a faculty without obtaining the formal advice of the DAC. However, in reaching that decision, he or she is likely to be assisted by the advice of the archdeacon and the chairman or secretary of the DAC, both of whom will probably be in touch with the Parish anyway. And the secretary of the DAC should be able to call upon the advice of appropriate members of the DAC to inspect the church in question promptly, where the matter cannot wait until the next formal meeting. That is one reason why it is wise for the Parish (or its architect) to notify the problem to the archdeacon and the secretary of the DAC as soon as possible.

[59] Once the chancellor has decided that the situation does fall within rule 13(10), he or she may dispense with the requirement to display a public notice under rule 6, and shorten the period of notice to be given to the interested persons or bodies – although, it would seem, not dispense altogether with the need for such notice, if it is otherwise required.

[60] The first of these means that a notice does not have to be displayed by the Parish under rule 6 – either for 28 days or at all. However, in order to ensure that everyone is as far

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[7] Numbering in square brackets added for clarity.

as possible fully informed as to what is happening, it may be appropriate for the chancellor (or, probably, the registrar) to suggest that an appropriately worded notice is nevertheless displayed at the church, explaining that urgent works as specified are about to take place, as soon as they have been authorised.

[61] As to the second, where the urgent works do not come within the categories in rule 13(3) (relating to listed buildings etc: see above), there is no general requirement for notice to be given to any other body. As soon as the chancellor is satisfied that the works should be authorised, therefore, he or she can notify the Parish by email that a faculty will issue, at the same time as asking the registrar to produce the necessary paperwork. The decision should also be notified to the archdeacon and the secretary of the DAC; and the latter can notify the DAC at its next regular meeting.

[62] If all proceeds smoothly, the Parish should thus have the necessary go-ahead to carry out the works within days rather than months of first contacting the Registrar – and can proceed to organise builders accordingly.

Publicity where the church is listed

[63] The position is not quite so straightforward where (as in this case) a church is listed. Thus, even where proposed works are said to be urgent, it is necessary for the chancellor to decide whether they affect the character of the church as a building of special architectural or historic interest – by virtue of rule 13(3), set out above, which applies in all cases. In practice, this decision will be informed by the secretary of the DAC expressing an opinion on the matter (if necessary, after consulting with appropriately qualified DAC members).

[64] In reaching that decision, the chancellor will have regard to the principle enunciated by the Divisional Court in *East Riding of Yorkshire DC v Hobson*.[8] In that case, Keene LJ noted:

> "19. … Parliament has deliberately chosen not to criminalise all works of alteration to a listed building. It has qualified the position, as Lord Hope pointed out [in *Shimizu v Westminster City Council* [1997] 1 WLR 168], so that only works of alteration which affect, or *would* affect, the character of the listed building are caught. Any court of law faced with that issue cannot decide it until it has first determined what the works of alteration consist of. That is a question of fact for the court—or in some cases, no doubt, the planning inspector—to determine. That is a crucial question to be decided.
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> 20. In a case like the present, deciding it may well involve, in particular, asking whether the works are to be seen as including some replacement or rebuilding activity. I emphasise again, that is a matter of fact for the decision-maker to determine, but it is a necessary step on the road to deciding whether the works of alteration affect the special character of the building. That determination may be influenced by a number of factors. Thus, if there was some appreciable time gap between works of removal or dismantling on the one hand and any replacement or rebuilding activity on the other, the court might take the view that those two elements were separate and distinct and that only the former constituted the works of alteration. Particularly would that be likely to be so if there was evidence that the replacement or rebuilding works had only come about because of some step taken or warning given by the planning authority, or other evidence of an intention not to proceed with such later works for the time being."

[8] [2009] PTSR 561.

In other words, it is the complete package of works that must be considered, to see whether they affect the character of the church as a building of special architectural or historic interest.

[65] On the other hand, taking that approach one step further, where the covering is removed from a roof, whether by thieves or storm action, or a window is broken to gain entry, the carrying out of temporary repairs that are immediately necessary (such as the erection of plywood sheeting to prevent the ingress of rain or burglars) will not usually constitute an alteration that is likely to affect the character of the building, because they will only be temporary. By contrast, the replacement of the original roof covering or window with a permanent substitute, of different materials – possibly following an interlude with a temporary solution – will (or at least may) affect its character.

[66] If the urgent works do not affect the character of the church, such as like-for-like timber repairs to deal with the effects of dry rot and to stop it spreading further, or replacement of missing lead with more lead, or temporary works as discussed in the previous paragraph, then no notice is needed. The chancellor may then order the issue of a faculty immediately, as in the case of works to a non-listed building (see above).

[67] However, exceptionally, the chancellor may decide that proposed works to a listed church, although urgent, are such that they would (or at least arguably might) affect its special character – for example, as here, where lead has been removed from the roof and it is proposed to replace it with a modern material. In such a case, rule 13(10) does not remove altogether the need to notify the relevant amenity societies under rule 13(3), but does mean that they can be given a shorter time in which to respond. They could therefore be notified by email and given, say, seven or fourteen days in which to respond.

[68] Clearly, to avoid this delaying the process unduly, it would be advisable for the secretary of the DAC to alert the Parish and the registry at the earliest possible opportunity where works seems to fall into this category, so that they can be notified promptly, as appropriate.

[69] Similarly, where the works in question affect the special character of a Grade I or II* church, or where works to the exterior of a Grade II church affect its special character, the chancellor must still direct that they be advertised in the local press by the Parish, under rule 13(4). Here too it would be advisable for the secretary of the DAC to alert the Parish and the registry at the earliest possible opportunity where he or she feels that works would fall into one of these categories, so that they can be publicised as required.

[70] Again, as soon as the chancellor is satisfied that the works should be authorised, he or she can notify the Parish, and ask the registrar to produce the necessary faculty. If the period for responding to notifications and publicity has not yet expired, the chancellor may issue a decision to the effect that a faculty can issue at the end of that period in the absence of any adverse response, which means that the registrar can then issue the faculty at the earliest possible opportunity without any further delay.

[71] Even in a case of this kind, therefore, the faculty should issue within only a few weeks.

[72] I have today issued a revised practice direction as to the submission and processing of petitions for urgent works, summarising the procedural points above, which is available from the Registry, the Archdeacons and the Secretary of the DAC, and which will in due course be available on the Diocesan web-site.

Need for planning permission

[73] Finally, in relation to general procedural points, the Advice Note from the CBC on alternative roofing materials, considered below, states that "a change in roofing material will require local authority planning consent", which I take to be a reference to planning permission, "if the building is listed or in a conservation area". There is of course an exemption from the need for listed building consent for works to churches in use, but no such exemption from the need for planning permission. This may be important in some cases, as the grant of a faculty will not avoid the need for planning permission to be obtained – although planning permission can be granted retrospectively, under Town and Country Planning Act 1990, section 73A, which may be appropriate in cases of urgent works.

[74] However, although section 55(1) of that Act provides that "development", for which planning permission is generally required, includes the carrying out of building operations, section 55(2)(a) provides that it does not include, amongst other things,

> "the carrying out for the maintenance, improvement or other alteration of any building of works which:
>
> (i) affect only the interior of a building, or
>
> (ii) do not materially affect the external appearance of a building."

[75] The meaning of section 55(2)(a)(ii) was considered by the High Court in *Burroughs Day v Bristol City Council*, which concerned roof alterations to a listed Georgian building in a conservation area. Richard Southwell QC, sitting as deputy judge, summarised as follows the factors to be taken into account:

> "(1) What must be affected is 'the external appearance', not 'the exterior'. … The alteration must be one which affects the way in which the building is or can be seen by an observer outside the building.
>
> (2) … all roof alterations which can be seen from any vantage point on the ground, or on or in a neighbouring building or buildings would be capable of affecting the 'external appearance' of the building in question.
>
> (3) The external appearance must be "materially" affected. … Whether the effect of an alteration is 'material' or not must … depend in part on the degree of visibility.
>
> (4) One point much argued before me was whether a different test of 'materiality' should be applied to listed buildings or buildings in a conservation area. … 'materiality' must in every case take into account the nature of the building which it is proposed to alter.
>
> (5) … the effect on the external appearance must be judged for its materiality in relation to the building as a whole, and not by reference to a part of the building taken in isolation."[9]

[76] On that basis, it seems to me that planning permission will often not be required for roof alterations, particularly where the area of roof involved is not visible, or is only visible to a minimal extent – even where the church involved is listed or in a conservation area. However, where there is any doubt as to the need for permission, the planning authority should be contacted as soon as possible.

[9] [1996] 1 EGLR 167, at p 170J.

Procedure in the present case

Invitation to all concerned to make representations

[77] In the present case, I noted at the outset that English Heritage clearly considered that the effect of the proposed works on the character of St John's Church, a building listed at Grade I, as a building of special architectural or historic interest would be adverse. I accordingly considered that, whilst I might or might not ultimately share that view, it might be difficult to argue that the works would have *no* effect.

[78] I accordingly directed, under rule 13(3) (see paragraph [45] above), that the proposal should be notified as soon as possible to the relevant national amenity societies, the local planning authority and English Heritage. Following consultation with the Secretary of the DAC, I considered that the relevant national body would be the Society for the Protection of Ancient Buildings (SPAB). Clearly English Heritage did not need to be formally consulted again, as it was aware of the position.

[79] However, I also directed, under rule 13(10) (see paragraph [56]), that, in the circumstances, I would take into account any representations made by either of them, or by English Heritage, only if received (if necessary by email) by the Registry on or before noon on Friday 22 September. That in effect shortened the period for response from 28 to 14 days.

[80] I explained that I would be particularly interested to receive from each of the bodies mentioned above – in addition to any other comments it might wish to make – representations in relation to the following questions:

(a) Are any or all of the roofs to be re-covered visible (or partly visible) from normal eye height at ground level?

(b) If any part of any roof is visible, from where can it be seen? Is that view significant? Why?

(c) If the roof (or one or two of them) is not visible, does that make a difference to what materials should be used?

(d) Is there any difference between the three roofs in this case, in respect of which materials are acceptable?

(e) Is any material other than lead acceptable for any of the roofs in this case?

(f) If a non-lead material may be used, which one/s is/are acceptable? Which ones are not acceptable? Why?

(g) In particular, is the material proposed for use in this case (Dryseal®) or any other similar material (such as another type or brand of GRP) acceptable?

(h) How does lead compare to other possible materials – whether considered suitable or unsuitable – in terms of costs, appearance, malleability, thermal performance, impact on ventilation of roof, expected longevity, attractiveness to thieves, and any other relevant factors?

(i) Are there any examples – in the Diocese or elsewhere – of the use of any materials other than lead that are considered suitable for use in cases such as this?

(j) What should be used for the flashings?

[81] Those seemed, and seem, to me to be the relevant questions to be considered.

[82] Secondly, I directed that the petition should be advertised in the local press, as required by rule 13(4) (see paragraph [44] above) – but specifying that representations should be made within 14 days.

[83] Thirdly, I asked for comments from the Diocesan Advisory Committee and the Archdeacon, also to be made by noon on Friday 22 September, particularly in relation to the points noted above.

[84] Fourthly, I noted that I had already received some written material from the Parish, but would be pleased to receive – by the same deadline – any further comments from it, either in relation to the questions above or otherwise, and also in detail as to its financial position. And I suggested that it might wish to point to other examples of the use of Dryseal®, and submit written comments from those with experience of how it performs in practice. I also noted that there had been no written input from the architect retained to carry out the quinquennial inspection of this church, and that I would value any comments he might wish to make, as he was clearly familiar with the building.

[85] Finally, I also asked all those making representations to state whether they wished to be heard at an oral hearing, or whether they were content that I should reach a decision on the basis of written representations alone, under rule 26.

Inspection

[86] I visited the Church myself, unaccompanied by any of the parties, on Sunday 11 September, not least in the light of the conflicting evidence as to the extent to which the various areas of roof in question were visible from ground level.

[87] I observed that the roofs of the north and south side aisles and the south porch (and indeed that of the nave) are not visible from ground level, being in each case hidden behind the castellated parapet. And I did not see any elevated view point from which they would be visible.

[88] However, whilst I could not see the main (approximately horizontal) surface of each of those roofs, I noted that the lead covering the roof of the north side aisle had apparently been dressed up to the rear of the parapet along the north boundary in such a way that it just came over each of the lower sections of that parapet, so that it was possible to see what appeared to be a thin sliver of lead. But the amount of roofing material thus visible was sufficiently small that it was not at all obvious that it was lead. The same feature could be observed along the parapet bounding the nave roof, but not along the parapets bounding the roofs of the south side aisle and the south porch.

[89] I invited those making representations to confirm the accuracy of those observations. And, on the assumption that that they were accurate, I invited them further to comment on the following matters:

(i) what precisely was the intention of the Parish as to the dressing of the new roof, and in particular would it protrude over the top of each of the lower sections of castellated parapet, in the same way as the lead did at present?

(ii) if that was intended, would that be the only way in which the new roofing material (whatever it is) would be visible?

(iii) if that was the only way in which the existing roofing material was visible and the new roofing material would be visible, and thus the only way in which the change would be noticeable other than from above, how would the replacement of lead with some alternative material constitute an alteration to the church that would affect its character as a building of special architectural or historic interest?

Responses

[90] In the event, all those consulted responded within (or almost within) the stipulated time frame. I am grateful. And no-one required to be heard at an oral hearing; and I decided, particularly in the light of the urgency of the works and the quantity of information (both case-specific and general) that was by then available to me, that it would be expedient to determine the petition on the basis of written representations alone.

Representations received

Representations in support of the petition

[91] The principal representations on behalf of the Parish were made by Mr Stollard, to whom I have referred earlier in this judgment, and by the incumbent. Mr Stollard drew my attention to the history of this matter, which I have already summarised. He pointed out that the use of Dryseal would apparently enable both the south and north aisles to be replaced at a total cost of around £50,000 – a great deal less than the cost of either lead or steel. He has also submitted material from the selected manufacturer (Hambleside Danelaw), which had been installing GRP systems for more than 35 years, indicating that GRP was expected to last around 50 years (compared to 100 years for lead).

[92] He also stated that, following discussions with Mr Lamb, it was intended to retain the thin slivers of lead that lip over the castellated parapet along the north aisle. This was because its removal might damage the stonework, whereas its retention would preserve unaltered the appearance of that elevation (as a gesture to English Heritage); and if that amount of lead were to be stolen, its replacement would not be prohibitively expensive.

[93] Mr Stollard noted, and I have no reason to doubt this, that Dryseal had been used around ten years ago on the roof of a church in East Anglia (St Nicholas, Great Yarmouth, listed Grade II*), with the full support of the Archdeacon and the DAC. I was supplied with a picture of this, which illustrated the new material used on the roof of a lean-to structure (possibly a vestry) with a fairly shallow slope, fully visible from ground level. The churchwarden of that church was said to be content with Dryseal; the only problem, apparently, was that lead had been used for flashings, which themselves had been stolen recently, and were now to be replaced with Ubiflex.

[94] Finally, Mr Stollard commented in detail on the representations by English Heritage. In particular, he explained that it was proposed to use ribbed sheets of Dryseal, which would

fairly quickly take on the appearance of a fairly new lead roof. In terms of performance, it would cope satisfactorily with condensation. Ubiflex, which is a flexible material, will be used to form the flashings. Repairs would be possible, should they be required. He also pointed out that the installation of GRP would not expose the workforce to the risks associated with lead-work.

[95] The Parish's architect, Mr Lamb of Hook Mason, in a measured and carefully considered letter dated 5 September 2011, noted that a temporary waterproof covering was in place, but that a more permanent solution had to be found. He accepted that the lifespan of GRP was significantly less than that of lead, in normal conditions, but not being subject to theft meant that it should provide a longer-term period of life before it needed to be maintained or replaced. He accepted that it was appropriate for roofing works and had a proven track record. And he considered the various detailed problems that would arise in connection with the detailing of the new roof to ensure waterproof joints, particularly where it abutted historic fabric.

Representations from the Archdeacon

[96] The Archdeacon, in an email of 9 September 2011, indicated that he was broadly supportive; although (understandably) he offered no observations as to the technical merits of the proposed material. He also commented that the church, although very near to the town centre, is in an isolated and vulnerable location, and is likely to remain susceptible to such thefts as long as the metal price remains high.

Representations from the Diocesan Advisory Committee (DAC)

[97] In view of the urgency of the matter, and the relatively long period until the next formal meeting of the DAC, I was sent or copied the views of various individual DAC members, all architects with substantial experience of working with historic churches.

[98] Mr Joyce commented that "quite obviously, if the lifespan of a lead roof is to be determined by the time it's on a roof before it gets stolen, then we must look reasonably at alternatives". He noted that, generally, metal roofs if correctly detailed have a longer lifespan than single-ply membrane roofs, have a better appearance, and will be easier to repair. In addition, single-ply membranes have not undergone the test of time, particularly in relation to the effect of ultra-violet light. However, he was not unwilling to support an application in a case such as this where aesthetics were not an issue.

[99] Mr Stainburn considered that it would be unwise to re-cover these roofs in lead. He considered that stainless steel would be an adequate alternative, which had been used on a number of important listed buildings. However, it too was expensive. Another possibility would be a single-ply polymer membrane, such as Alwitra. GRP was subject to considerable thermal movement, and possibly susceptible to ultra-violet light. However, he was not against the use of any alternative material that would safeguard the fabric of the church.

[100] Mr Kilgour considered that replacing lead with something alien and inappropriate would be a "disastrous intervention". He preferred to rely on security alarms.

[101] Mr Reardon also would have preferred stainless steel, or possibly modern materials developed for roofing such as Trocol – although he accepted that that would probably cost

"a bit more than" GRP. He thus considered that GRP was not an ideal material. However, he was not wholly opposed to its use, provided that it was properly laid by an approved contractor, and considered that it should have a life of 40-60 years.

[102] Finally, I received from Mr Dentith, the Secretary of the DAC, the view of the Committee as a whole (expressed at its meeting on 27 September) that Dryseal would not be appropriate, and suggesting that a more appropriate alternative material be found.

Representations in opposition to the proposal

[103] I received an initial email of 6 September from Mr Taylor of English Heritage, expressing his intention to object formally to the proposal, and a more detailed letter of 15 September providing reasons.

[104] He highlighted the particular features of the building, as noted in the list description. He pointed out that the nave roof was visible from within the churchyard, although the aisle and porch roofs were just concealed behind parapets; there are no long-distance views. The south aisle roof was perishing and admitting water; and English Heritage had offered an initial £14,000 towards the cost of repairing this, effectively taking the project to tender stage, and in principle a further £56,000 towards the £224,000 cost of carrying out the works. It had not yet inspected the north aisle roof.

[105] He observed that lead is historically authentic, practical and a constituent part of the character of the listed building. Its permanent removal would break the historic continuity of its use as an appropriate technical and visual roofing material.

[106] The proposed GRP substitute would have a different appearance, and plastic-like sheen, evident in the accompanying photograph of the church in Norfolk. As a rigid or semi-rigid material, it did not lend itself readily to fitting into corners or abutments. Mr Lamb's letter (above) indicated that a way had been found to deal with these problems, but it remained to be seen whether this would be effective over time.

[107] The effect of GRP on the thermal performance of church roofs was not understood. There might be a risk of increased condensation and deterioration of the underlying substrata, causing damage to historic fabric. The manufacturer had predicted a 50-year life for the product, but offered only a 20-year guarantee. English Heritage experience of GRP materials was that they broke down in UV light, and had a maximum lifespan of no more than 35 years – substantially less than sheet-metal roofs (80 years for steel and 100+ years for lead). It might be difficult to repair, and there were only a few relevant contractors with specialist expertise.

[108] To allow the pre-emptive removal of lead would set an undesirable precedent for other churches and historic buildings. Other deterrent measures should be investigated.

[109] In short, English Heritage considered that the proposed use of GRP would be inappropriate historically, visually and technically as a roofing material for this historic building. The Parish had not considered alternative security measures that might enable the retention and re-use of lead. Applying the test of Policy HE 9.1 in the Government's Planning Policy Statement PPS 5, the proposed works would cause substantial harm to the significance of the building, and a faculty should be refused. English Heritage's preference would be to retain lead roofs throughout.

[110] More generally, English Heritage had agreed to terne-coated stainless steel, as an emergency response to the theft of lead, and other materials (such as Alvitra and mineral felt) as very short-term expedients. But its preference remained for lead as the most durable and authentic cladding. Moreover, it was becoming increasingly concerned not only by the scale of lead theft, which was much greater than ever expected, but also by the increasing prevalence of substitute roofing materials being introduced to replace lead. There were now many anti-theft products in the market; their success remained to be tested, but English Heritage expected churches to install these to prevent repeat thefts, rather than for the use of substitute materials.

[111] Ms Cullis of the SPAB expressed the view of the Society's Technical Panel that Dryseal would be inferior, inadvisable and inappropriate. In short, the Society appreciated that this was a very difficult decision, especially in the light of the Parish's financial plight and the need for a new heating system; but it strongly supported the views of English Heritage.

[112] Ms Worsfold, the conservation officer of Bromsgrove District Council, in a very helpful letter (she was the only one to answer the specific questions I posed), expressed the view of the Council that lead would be preferable but that, in all the circumstances, an alternative could be considered – although she would prefer terne-coated stainless steel to the proposed GRP. However, I mean her and the Council no disrespect when I say that, in essence, the views she expressed more or less exactly echoed those of English Heritage, as I have recorded them above.

Representations in response to the publicity in the press

[113] The petition was advertised in the Bromsgrove Advertiser on 14 September 2011, and representations were invited to be made to the Registry not later than 27 September 2011. This publicity resulted in no representations being received, either supportive or in opposition, by that date or subsequently.

Other relevant material

General reports

[114] As well as the representations noted above relating specifically to this case, I have been helpfully supplied with a number of documents dealing directly or indirectly with this problem more generally, including:

- *Theft of metals*, guidance note from Ecclesiastical, 2010
- *Report of the working party on metal theft*, Church Buildings Council (CBC), March 2011
- *Materials for roofing that are used or considered as alternatives to lead*, Advice Note from the CBC, 2011
- *Theft of Metal from Church Buildings*, English Heritage guidance note, September 2011.

[115] The first of these contains guidance as to a number of useful if largely commonsense preventive measures that may lessen the incidence of metal theft – for example, applying anti-climb paint, ensuring that trees are kept back from low roofs, storing ladders in a secure place, and restricting vehicular access. However, measures intended to facilitate the detection of those engaged in criminal activity – such as various forms of alarms, and improved lighting – are dependent on co-operation by the police and the Crown Prosecution Service (CPS), and experience suggests that this may be difficult to achieve in practice. For a zealous churchwarden to discover on a dark night that the lead on her church is being stolen is one thing; for her to be able to do something about it is quite a different matter.

[116] The report of the CBC working party highlights the scale of the problem, and confirms the reluctance of the CPS to take action to prosecute those responsible. And it focuses on the regulation of scrapyards, suggesting measures that may reduce the level of metal theft. However, whilst its recommendations may well be desirable, they are unlikely all to be implemented in the near future; and even if they were, they would not make the problem vanish overnight, given the opportunist nature of much of this type of theft.

Guidance from the CBC on alternative materials

[117] In any event, neither of these reports provides any guidance on what materials should be used to replace stolen lead. However, the report of the CBC working party does draw attention to the third of the documents highlighted above, an Advice Note produced by Dr David Knight of the CBC. That provides useful guidance on a variety of possible alternative materials. It rightly points out that many of them will only work effectively and be durable if they are laid over a proper substrate, and that care will be needed in relation to the detailing of rainwater disposal outlets, parapets and flashing.

[118] The material most often used as a substitute for lead roofing is terne-coated stainless steel. The CBC Advice Note points out that:

> "there are concerns about its appearance on prominent roofs, but these are less relevant where its use is proposed for low-lying roofs, such as aisles and extensions, and when the roof is not readily visible from ground level, for example when it is behind a parapet.

This leads to the general observation that

> "The greater the architectural sensitivity of a building, the more important it is that any alternative replacement material matches that of the stolen roof."

[119] Other metals are briefly described (stainless steel generally, copper, zinc and aluminium), although the Advice Note observes that each has its problems.

[120] As to non-metal alternatives, the Advice Note starts from the general proposition that:

> "Although the use of slates or tiles may occasionally be appropriate instead of lead, in general the use of non-metal alternatives is not recommended, especially for large roof areas. They can be especially unsuitable for buildings with traditionally constructed roofs as a substrate suitable for lead will not be a good one for non-metal substitutes. On some occasions they may be used as an interim measure, whilst funds are raised for a more permanent roof. Their chief use is for flashing."

It then proceeds to describe various materials, including EDPM (ethylene propylene diene monomer, a type of synthetic rubber), other membranes (including Alwitra Evalon, Evalon V, Sarnafil, and Roofkrete), fibre glass / GRP, bituminous felt, asphalt, and liquid plastic coatings (with a variety of trade names, including Decothane, the material under consideration in the *Bexhill* case). It also deals with non-lead flashing, fixing systems, and rainwater goods. I have also noted the more specific observations from the CBC on the use of Decothane quoted in the judgment in *Bexhill*.

[121] The treatment of fibreglass / GRP is, unfortunately, brief:

> "Fibre glass as a roofing material will not puncture or tear and has a life span [of] over 30 years. It is available with an anti-slip finish, and [in] any colour. Most examples of use are on flat roofs, or very gentle slopes, and for gulleys and flashings."

General guidance from English Heritage

[122] The most recent of these general documents is the English Heritage Guidance Note entitled *Theft of Metal from Church Buildings*, produced in September 2011 (as an update to the note of October 2008 on *Theft of Metal Roof Coverings from Churches and Other Historic Buildings*). Chancellor Hill rightly observes in *Bexhill* that this is a thorough and well-informed document, underscored with pragmatic good sense. As well as emphasising the general points on preventing metal theft, considered in other guidance and noted above, this Guidance Note helpfully lists the advantages and disadvantages of lead and stainless steel.[10]

[123] The English Heritage Guidance Note also contains, at the end, useful advice on "short term roofing and modern replacements", as follows:

> "Today there are an increasing number of new roofing systems being marketed as alternatives to lead, many based on modern plastics or rubber with claimed life expectancies of 25 years or more. Some will have laboratory certification, but few will have been *[sic]* experienced the harsher climate often found on exposed church roofs. English Heritage would not normally support their use on any part of a listed building.
>
> Most of these alternatives are visually inappropriate and will still be relatively expensive to install, even using a material such as felt, which should last for 10 years.
>
> Questions to consider when contemplating using these materials on roofs include:
>
> - what tests were carried out and how did the product perform?
> - is there any experience of its longevity and use on churches?
> - can the detailing accommodate the many complications found on church roofs?
> - does the colour remain consistent in different light, weather and over time?
> - how easy/expensive is it to install in terms of scaffolding and access?
> - how easy/expensive is it to maintain and repair?
> - how does it deal with problems e.g. exceptional weather, sitting water, dropped scaffold clips etc?
> - what does the guarantee cover?
> - are specialists needed for installation and repair?
> - how long has the company been in business?

[10] Respectively at sections 7, 10.

- is the system likely to be refined in future, resulting in a lack of spare or replacement parts?

NB: none of these systems replicate the appearance of lead."

Analysis

The use of lead

[124] The first question to be answered is whether there should be an insistence on replacing lead only with lead, as a matter of principle – subject, possibly, to allowing some other material on a temporary basis while funds are raised to pay for the lead.

[125] As noted above, the advantages and disadvantages of lead are summarised in the English Heritage Guidance Note. These fall into several categories, including:

(1) practical considerations;

(2) longevity;

(3) cost;

(4) appearance; and

(5) broader issues of principle.

[126] As to the first, it is clear that there is a job to be done – covering the space beneath, in such a way as to keep out rain and snow, and providing reasonable heat insulation. Different materials will have particular advantages – for example, because lead is soft and readily malleable, it is easy to dress around the edges of awkwardly shaped areas, which in turn leads to less risk of water ingress. It is therefore particularly suitable for flashing. It is also easy to repair. And it is highly resistant to atmospheric and bi-metallic corrosion.

[127] However, if any material other than lead can replicate those characteristics, there would seem to be no reason of principle (at least under this heading) why it should not be just as acceptable. Clearly the substrate of a roof that has been designed to accept lead covering may need to be adjusted to accept some alternative material. But architects and surveyors are (or should be) well aware of that, and can design and detail a new roof accordingly; a parish should therefore be able to rely on the professional advice it receives as to the advantages and disadvantages of any particular material to be used, and the need for consequential works to enable that material to be used to best effect. And if that advice proves to be incorrect, the parish can seek redress in the usual way. Similarly, a roof – of whatever material – needs to be installed (and in due course repaired as necessary) correctly, and appropriately experienced contractors and sub-contractors must be employed, and supervised as necessary.

[128] The second and third issues relate to the first. Sooner or later, any building material (including lead) will reach the end of its life and need to be repaired and, eventually, replaced. That will influence its overall cost-in-use over the long term, taking account of both the costs of the initial installation and that of subsequent repair and replacement. But it may well be more appropriate for a parish to use a material that involves an outlay of, say, £75,000 (at present prices) every 25 years than one which lasts 100 years but costs

£300,000. It will probably be easier to raise the smaller sum once a generation than the larger sum once a century.

[129] In relation to the first three issues, several of those supporting the use of lead (or terne-coated stainless steel), either in general or in this particular case, argue that it has proven longevity, and that alternative materials have not been used for long enough to be certain of their durability. That is obviously true, and to use any new material is inherently risky, as will be obvious to any building professional. But if on that basis no new materials were ever to be employed, building construction methodology would never advance. And there is an apparently related argument to the effect that few new materials will have experienced "the harsher climate often found on exposed church roofs"; but it is not clear why the climate found on church roofs is any harsher than that experienced elsewhere.

[130] And of course, as to longevity, the argument that lead lasts over a century sounds very hollow in the light of if its attractiveness to thieves. Experience suggests that, where a church has once been targeted, any remaining lead is likely to last months, not decades. It is thus noteworthy that amongst the characteristics of lead noted by English Heritage are that all roofing lead sheet is fully recyclable, and that it has a value when it is recycled and re-used; but these are arguably, in the present climate, disadvantages rather than, as claimed, advantages.

[131] As for appearance, lead is said to be "aesthetically attractive". That must be to some extent because it is familiar. We are used to seeing grey expanses of lead on flat or shallow-pitch roofs, and tiles and slates on sloping roofs. But any other continuous surface would have a broadly similar appearance, even if perhaps of a slightly different colour. If there are two similar roofs, both visible in a single view, and one is to be replaced, or where only part of a roof is to be replaced, it might indeed look odd if a different material were to be used. But where, for example, a lean-to vestry is to be re-roofed following theft of lead, there seems to be no reason why – on aesthetic grounds – a different material should not be used, subject to the practical issues (such as detailing junctions with walls) already mentioned.

[132] And in many cases a roof is invisible except from within a low-flying balloon – not least where it is hidden behind a parapet. In those situations there seems to be no aesthetic basis whatsoever for insisting on lead, or indeed any particular material. This would also be true where, as in the present case, a lead roof is just visible where it is dressed over the top of a parapet – almost no-one would be able to determine the true composition of the thin slither of roofing material that was on view.

[133] A not dissimilar problem was some years ago considered by a planning inspector advising the Secretary of State in relation to an appeal against the refusal of listed building consent for the replacement with Sarnafil of a lead gutter (wide enough to be walked along) between the dormer roof and the front parapet of 15 Garrick Street, London. The inspector observed as follows:

> "The gutter is a purely functional element of the building, not visible other than when standing in it. It is not visible to any material extent from any other point, including surrounding buildings. It is of no architectural, historic or technical significance. It is not mentioned in the listing description.
>
> English Heritage and [Westminster] Council refer to Annex C of PPG15, where it is said that lead roofing should not normally be replaced by modern substitute materials. Whilst that advice is obviously sound as a general principle, to apply it to the present case appears to me

> to involve taking an excessively purist approach to the problem of a leaking gutter. I cannot see that the special architectural or historic interest of this important Grade II* listed building can be affected in the slightest degree by using a material other than lead to renew the gutter. Indeed, I cannot see how anyone (other than the maintenance staff) would ever know a substitute material had been used. That being so, the suitability and durability of the material proposed is entirely one for the appellants' professional advisers."[11]

[134] That appraisal was accepted by the Secretary of State, who granted listed building consent. Clearly such a decision is in no way a binding precedent, and equally clearly a large area of roof is different from a gutter; but I cannot see why the difference is anything other than the amount of lead-work involved. The logic seems to me to be the same. An area of roofing, whether as small as a parapet gutter or as large as the roofs in the present case, if it is invisible, cannot be said to be an important element in the appearance of a building.

[135] Finally, then, is there some broader, philosophical issue of principle in favour of lead? This is the argument summarised by English Heritage as "lead is the historically correct material" or, as Mr Taylor put it, "its permanent removal would break the historic continuity of its use as an appropriate technical and visual roofing material". The CBC notes that lead "is part of the heritage of our built environment". Mr Kilgour of the DAC considers that any alternative would be "alien and inappropriate".

[136] However, I am sceptical. Clearly until relatively recently there was in practice no real long-term alternative to lead sheeting for roofs – there was no Sarnafil, Decothane or Dryseal. But there seems no basis for assuming that, had those materials been available, they would not have been used. Historically there was no electric light, or plumbing, or heating, or printed hymn books, in any of our churches; but no-one would seriously suggest that churches should be without any of those – except, possibly, in the case of a building retained as a one-off museum exhibit.

[137] Obviously, none of this justifies the removal of an existing lead roof. But once all of the lead from a roof has been removed, due to disrepair or theft, any covering – even in lead – will be a "new" roof. And where only part of the historic lead covering is removed, unless the part removed is a very small proportion of the whole, it is likely that the whole roof will be re-covered as a single operation. In either case, therefore, there will be no historic material to be enjoyed.

[138] Nor should it be supposed that there will never be a case in favour of lead. It is particularly appropriate for roofing, for the various technical reasons noted above; and any alternative must be able to achieve an equivalent level of performance in use – or, if not, those advocating its use must be able to deal with any resulting problems. And there will be, exceptionally, situations where it may be appropriate for aesthetic reasons to insist on lead being used; I have already noted the sensible guidance from the CBC in relation to the need to consider the architectural sensitivity of the particular area of roof in question.

[139] However, I remain of the view, already expressed in my interim decision, that in this case – given the nature and location of the roofs concerned, the higher cost of lead, and the increased likelihood of theft – there is no reason to insist on the use of lead.

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[11] Planning Inspectorate ref ref APP/X5900/E/94/811051.

Substitutes for lead

[140] Once a modern material is to be used in substitution for lead, there is a wide range of possibilities, described in the CBC Advice Note.

[141] Terne-coated stainless steel, in particular, seems to be generally preferred. It has a similar appearance to lead, and is significantly cheaper than lead. However, as noted in the English Heritage guidance, laying it is more expensive on a roof with traditional detailing, which may outweigh (or significantly diminish) the price difference between the materials; and it may last only between 60 and 80 years, as opposed to the 100 years predicted for lead (in the absence of theft), which means that its overall cost in the long term is apparently no less than that of lead, and may indeed be higher. The English Heritage guidance also highlights some other practical disadvantages.

[142] No-one seems to be advocating the use of a metal other than lead or terne-coated stainless steel, either in this case or generally.

[143] The other materials mentioned in the CBC guidance are generally significantly less expensive than lead or terne-coated stainless steel, but may well have a shorter life-span – although that of course remains to be seen. They will therefore probably require to be replaced sooner than either lead or steel, and may need to be repaired from time to time. Because they are relatively new, there is less experience of their use; but each manufacturer provides at least some guarantee, and the use in practice may be longer than the guaranteed period. The overall cost in the long term of using any particular substitute material may therefore be greater than is hoped by those proposing its use. As for which material should be used, the questions raised in the English Heritage guidance (see paragraph [122] above) will be helpful.

[144] In addition, it is very important that any material is used in a way that ensures that it does its job properly – that is, not so that it replicates lead, but so that it provides a proper roof for the building, to keep out the rain. This will mean that it must be detailed and installed correctly, and in particular that any necessary adjustments to the substrate are made. To achieve this may require that the method of installation be approved by the Court (on the advice of the DAC), although that will not be necessary where it is clear that an appropriately experienced professional is already fully involved – as in this case.

[145] I also do not support the approach that plastic or other non-traditional materials can only be justified as a "short-term" solution, whilst a permanent solution (presumably using a material such as lead or terne-coated stainless steel) is identified and funded. The difference in cost between the two types of solution can be measured in hundreds of thousands of pounds; and to raise the larger sum necessary to pay for the traditional solution will not only take a long time, during which the roof may let in water, but may be a wholly inappropriate use of the limited financial resources of the parish. Nor is there any particular reason why metal theft will decrease significantly.

Sale of remaining lead

[146] Where some of the lead on a roof has been stolen, and a faculty has been granted for the re-covering of the whole roof in an alternative material, there would seem to be no reason why any lead remaining after the theft should not be sold, with the proceeds used to pay for the cost of the new roof. The only exception to this might be where it can be shown

that there is some historic value in the particular lead remaining – where, for example, there are historic plumbers' marks, graffiti or particularly fine detailing (as noted in the English Heritage Guidance Note).

Decision

[147] As to the outstanding procedural points, although on a precautionary basis I required this case to be notified and advertised under rule 13(3) and 13(4), I am not convinced that the re-covering (albeit with a non-traditional material) of an area of roof that is invisible from ground level does affect the character of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest. However, the responses I have received as a result of such notification and advertisement have been very helpful in assisting me to produce this judgment.

[148] I make no further comment as to the need for planning permission for the works that have now been carried out, as that must be a matter for the planning authority, other than to note that it has not sought to suggest that such permission was required.

[149] As to the substantive matters to be determined, as noted above, I have come to the conclusion that there is no reason to insist on the use of lead.

[150] As to what could or should be used as an alternative, there seems to be a general consensus that the material that was proposed in this instance, Dryseal, is probably not ideal as a roofing material. On the other hand, Dryseal is certainly adequate – the CBC Advice Note does not condemn its use out of hand (see paragraph [121] above) – and it has been used on other church roofs. It is also said to be significantly cheaper, at least in the short term.

[151] In my interim decision, I indicated that the petitioners, as responsible trustees of the funds of the Parish, would need to take account of the copious advice that had now been proffered to them, and that they might wish to reconsider their choice in the light of that. Thus they might have decided that they were willing to take the risk that their proposed material would be less than ideal in practice, in the knowledge that it would also be less expensive. Alternatively, on reflection, they might wish to opt for a safer but more costly alternative, which would no doubt involve more fundraising. I thus concluded that which of the various possible materials should be used was a matter of judgment for the Parish and its advisers.

[152] However, to avoid any delays if the Parish did decide to reconsider its position, I explicitly stated that if an amendment to the faculty were to be sought substituting terne-coated stainless steel for Dryseal, I would be willing to authorise that.

[153] On that basis, I decided to authorise the use of Dryseal, as requested in the petition. I understand that the parish has chosen to implement its proposed solution, as thus authorised, rather than exploring further any other alternative to the original lead.

[154] Finally, I noted and shared the concern that the new roofs should be installed and detailed correctly. However, Mr Lamb, the architect engaged to advise the parish in this matter, appeared to have the matter well in hand, so I saw no reason to require the involvement of the DAC unless for any reason he were to be no longer involved.

[155] I therefore directed that a faculty should issue to authorise the works as proposed, subject to a condition that either:

(a) the works be supervised by Mr Lamb, or

(b) before any works are carried out, a specification be approved in advance in writing by this court following consultation with the DAC.

[156] I understand that a faculty has now issued in those terms.

DR CHARLES MYNORS

Chancellor

6 January 2012