

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

C117/2013

LEAMINGTON HASTINGS: ALL SAINTS

JUDGMENT

- 1) All Saints, Leamington Hastings is a significant medieval church with a grade II* listing. The Priest in Charge and churchwardens petition together with the parish's roof and organ repairs project manager and with the unanimous support of the Parochial Church Council for a faculty for removal of the lead roofing on the south aisle and its replacement by a Dryseal GRP (ie glass reinforced polyester) roofing system. On 22nd July 2014 I authorised the issuing of a faculty which would permit the retention in place of the current GRP roof for ten years but require it then to be replaced by a roof made of terne-coated steel or an equivalent material.

- 2) The church is in a small country village (with the local population numbering about 450). Although the church building is in the centre of the village it is some distance from the nearest properties and the south side of the church faces away from the village. Being in that location the church has been vulnerable to attacks of various kinds and these have focused on the hidden south side. In November 2009 there was an arson attack resulting in a fire starting on the roof of the south aisle. This affected a large part of the church but causing particular damage to the south aisle and destroyed the organ. The roof which had been partially destroyed in that attack was replaced in lead; the damage repaired; and after considerable work and expense the pipe organ was replaced by a new pipe organ (or rather by a historic organ which had been sought out and restored). In August 2013 there were two instances of the theft of lead from the roof of the south aisle and a further attempt to steal the remaining lead. The removal of the roofing caused by these attacks permitted water ingress immediately above the new organ rendering that instrument unusable and necessitating repairs to it costing £25,000. The work on that organ had only been completed in July 2013 and a dedication service had been planned for the end of October 2013. In addition there has been theft of silver from inside the church. That history only needs to be stated in the shortest of terms for anyone hearing it to be conscious

of how hard a blow to the loyal congregation of this church the events of August 2013 were.

- 3) There was no response to the public notice advertising the Petition but the Diocesan Advisory Committee has not recommended approval (although it has certified that the proposed change would not affect the church's character as a building of special significance). In addition both English Heritage and the Society for the Protection of Ancient Buildings have expressed opposition to the proposal but neither body wished to become a party to the proceedings. The Local Planning Authority takes the view that because there is limited visibility of the south aisle roof planning permission is not required and it has chosen not to make any other comment on the proposals.
- 4) I concluded that it was expedient to determine the matter on the basis of written representations and the Petitioners have consented to that course.
- 5) A temporary polythene covering had been fitted to the south aisle roof immediately following the lead thefts. On 16th August 2013 at the request of the Parochial Church Council I authorised the removal of the remaining lead from the roof and its replacement by a more substantial temporary covering. That authorisation was given in the face of the repeated thefts and attempted thefts and to stabilise the situation until a decision had been made on the appropriate roof covering. My Note of 19th August 2013 explained that the authority to remove the remaining lead was not to be seen as prejudging the question of the material to be used for the permanent roof covering.
- 6) Following that authority the Petitioners addressed the issue of a temporary roof covering. It was apparent that such covering was likely to need to be in place for some time and there had been some water ingress through the original polythene covering. The Church Architect's recommendation to the Petitioners was that any temporary covering should provide protection at least as robust as that of a three thickness elastometric roofing felt. The Petitioners investigated the cost of such a covering and found that would be the same as the GRP covering which they wished to install on a permanent basis. In those circumstances they installed a GRP covering relying on the authority given in August 2013 for a temporary covering but being conscious that the final decision of the Court might require a

different covering. That installation was completed in early April 2014 by when it had become apparent that there was a difference of views with the Petitioners seeking permission for a GRP covering (the Petition having been lodged on 18th December 2013) and with the Diocesan Advisory Committee, English Heritage, and the Society for the Protection of Ancient Buildings pressing for a terne-coated steel roof. I am satisfied that in acting as they did the Petitioners were not seeking to steal a march nor in some way to present the Court with a 'fait accompli'. I am satisfied that they acted genuinely having concluded that their preferred covering would be no more expensive than an appropriately robust temporary covering and that installing such a covering might be an unnecessary expense. However, I am also satisfied that the Petitioners knew that they were taking the risk that the Court would in due course refuse the petition for a GRP covering.

- 7) I have set out that background in some detail because it is relevant to the approach to be taken to this Petition. The following factors will be seen to be of particular note:
- a) All Saints is a church in a rural location which has a small but loyal congregation.
 - b) The church is vulnerable to attacks from those seeking to damage it or to steal from it with the roof of the south aisle being a point of particular vulnerability.
 - c) There has been a succession of such attacks.
 - d) The worshipping congregation has responded with faithful fortitude to those attacks. The incumbent, churchwardens, and the Parochial Church Council have striven to maintain the heritage of this historic church. In particular the sourcing of a replacement pipe organ was a major exercise showing a willingness to avoid easy options and a commitment to taking care and incurring expense in order to achieve quality. This attitude is also shown by the fact that the nave roof is to remain of lead.
 - e) Similarly, as I have already explained, I am satisfied that the decision to install GRP covering under my authorisation of August 2013 was made with proper motives.

The Competing Contentions in Brief.

- 8) All are agreed that it is not appropriate for the roof to be recovered in lead. The proven vulnerability of the church and of the south aisle roof in particular to theft means that it is neither realistic nor practicable to require the former lead roof to be replaced by a further lead roof.
- 9) The dispute is as to whether the replacement roof should be made of terne-coated steel or should be the Dryseal GRP covering. The Petitioners seek permission for the latter while the Diocesan Advisory Committee, English Heritage, and the Society for the Protection of Ancient Buildings contend for the former.
- 10) The points made in favour of terne-coated steel and against GRP can be summarised thus:
 - a) In circumstances where it is no longer possible to retain lead roofing the most suitable replacement is terne-coated steel because it best imitates the effect and appearance of lead.
 - b) Terne-coated steel is markedly less vulnerable to theft than lead being more difficult to remove and having a much lower resale value. The submission from English Heritage says it is aware of attempts to steal terne-coated steel but seemingly not of successful attempts whereas the Diocesan Advisory Committee advises that the risk of theft of terne-coated steel is "*negligible*".
 - c) GRP is a relatively new and untested material and so it is not possible to know how it will perform over time and in particular how it will perform as a roofing material for a church.
 - d) Terne-coated steel is believed to have a longer life-span than GRP and so to be a more sustainable solution. The life-span of a properly fitted terne-coated steel roof is believed to be of the order of 60 years or more while that of a GRP roof is likely to be a rather shorter period.
 - e) Although the bodies resisting the use of GRP sympathised with the Parochial Church Council's concerns about insurance and the attitude of Ecclesiastical Insurance Group they submitted that problems in insurance could not justify the use of a roofing material which was otherwise inappropriate.

- 11) The Petitioners put forward a number of reasons why they believe that it is appropriate to use a GRP covering rather than terne-coated steel for this roof.
- a) The principal reason is clearly the stance being taken by the insurers of this church, the well-known company Ecclesiastical Insurance Group. The Petitioners explain that those insurers have said that if there is a metallic roof of any kind on the south aisle they will only provide insurance cover up to the sum of £5,000 (including consequential losses) although this sum will rise to £10,000 if a suitable alarm is fitted. The Petitioners believe that this stance is because the insurers treat all metallic roofs in the same way. However, it is possible that it is a consequence of the repeated thefts from the south aisle roof and I note that in the case of *Eastry: St. Mary the Blessed Virgin* (Canterbury Commissary Court November 2012 (2013) 15 Ecc L J 247) Commissary General Ellis referred to a similar limitation on insurance cover but attributed this to the fact that there had been earlier thefts from the roof in question. Whatever the reason for the policy it is clear that if a metal roof is put on the south aisle of All Saints the insurance cover will be limited. The Petitioners point out that the new organ (with an insurance value of £150,000) is in the south aisle as are other valuable items. They say that it would be unjustifiable to permit a situation where valuable items were in the south aisle but the roofing material meant that there would not be adequate insurance cover in the event of a further attack on the roof and damage to those items¹.
- b) The Petitioners say that although stainless steel does not have the value of lead it does have a resale value and so a roof of such material would be at risk of attack. Even if an attempted theft were not to be successful it could result in damage to the roof with consequent water ingress and damage to the church in circumstances where there would be inadequate insurance cover.

¹ The approach of EIG is a matter for that company. Moreover, I am very conscious that I have not received any representations from it and that it is possible that there has been some misunderstanding. Nonetheless, I am compelled to say that if the approach is as described by the Petitioners, namely treating all metallic roofs in the same manner (or doing so once there has been a theft), then this does seem somewhat puzzling. As described below the expert consensus is that the risk of theft of terne-coated steel is greatly less than the risk of the theft of lead. In those circumstances regarding roofs made of the former material as no different for insurance purposes from those made of the latter would seem a strange approach and one hardly calculated to encourage the use of terne-coated steel as opposed to lead.

- c) It is the belief of the Petitioners that terne-coated steel roofs are noisy when there is rain or high winds.
- d) The Petitioners say that account is to be taken of the higher cost of terne-coated steel. The Parochial Church Council does not have the funds to meet that cost and so would have to engage in a major fund-raising exercise in the small local community. The Petitioners doubt whether this would be successful given that generous support has been given in the recent past to cope with the effects of the various attacks on the church. Moreover, the request for such support from the local community would be hard to justify given that there is now an adequate roof on the church.
- e) The fire in 2009 was confined to the south aisle because the roof of the aisle burnt through. The Petitioners are concerned that terne-coated steel would not burn through in the event of a similar fire with the consequence that the fire could spread to the remainder of the church roof.
- f) The south aisle roof is hidden behind a parapet and so is not readily visible. Moreover, as already explained it is hidden away from the houses in the village. In any event the Petitioners contend that Dryseal GRP imitates the appearance of lead. It follows, the Petitioners say, that there will be no adverse impact on the appearance of the church building.
- g) The Petitioners contend that a GRP roof may well have a life expectancy in excess of 50 years. They point to the fact that a history of the use of this material and of its longevity is building up over time

The Applicable Principles.

- 12) All are agreed that it is inappropriate for the lead to be removed from the roof of All Saints and replaced by a different material. It is also common ground that the installation of a GRP roof would not affect the special character of the church. This means that the guidance in *Re Duffield: St Alkmund* [2013] 2 WLR 854 as to changes to listed churches is of little assistance here.
- 13) The consequences of lead theft and the debate as to suitable alternative roofing materials have been addressed by a number of my fellow chancellors. In particular substantial judgments have been given by Hill Ch (*Bexhill: St. Michael and All Angels and other churches* – Chichester Consistory Court November

2011 (2012) 14 Ecc L J 316); Mynors Ch (*Bromsgrove: St. John the Baptist* – Worcester Consistory Court December 2011 (2012) 14 Ecc L J 319); and Commissary General Ellis (*Eastry: St. Mary the Blessed Virgin* – supra). In addition I have considered the approach to be taken in my judgments in the cases of *Eccleshall: Holy Trinity* (Lichfield Consistory Court February 2013) and *Church Lawford: St. Peter* (Coventry Consistory Court December 2013 (2014) 16 Ecc L J 259).

- 14) Account is also to be taken of the English Heritage Guidance Note “Theft of Metal from Church Buildings” and of the Church Buildings Council’s Note “Materials For Roofing That Are Used Or Considered As Alternatives To Lead”.
- 15) I have to consider whether GRP is a suitable and appropriate roofing material for All Saints. The effect of the foregoing authorities and guidance is that in considering the appropriateness or otherwise of proposed roofing materials I must take account of the very substantial benefits of lead and of terne-coated stainless steel as roof coverings. Those benefits are both aesthetic and practical. The practical benefits stem from the proven longevity and effectiveness of those materials. They combine with the aesthetic benefits in that roofs covered in lead were typically designed to be so covered. It follows that they will both look better and be better protected if covered in lead or a similar material. Moreover, the general experience of the courts and of the appropriately qualified experts is that terne-coated steel is generally the most appropriate alternative in cases, such as the current one, where it is not practicable to retain lead on the roof. It follows that the Consistory Court should be alert to those benefits and should be cautious where the use of a different material is proposed.
- 16) If the Court’s recognition of the benefits of lead and terne coated stainless steel is to be more than just a pious utterance the Court must be prepared to reject petitions for the use of other forms of roofing where those forms are inappropriate no matter how strongly particular petitioners wish to have a different form of roofing. However, this does not preclude the use of an alternative material in a suitable case. Account has to be taken of the particular church and the particular roof. Thus in *Bromsgrove: St. John the Baptist* Mynors Ch authorised the use of GRP and in *Eccleshall: Holy Trinity* I authorised the use of Kemperol. However, it is to be noted that in the latter case the Diocesan Advisory Committee had

recommended approval of such use and as I explained in my judgment that was a powerful factor. In the former case Mynors Ch was confronted with a choice between lead and GRP. There does not appear in that case to have been any suggestion that terne-coated steel should be used. Mynors Ch's authorisation of the use of GRP was in a context where the roof was not visible; where it was vulnerable to theft; and where lead would have been very markedly more expensive than GRP. It is not surprising that the use of GRP was authorised in those circumstances and I do not understand Mynors Ch to have been suggesting that GRP would always be a suitable roofing material provided that the roof was not readily visible. I also note that one of the churches which Hill Ch was considering in his judgment cited above was St. Mary, Balcombe and that the use of GRP as a roof covering was permitted in that case. However, the roof in question was the flat roof of a small 1990's toilet building annexed to the church. It follows that the decision does not assist with the suitability of GRP for an important roof on the main body of a church building.

Analysis of the Contentions in the Light of those Principles.

- 17) This is a case where it is right for the lead roofing to be replaced. I have to consider the Petitioners' request to be allowed to use GRP against the general preference for terne-coated steel which I have set out above. Moreover, I have to consider it in the light of the considered advice of the Diocesan Advisory Committee and the considered submissions of English Heritage and the Society for the Protection of Ancient Buildings. Those are advice and submissions to which I must give considerable weight coming as they do from experts in this field and representing a substantial consensus. Do the Petitioners' contentions outweigh those matters?
- 18) The fact that terne-coated steel is more expensive than GRP cannot be a determining factor if the former is the more appropriate material to use and given that the increased initial cost is to be seen in the light of the greater proven longevity of terne-coated steel. In this regard there is some force in the Petitioners' contention that the passage of time is showing that GRP can last for some time and can operate adequately as a roofing material. Nonetheless I note that it is the clear conclusion of the various expert bodies which have considered

this matter that a roof made of terne-coated steel is likely to last longer (and potentially very much longer) than one made of GRP. I am satisfied that I should be guided by that established expert consensus and I will proceed on the basis that a terne-coated steel roof is likely to last materially longer than one made of GRP.

- 19) The Petitioners contend that terne-coated steel is at risk of theft or at least at risk of attempted theft which could cause damage to the roof. In part this contention appears to be based on a misunderstanding of the nature of terne-coated steel and a belief that it has a value equivalent to stainless steel. The guidance I have referred to above makes it clear that the terne-coating process is intended to reduce the value of the steel to which it is applied and that it is successful in so doing. Moreover, I must take account of the strong advice from the Diocesan Advisory Committee and English Heritage to the effect that the risk of terne-coated steel being stolen is very low. That is a matter in respect of which those bodies are well-placed to advise and I will approach the matter on the footing that the risk of terne-coated steel being stolen is small as is the risk of an attempted theft causing damage. I reach a similar conclusion with regard to the Petitioners' contention that GRP is to be preferred to terne-coated steel because there is a greater risk of a fire on the south aisle roof affecting the latter spreading to the rest of the church than would be the case with a GRP roof. Although there is a degree of speculation in this argument I understand the logic of the Petitioners' argument but this additional benefit of GRP, even if accepted, is modest. Without more it could justify the use of a material which would otherwise be unsuitable.
- 20) The Diocesan Advisory Committee has advised that proper fitting can remove the "drumming" effect which can result from the use of terne-coated steel and so this is not a factor against that material.
- 21) There is force in the Petitioners' contention that the roof of the south aisle is not readily visible. I note that the Diocesan Advisory Committee has advised that the application of a GRP roof will not adversely affect the church's special character. This is not a case where the visibility of a roof to which a GRP covering is to be applied a powerful factor against use of that covering. Visibility is not the only criterion and it is apparent from the guidance and authorities set out above that

terne-coated steel will normally be preferable to GRP even if the roof in question will not be readily visible.

- 22) It follows that but for the impact which a terne-coated steel roof will have on the insurance of the church this would be a comparatively straightforward case. It would be one where the Petitioners have a preference for a roof of GRP and where that preference is by no means irrational but where that preference and the arguments in favour of GRP were not sufficient to outweigh the established preference for terne-coated steel as the material to be used where the risk of theft precludes the use of lead. Indeed the clear impression which I gain from the papers in this case is that it is the insurance position which has caused the Petitioners to seek permission for a roof of GRP. Even though I have no doubt that the other arguments which the Petitioners put forward are genuinely believed it is the insurance position which has caused the Petitioners to resist the advice that the most appropriate roofing material is terne-coated steel.
- 23) Accordingly, I turn to consider the impact of the limits on the potentially available insurance. The concerns raised are real. If there is a metallic roof of any kind the insurance cover (including consequential losses) will be limited to £5,000 (increasing to £10,000 with a suitable alarm). That limitation has to be considered in circumstances where the value of the items in the south aisle (in particular the organ) greatly exceeds that sum and where those items are inherently vulnerable to damage from the water ingress which could result from the removal of the roof or from damage being caused to it in the course of an attempt to remove it.
- 24) The particular history of this church and the especial vulnerability of the south aisle together with the actions which the parishioners have had to take in response to thefts and arson make the Parochial Church Council's reluctance to be underinsured all too understandable. Am I able to say that the difficulties in obtaining adequate insurance cover are sufficient to justify the use of a roofing material which would otherwise be inappropriate? English Heritage and the Diocesan Advisory Committee say not. They have sympathy with the Petitioners' plight but say that the proper approach is to consider what is objectively the right material to use on the roof. They say that the stance of the insurers should not compel the court to authorise the use of a material which would not otherwise be permitted.

- 25) I have been able to derive only limited assistance from the decisions of other chancellors and it does not appear that the problem has presented itself in quite such a stark form elsewhere. Thus in his decision in *Bexhill: St. Michael and All Angels and other churches* supra Hill Ch identified (at paragraph 47 (iii)) the ending of insurance cover for like for like replacement as one of the factors which operated to justify the removal of lead and its replacement by other materials. However, Hill Ch was not in terms addressing the contrast between roofs made of terne-coated steel and those of other materials. In addition the insurance difficulties do not appear to have been the key factor in his reasoning. It is apparent from paragraph 3 of her judgment that the insurance position with which Commissary General Ellis was confronted in *Eastry: St. Mary the Blessed Virgin* – supra was closely akin to that here in that the insurance cover in respect of any metallic roof was to be markedly limited. The decision in that case was that the ultimate replacement roof was to be of lead or a suitable metallic material. This suggests the learned Commissary General did not regard the insurance limitation as a significant factor. However, I note that the issue is not substantively addressed in her judgment and it seems that the argument put forward by the Petitioners in this case was not in terms put to Commissary General Ellis.
- 26) I have to consider whether as a matter of principle a limitation on the insurance cover which will be available should be a factor causing the Court to allow the application of a roofing material which would not otherwise be appropriate. Looking at the matter from a different angle does the limitation on insurance cover which would result from its use mean that the Petitioners are justified in rejecting terne-coated steel? In their advice to me the Diocesan Advisory Committee contend that I should be guided by what is most appropriate for the building without reference to the insurance position. The Petitioners would say that consideration of what is appropriate for the building has to take account of the consequences of applying a particular material including the impact on the available insurance cover. In my judgment the effect on the available insurance cover is a factor which is to be taken into account but it is a factor of very limited weight. If there had to be a choice between two kinds of material each of which was suitable for the church in question then it would be legitimate to take account of the insurance consequences when making that choice. This would be so even

if doing so were to tip the balance in favour of material which might otherwise not be the preferred option out of two suitable materials. However, the approach of insurers cannot be a justification for using a material which would otherwise be inappropriate. It cannot render suitable a material which would otherwise not be suitable. The position in this case is that but for the insurance issue there would be no doubt that the appropriate material to be used would be terne-coated steel and that the Court's conclusion would be that GRP was an inappropriate covering. It is my judgment that the insurance position, regrettable though it is, cannot be a justification for the use of GRP to roof the south aisle when the balance of other factors is so strongly against GRP and in favour of terne-coated steel.

The Consequences of that Analysis.

- 27) It follows that the long-term solution must be a roof of terne-coated steel or some equivalent metallic material. What is to be done in the current situation where there is a GRP covering which was installed in good faith and in the circumstances set out above? The fact that the roof should be of terne-coated steel or the like does not mean that such a roof has to be installed immediately. All Saints has had a long life and the Court is entitled to take a long view of what is required.
- 28) I will direct the issue of a faculty which confirms the authorisation of the removal of the lead from the roof of the south aisle. The faculty will confirm, for the avoidance of doubt, that the installation of a GRP roof which took place in April 2014 was permitted under the authority given on 16th August 2013 to install a temporary roof covering. I will also authorise the retention of that GRP covering in place until 1st September 2024 by when it shall be replaced by a roof made of terne-coated steel or an equivalent metallic material. I will also give permission to apply for an extension of that period in due course. The Court will have to consider the merits of any such application when it is made but I would expect any extension period to be comparatively short and for good reasons to be shown as to why the ten year replacement date cannot be achieved.
- 29) It will be seen that I have adopted an approach similar to that of Commissary General Ellis in the *Eastry* case of allowing the retention of a non-metallic roof for

a number of years but requiring an ultimate and permanent replacement in metal. I have done so and have given a substantially greater period than was allowed by the Commissary General for the following reasons and taking the long view just stated.

- a) The recent history of this church shows the care which the worshipping congregation and the local community have taken of the fabric. It also shows the efforts which they have made in remedying the effects of repeated attacks on the church. Account is to be taken of that faithful fortitude.
 - b) The repeated attacks demonstrate the vulnerability of the roof of the south aisle and give substance to the anxiety felt by the Petitioners as to the desirability of adequate insurance cover.
 - c) The GRP roofing which is currently in place provides an adequate short-term protection for the roof. It was installed in good faith and after consideration of the authority which was given for a temporary covering. This is a case where the Parochial Church Council acted lawfully, openly, and after liaison with the Registry and the Diocesan Advisory Committee so that the situation is markedly different from that with which Commissary General Ellis was dealing in the *Eastry* case.
 - d) I have already explained that the insurance position does not justify the application of an inappropriate roof covering. However, it is by no means entirely irrelevant and is a justification, particularly given the special history of this church, for allowing a breathing space while all concerned can take stock. I hope that the lengthy period which I have allowed will enable further discussions to take place with the insurers. I note that the Diocesan Advisory Committee is already seeking to arrange a meeting with the insurers about this matter. I hope that English Heritage and the Society for the Protection of Ancient Buildings will consider giving support to representations from the Petitioners to the insurers in due course. This period of time will also allow scope for potential further reductions in the risk of theft from church roofs and for the development and improvement of metallic coverings.
- 30) In the *Eastry* case the learned Commissary General imposed a set of stringent conditions to ensure that steps were taken to put in hand work towards the

proposed metallic replacement roof. I am satisfied that no such conditions are needed in this case. The Parochial Church Council of All Saints has demonstrated a determination to care for the church building; an understanding of the constraints imposed by the faculty system; and an ability to organise and plan long-term projects. I have no doubt that knowing the arrangements which must be in place for September 2024 the Parochial Church Council will put in hand the necessary measures to achieve those.

31) For completeness I add that I have considered whether to adopt the approach which I took in the case of *Fenton: Christ Church* (Lichfield Consistory Court January 2013 (2013) 15 Ecc L J 253). In that case I permitted the replacement of a lead roof with Sarnafil and declined to impose a time limit on the period for which that material could remain in place saying that it should remain for the course of its normal life-span. However, the circumstances there were materially different in that there the Diocesan Advisory Committee recommended the use of Sarnafil and English Heritage agreed that it was acceptable as a temporary covering. That meant all were agreed that Sarnafil should be applied to the roof. In those particular circumstances I concluded that it was not appropriate to impose an artificial limit on the period of time throughout which that covering could remain in place. Here there is no such general agreement that GRP should be applied.

STEPHEN EYRE
CHANCELLOR
11th August 2014