

St Mary Moseley- judgment

By a petition dated 7th June 2010 the vicar, a warden and former churchwarden of the above parish seek to install 48 photovoltaic solar panels with a total peak output of 10kW on the south-facing nave roof of the church. The panels are to be mounted on aluminium bars attached to the roof by screws into the roof timbers through pre-drilled holes in the slates. Six 5mm diameter cables will carry the current into the tower through a louvered window aperture and are said to be invisible from below. Three inverters to convert a DC to an AC current will be placed in the clock room of the tower of the church and the connection to the electricity supply grid will be in the boiler room, located in the basement. I am told there are suitable cable runs. The installation process would take but two weeks.

When this matter was first referred to me I was told that there was some urgency as a grant period from BG would expire but that this is no longer the case and I have had therefore a longer period in which to have come to a considered decision.

There is no doubt that the plans are radical and controversial. The Diocesan Advisory Committee of the Birmingham Diocese ['DAC'] has decided not to recommend the proposal. There are letters of objection from various amenity bodies, to which I shall come, the principal ones being from the Victorian Society ['VS'] and English Heritage ['EH']; but strong support from the parish itself [no member of the PCC has voted against the proposals], from the Moseley Society and from many with an interest in ecological issues and in the use of re-usable energy. A recent development has been the support of the Church Buildings Council ['CBC'] to whose views I will also come. Disappointingly those comments have arrived quite late although it was in my view only right and proper to consult with the Council.

The petition has this unusual aspect also; I am given to understand that this will be one of the first if not the first judgment in connection with such a request that has been disputed and therefore is bound to create a good deal of interest. The petition has attracted considerable publicity for obvious reasons; and there is an unusual tension between those favouring the conservation arguments and those in favour of a constructive use of energy sources. The solution, if I may say, is not obvious as a matter of ecclesiastical law. Moreover other churches will doubtless rely on what is said here in support of other petitions of their own. The petition is therefore of some importance.

St Mary's

The church is of 15th century origin, originally built as a chapel in the parish of Kings Norton, but with later numerous rebuilds and enlargements. The west tower of plain stone was erected in the early 16th century. The main body of the church was rebuilt and considerably altered by the Victorian architect Rickman and a complete reconstruction was then undertaken by the other well-known Victorian architect J A Chatwin and later by his son. The church is in a conservation area and is Grade II listed. It is considered to be a fine building now by for example Alexandra Wedgwood, who writes in the book 'Buildings of England, Warwickshire', that the church "has a typical Birmingham history of alterations, but now it is all of a piece."

Moseley is an unusual part of Birmingham in many ways: it is referred to as Moseley 'village'; it most certainly has a reputation for being a liberal and intellectual hub in the city, and it combines considerable differences in wealth and background amongst its residents. It comprises a considerable ethnic and religious 'mix' amongst its inhabitants.

I am told that planning permission for this project was originally refused but granted on appeal.

Unusually St Mary's is built on a steep hill where the passing road is somewhat sunken. As a result the nave roof cannot easily be seen from St Mary's Row by those driving or passing by until they are up the hill, and any visual damage is screened in part by trees in the summer months. I have had the benefit of visiting the site with my Registrar and Archdeacon Hayward Osborne, but not with the petitioners. Likewise I gave the opportunity to others making representations and had the pleasure of meeting Mr J Holyoake of VS on Thursday 10th February 2010. We viewed the site from outside and in particular from the end of Oxford Road by the old Meteor Garage from which the most of the nave roof can be seen. Mr Holyoak also showed me a photograph of the church with the one trial panel on it. Mr Holyoak drew my attention to the anxiety that the panels would be reflective and this would be adverse to the appearance of the church, and to the view of VS that other buildings in this conservation area could have appropriate solar panels; though he was fair in acknowledging that the roof of the nave is the largest and highest building for such a task [so physically the most appropriate]. He reminded me of the concern as to the damage to be done to the roof by the installation [which I refer to below]. EH has requested a similar site meeting but was late in its response to the opportunity given. It was suggested that they speak to Mr Holyoak of VS.

Does there need to be a formal hearing?

I am told that those who object [principally EH and VS] do not desire a formal hearing to take place. The option was given to them by my Registrar and they do not wish there to be one. Whilst EH noted it has a right to give evidence formally it does not seek so to do. VS has said that it simply wishes me to take its objections into account, which of course I do. Accordingly I note that no written particulars of objection have been filed. That does not of course minimise the force of the objections, which I treat with great respect.

In addition I have inquired of the Archdeacon whether he considers that so radical are the plans that there should be a consistory court hearing. He has not indicated that in his view there should be one.

The church's view

With the petition [as indeed there has to be] are a statement of significance and statement of needs. Nothing turns on the former which is I believe an accurate description of the church's origins and history.

I am informed that at present the church's heating costs are of the order of £10,000 per annum, such heating being provided from an electrical power source. Doubtless the figure will rise given the current round of price increases plus political instability

in the Middle East. There is a desire to utilise renewable energy and reduce carbon dioxide emissions. As to the heating system there is an immersion heating system which supplies radiators- heating is provided for one Sunday service and is used to prevent frost damage at other times at a minimum level. Adjacent rooms have electrical storage heaters. Other improvements are reviewed and considered, and have clearly been weighed up by the petitioners, even ground source heat pumps, though they are dismissed for good reasons.

The benefits of solar panels are carefully set out in the statement of needs – and it is stated that the panels would have matt black rather than metallic frames, a visual improvement.

The petitioners note that non-attending members of the public are largely in support of the proposals and whilst those views cannot be determinative it is pleasing to know that the church regards itself as ‘in tune’ with public views. The Moseley Society supports the plan, and I am told that 53 wrote in support to the Planning Office and none but VS were against it. I note that a letter expressing concern as to the visual impact from Chantry Road and Park Hill Residents Association was withdrawn

If I am to reject this plan there will be a commensurate increase in the solar heating proposals by the Hamza Mosque. *The signal to the community at large will be that the Muslims of Moseley care about the planet, without a corresponding statement from the Christians* say the petitioners. That would I think be an unfair and ill-considered view to take. Islam is a very recent arrival compared with Christianity; those who follow Islam do not have the responsibilities of sustaining and keeping listed buildings. Somewhat illogically the statement goes on to speak of inter-faith work when the argument appears to be that Christians should take an active interest in energy saving [though I see that the Sustainable Moseley campaign is interfaith]. Again the argument is not determinative but I do note the poor light in which local Anglicanism might be reflected were the project not to go ahead.

I am told the net saving would be of the order of £3000 per annum.

The other benefits are set out in the statement and the DAC urged to accept the proposals, which of course it has not.

The views of the various other parties

Before I proceed to evaluate them I set out the competing views of others: No objections have been received from members of the public

i. The DAC

The DAC has considered the petition for a period of almost a year. It noted during its deliberations the debate as to weighing up conservation of buildings as against conservation of nature [as Professor Dowell, the former churchwarden, put it]. It was concerned at the visual impact of the installation of the panels though understood that visibility might draw attention to the church’s concern with conservation of energy resources. Notwithstanding that the DAC wished to see measures to reduce visual intrusion, a rationale to gain public support and an audit of the church’s existing carbon footprint. It was further concerned by the plan to fix PV tiles by drilling through roof tiles, and wished there to be a fully reversible scheme. It noted that 53

letters of support had been sent to the planning department of Birmingham City Council with only one objection [that of VS]. As to visual intrusion the DAC noted that the panels would be visible from alleyways at the back of the shops along the main road.

Accordingly the DAC did not recommend the petition for three stated reasons:

- i. The puncturing of roof slates would lead in time to water ingress affecting roof timbers and contents
- ii. The visual detriment to a finite local heritage asset
- iii. An absence of a convincing argument for this particular type of electrical microgeneration in the absence of external finding and detailed exploration of alternative plans

I listen to DAC advice with the greatest care and in my view should always give sound and very carefully argued and cogent reasons were I to disagree with its recommendations

VS

The principle objections from VS are to be found in its letter to the Diocesan Registrar dated 15th October 2010. That letter sets out the building history of the church, compares it with Edgbaston Old Church [which has a similar building history] and asserts that both churches are *focal points in their respective conservation areas*

Whilst recognising the intention to contribute to energy saving, VS takes the view that *the panels would be highly visible above the parapet on the nave roof. We consider that they would significantly detract from the harmonious and unified appearance of the south elevations of the church as referred to by Wedgwood. We further consider that the panels will be particularly noticeable on the eastern and south eastern approaches to the conservation area from Wake Green Road and Oxford Road.* They continue to describe the church as an important focal point in Moseley and say *The introduction of these panels would be highly damaging in this prominent location.* Their conclusion is that the panels are *unsuitable and they would have a negative impact on the character and appearance of both the listed building and the Moseley Conservation Area*

I take the above comments from the letter I have quoted and from the submissions of VS to the city planning department of Birmingham City Council- it will be recalled that the planning application was approved on appeal. VS add in the letter to the Registrar *the church forms an important focal point in Moseley. Its sandstone walls and slate roofs define the buildings character as a village church rising above the walled churchyard by St Mary's Row, where a number of pre-nineteenth century buildings from the old village centre are retained. We consider that the introduction of these panels with their reflective surfaces and metallic frames would be highly damaging in this prominent location.*

VS is further concerned as to the damage which may be caused to the roof and quotes the EH guidance on solar energy installations. It adds: *we consider this proposal as it is currently presented is not acceptable given the historic and architectural significance of this grade II listed church in the conservation area.*

VS notes that the planning appeal was granted and criticises the decision of the Inspector for its brevity. I am not told that this decision has been challenged by judicial review, which is perhaps a little surprising in the circumstances.

I have had the benefit of many submissions from VS over my time as Chancellor and I of course take the views put to me extremely seriously. I do not doubt the society's commitment to our country's cultural heritage and traditions.

EH

EH objects to the proposal even though it has published guidance for the owners of listed buildings as to how they might install solar panels.

In its submissions to the Registrar EH sets out the special interest and significance of the church as one of the oldest buildings in Moseley and its significant in socio-economic development in the area.

It speaks of the importance of the building in terms of it being emblematic of Victorian expansion of Birmingham, being an example of the regionally important Victorian architects and being *a good example of parish church building in the national, context.*

The proposal is criticised on the basis that it would not be put forward but for the availability of grant aid- I am not at all sure that such a contention is persuasive; it would be foolish indeed to reject a sensible proposal [were I to find it were so] on the basis that it had the attraction of being free.

I am reminded of the importance of protecting ecclesiastically listed buildings [of which I am very much aware] and protecting their special historic and architectural interest in determining a petition. I am understandably reminded of PPS22- *in sites with nationally recognised designations [listed buildings] planning permission for renewable energy projects should only be granted where it can be demonstrated that the objectives of designation will not be compromised by the development, and any adverse effects on the qualities for which the area has been designated are clearly outweighed by the environmental and economic benefits.* In other words governmental planning guidance is that the latter benefits must outweigh developmental disadvantage. Mere assertion that the church needs to be in touch with environmental concerns is not enough. I of course accept that; and I note that such planning permission has been granted so at least the Inspector must consider that the benefits outweigh the disadvantages of this development. I remind myself too that no one has challenged this decision.

The conclusion of EH is that the proposal *will have a significant negative impact on the appearance of the church and consequent loss of special interest particularly in respect of the architectural integrity of the south elevation, by virtue of the number of cells, their large surface area, their contrasting appearance in terms of unit size, materials, texture, colour and reflectivity and their prominent location.* In this context the argument that the solar panels should be seen as a witness falls by the wayside and I accept that such assertions are not enough.

EH observes that PV cells have an average life of 25 years and then performance rapidly deteriorates. They would require removal/replacement with the adverse effect of loss of fabric in damaged slates. [I am not sure that is so important; I am not told the roof slates are per se of especial value].

EH asserts that £3000 savings does not appear to outweigh the negative impact on the building though of course that is a value judgment for me to decide.

EH states there is no compelling necessity for the proposal. I am not sure that is the test- Just because the development depends on grant aid does not seem to me to be a good argument against it. In these days of austerity a church cannot be criticised for seeking what is provided.

Nonetheless EH is a body which attracts the greatest respect and I note with concern all that is said.

CBC

The application has been considered with care at the CBC meeting on 19th January. It concludes as follows: *The Council understood the concerns of the DAC but noted that the project was, with the exception of the damage to the slates, reversible. The scheme also fits in with the church's environmental agenda and St Mary's should be commended for this.* It goes on to recommend the granting of a Faulty.

The CBC draws the attention of the parish to the hidden costs [re-slating the roof] when the panels are removed and that there may be some increased maintenance problems from natural wear and tear on the silicon washers causing water ingress. The CBC recommends an assessment of perimeter trees to ensure that trees in full leaf do not cast shadows that diminish the efficiency of the scheme. But it remains enthusiastic and anxious to be kept informed of any monitoring of performance as such scheme is likely to be repeated elsewhere.

Separate letters

It is right that I should set out letters in support that have been received.

- i. The former vicar of All Saints, Kings Heath, Canon John Wilkinson, regards the proposals as part of the witness of the church- conservation of the planet and by inference of human life itself should be a priority. The possibilities for many churches with south-facing roofs is of *huge potential*. He argues that it is good that the panels will have limited visibility and yet be visible. They will not, he argues, spoil the appearance of the church but rather reflect God's continuing concern for humankind. He argues the proposal is a tasteful one. Finally he argues that the mere costs of sustaining an old church building by heating it properly means that the grant should be obtained and the work done. I see the point- old and beautiful buildings are both a blessing and a curse for a congregation not that far from the centre of Birmingham when the parish is neither wealthy nor that well attended. The church should not block its own initiative. I am not persuaded by that latter argument. If I determine that the conservation

arguments outweigh the purported benefits then that is the end of the matter.

- ii. Kenneth Fisher, an architect, has been involved for over 40 years in church developments and alterations. He has been involved in the restoration of the Moseley Dovecote and is a trustee of the Moseley Park and Pool. He refers to the church and writes *St Mary's plays a major part in the collection of buildings that form the core of the Conservation Area but this does not mean that it cannot undergo change*. He reminds me that many buildings change over the centuries [as indeed has this church as I have set out above]. He takes the view that the church is responding responsibly to climate change. *It is not the preservation of lovely backdrops to wedding photographs that matters. It is the built palimpsest that discloses the audit trail of our culture that is so important*. He urges me not to freeze the past as conservationists, he argues, would have me do.
- iii. Michael Potter, another architect, is the inspecting architect at the church. He points out that the solar panels proposed will not be visible when viewed from all the adjacent streets [as I have already noted above]. *A small part of the upper part of the roof slope (and therefore the top of the solar panels) will only become visible when viewed from St Mary's Row in line with the east end of the nave...As you walk further up St Mary's Row away from the village centre, the panels will be largely screened by mature tree (both by foliage and branches) in the south east corner of the churchyard*. The fixing method [which concerns the DAC] was used on Harrow School and he would in any event himself ensure is done correctly. In seeking to reduce emissions the church is following Anglican policy of reducing the carbon footprint; there is clear support by the Moseley Society and Susmo [the interfaith environmental campaign in Moseley] and I should note the support of the planning inspector. He includes helpful photographs to illustrate the relative lack of visibility of the panels.
- iv. Margaret Healey Pollett has written by letter of 29th September 2010 to express concern at the recommendation of the DAC to refuse permission and urging me to grant the Faculty. *Church members have a calling to be faithful stewards of Creation and advocates for social justice*. She quotes Archbishop Rowan Williams who has said *for the church of the 21st century good ecology is not an optional extra but a matter of justice. It is therefore central to what it means to be a Christian*. He commends the pioneering approach of utilising a church roof and points out that it speaks to the local community. A refusal would she says not just add to financial loss but diminish the church's witness.
- v. Chris Pearce, who is a mechanical engineer, wrote on 8th October. He worships elsewhere but did worship for a time at St Mary's. He writes from an ecological point of view; climate change is the most serious issue facing the humankind, he says. The developed world needs to act quickly and forcefully. The message needs to be shouted *from the rooftops*. Hence his strong support for the proposals. *Many of the thousands of churches in Britain have long south-facing roofs ideal for harnessing energy from the sun*. He points out the irony that if buildings fall into disrepair for lack of funds and yet this opportunity is not taken. It would be damaging to the church's reputation to refuse the scheme, as well as demoralising to the

congregation. He informs me that the All Saints Social Justice Action group also support the scheme.

Response of the parish to objections

- i. **The vicar:** I have seen a letter of 29th September 2010 from the vicar. He inherited the solar panels proposal upon his appointment in 2007. In his letter he emphasizes how he had sought to achieve co-operation between the church and the conservation bodies, but that his own anxiety had been the aluminium material originally proposed which is no longer proposed. He suggests that the revised proposal would be *acceptable* to the heritage bodies and would support *the concept of sustainable energy on God's planet*. His optimism as to agreement with the heritage bodies has proved to be ill-founded for the reasons I have set out. I note that the vicar continued to say *I believe we now have acceptable plans and recommend them to you*. I have invited the vicar to make further representations but he has left this to Professor John Dowell who has of course corresponded in this matter at length as he has been the driving force behind the proposals. I do not criticise the vicar for so acting.
- ii. **DAC guidance on photovoltaics:** I have had passed on to me [via Professor Dowell] the guidance prepared at the South West Diocesan DAC conference [and therefore of course in no way binding or compelling]. It is interesting to note that it is thought south-facing roofs are *ideal for solar energy generation*. I also note that relaxing the guidance as to visibility of panels was recommended by Exeter diocese. It seems therefore that nationally the position as to such radical approaches is in flux.
- iii. **Professor Dowell:** the Professor is very much the 'lead' in putting this matter forward. I say that not as a criticism but to reflect that he has taken on the burden of putting forward the parish's case and promoting it in every area.
In September last year he wrote inter alia asking me to meet with members of the Moseley community. I have not taken up that offer, not least because I accept that there are many supporters of the proposals and because I should not be swayed save by appropriate legal submissions.
On 14th January 2011 the Professor wrote a long letter to me [I emphasize that I have not met him] setting out various churches which have installed such panels. Most churches are not Anglican ones and therefore not subject to the Chancellor's jurisdiction; though he does point out that similar work has been undertaken at St Peter's Brockley, he says with support from the Southwark DAC and no objections from EH and VS, I am unable to check the position. Similarly he tells me that work has been done at St Philip and St James, Bath.
By a letter of 24th November he criticises the failings, as he sees them, in taking into account *universal support* for the petition in the area and, he says, places a heavy burden upon me.
He then deals with various objections lodged:

- i. **The method of fixing the panels to the roof:** there is no way of fixing panels to a sloping roof without interfering with the fabric – drilling through the slates [as is suggested here] or attaching hooks to the roof timbers. The second method is likely to damage slates. The first method is likely to be more robust. Slates are replaced as part of maintenance in any event. A frame fixing method risks movement in high winds.
- ii. **The letter from VS:** he notes that only VS objected to the planning proposal. He notes too that the church mounted a panel on the roof for 2 months from March to May 2010; few noticed it [though VS were plainly aware]. He takes the view therefore that the claim that such panels would be *highly visible* to be exaggerated. They have found a supplier of black rather than metallic frames. The criticism of the brevity of the Inspector's planning decision is dismissed – in any event it is not in my judgment for me to comment on the planning process, which I must assume to be fair and balanced. Doubtless were the decision to be susceptible to challenge it would have been so challenged.
- iii. **The letter from EH:** the professor suggest that it is *perverse* to say on the one hand that that the church is a record of socio-economic development and then suggest that it cease to be so and remain as it was in 1910. He also notes that not all take the same view of the quality of the building. In *A history of Moseley* by Alison Fairburn she refers to the church's *grossly enlarged nave that is quite out of keeping with its 15th century tower... The reason for this is obvious considered against the practical needs of accommodating a burgeoning congregation.* He concludes that the Victorians put practical needs ahead of preserving things as they were. By implication, so should this generation
 He notes that recent history reveals that the church is not a tourist attraction. Those who campaign in favour of the changes suggested far exceed the numbers of visitors [of whom there are few] – indeed more may come to see the panels once installed.
 The number of slates to be drilled would be but 200 not 300 as EH suggests.
 He suggests there is no obvious better method available to reduce the carbon footprint of the church. Electrical heating is likely to be more popular as carbon-free power generation becomes more common and the feed-in tariff is generous as the technology is being encouraged. The church does not seek to cover all south-facing roofs so as to have a visually acceptable installation. [That I consider is by implication a concession that even in its revised form the installation will not be terribly attractive]. For all that he suggests that it would be illogical to treat energy conservation as a choice between different options. I am not entirely sure what he means by this, nor his next remark that *a renewal of the heating system will have to be part of a more general plan to reorder the church, and as already indicated would be compatible with the panels.*

He rejects the notion that the granting of the petition and the installation would have a significant negative impact- for that is, as he rightly suggests, a matter of opinion.

He rejects too the remark about grant aid- as do I.

He accepts that the panels will one day have to be replaced and suggests that the same mountings could be used again.

In his conclusion, rejecting the deleterious effect on the appearance of the church and the extent to which fabric damage might be caused, he says that the installation of the panels *excites the imagination of the public at large...the panels will generate renewable energy and send out a message that the church cares about the preservation of the planet.*

Attitudes taken

I bear in mind that in coming to the conclusions that I do that an appropriate balance must be struck between the dynamic quest for change and the dogged retention of the present or half-remembered past. The church is constantly evolving and yet I bear in mind that the present PCC and wardens are but temporary custodians of the fabric and fixtures of the church. I therefore take a very careful approach yet noting that the church must not simply continue as a beloved [but not much visited] monument as it seeks to be a living body.

The law

I have been considerably assisted in coming to the decisions that I have by looking in detail at the decision of Chancellor Bursell QC in the case of *In re St Mary's Churchyard, White Waltham (No 2) [2010] 3 W.L.R. 1560* ['St Mary's']. It seems to me that a number of points are made in that case with clarity by the learned Chancellor to which I shall come.

Burden of proof

The burden of proof in connection with a Faculty petition lies on the petitioner i.e. the vicar and wardens must have shown me on balance that their plans are appropriate. There is no presumption that the views of the PCC will prevail. Indeed in the *St Mary's White Waltham* decision the Chancellor reviewed the law as to the presumption and made it clear again that the burden of proof in faculty proceedings falls on the petitioners who are required to prove their case to the civil standard of proof. There is no presumption that unless good reason to the contrary is shown that the faculty should be granted.

Applying the law

It has been argued that where planning permission has been granted the Chancellor should not stand in the way of the development proposed. I reject that; for the consistory court has specific duties arising from the Ecclesiastical Exemption. Indeed in the *St Mary's White Waltham* case the Chancellor held that a consistory court is not bound by the decision of a local planning authority, but instead is entitled to accept the decisions of the planning authority or planning inspector [here of course it was the inspector] as a reasoned starting point from which to begin its own deliberations unless the conclusions of the planning authority were demonstrated to be wrong by

reasoned and cogent evidence. That seems to me to be an entirely rational and appropriate approach. Whilst there are some matters that are almost exclusively the provenance of town planners [e.g. traffic matters] there are others that can and should be raised before planning authority and consistory court alike. One is not to be seen however as effectively an appeal court from the other. Here I have no doubt that the matter has been properly aired before the planning inspector. I should in my judgment evaluate the evidence put before me in effect to displace the assumption in favour of the reasoned planning decision of the planning inspector.

I have of course set out the submissions of EH and VS; what is missing from their submissions is a reasoned criticism of the judgment of the planning inspector. That seems to me to be a key failing on the part of VS and EH given that the *St Mary's White Waltham* decision is in my judgment sound law which I should apply.

I have considered submissions from EH and VS, whose views I can and do respect, and the anxieties of the DAC, an august body of some renown. I can and do balance their views against the other very powerful submissions which I have received.

What legal tests must I apply? I bear in mind the fact that the wishes of the parishioners are of considerable weight (especially as there appears to be unanimity) in the absence of any representations against the proposals- although they cannot be wholly determinative, as that would interfere in my exercise of my discretion in making a decision. Following the well known decision in *Re St Luke the Evangelist, Maidstone* I must follow the so-called *Bishopsgate* questions and I now address those:

- i. Have the petitioners proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?
- ii. Will some or all of the works adversely affect the character of the church as a building of special architectural or historical interest?
- iii. If the answer to (i) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

I note that 'necessity' is a broad concept; it is more than mere unavoidable repair but it includes works necessary for the pastoral well-being of the church or for some other compelling reason. In *Re St John the Evangelist Blackheath George Ch* [as he then was] described the word as meaning *something less than essential but more than merely desirable or convenient; in other words something that is requisite or reasonable necessary*.

I bear in mind of course that in the case of a listed building the burden of proof is not easily discharged, indeed the presumption is ordinarily heavily against change.

It seems to me that I can apply those *Bishopsgate* questions in this case.

Application of the Bishopsgate questions

Before I apply these tests directly I turn briefly to cost. I dismiss [without I confess much sympathy] the point made by objectors that the project would not be petitioned were it not for the costs being largely if not completely obtained by a grant. I say

without sympathy because I have taken the view that it is not for me to police how the petitioners obtain their monies for fulfilling their plans. I find support for that view in the *St Mary's White Waltham* case where the Chancellor said that the question of finance was a matter for the parochial church council and it was not appropriate to refuse the faculty on the grounds that there was a large discrepancy between [in that case] the cost of the proposed building and the funds raised thus far. Likewise here I need not and should not be constrained by the costs question unless either the expenses of installation would palpably outweigh the benefits over a lengthy period so that the financial expectation were wholly unrealistic. They do not do so here. I will instead make it a condition of any faculty granted [were I to do so] that the grant funds remain available to the petitioners.

My decision and reasons

Applying the Bishopsgate questions I therefore ask myself first *have the petitioners (a) proved a necessity for some or all of the proposed works either because they are necessary for the pastoral well-being of [the parish] or for some other compelling reason?*

It seems to me that like many churches on the immediate outskirts of the inner city there are sound financial reasons for the proposals- money will be saved. More importantly the church will be seen to be acting in accordance with the church's national stance on ecological issues and seeking to conserve energy resources. Frankly this is not a church with a vast attendance but one with a loyal and committed congregation. It wants to devote its time to mission rather than be weighed down by the costs of a building. The parish's pastoral well-being demands looking at costs and energy efficiency so that the kingdom of God may be preached and advanced. Moreover being committed to ecological issues is in itself a witness and a sign that the church is not unconcerned with modern anxieties.

This is not a case of the church bowing to a current liturgical fashion but rather a thoroughly researched project based on the long-term needs of the community that energy should be conserved.

(b) Will some or all of the works adversely affect the character of the church as a building of special architectural or historical interest?

No one suggests that the installation of solar panels improves a church's appearance. Whilst I note the argument that the church should be seen to be conserving energy such an argument falls foul of this legal test. But I note that not all expert evidence points to the church building being of wholly exceptional character [see above] and having now had two site views I was not convinced by the EH argument that the plans will have *a significant negative impact on the appearance of the church and consequent loss of special interest particularly in respect of the architectural integrity of the south elevation*. True enough the roof will be seen at the top of the hill and especially in the winter; but the development will not have as great an impact as it might with other churches in other locations especially in the summer when trees are in leaf. So my answer to the question I must ask myself is that yes the work will have an impact but not a disastrous one. I remind myself too that the plans are not irreversible. It is a question of balance- is the change so great that the damage outweighs the ecological advantage?

(c) If the answer to (b) is yes, then is the necessity proved by the petitioners such that in the exercise of the court's discretion a faculty should be granted for some or all of the works?

This question demands that I answer the question I have just addressed to myself. I am satisfied that the petitioners have proved necessity for a number of reasons though of course I accept that in being so satisfied I have conducted a balancing exercise in coming to that conclusion:

- They need to have an efficient heating system that covers the expense of worshipping in an old building
- They are properly fitting in with the prevailing common view that energy resources should be conserved and witnessing to their commitment to that
- They are complying with the church's national commitment to such a policy

The sad truth is that churches such as St Mary's have finite resources. Small groups of dedicated Christians cannot maintain buildings like theirs in an age of indifference to Christianity. I am persuaded that their plans do not do as great damage as has been suggested and that the plans are sound and well thought out. They will be pioneers of such a system in a listed building in this diocese and will have a responsibility to share their experiences.

I have said that I am not prepared to grant the Faculty simply because planning permission has been obtained; nonetheless it is persuasive and I remind myself that the conservation arguments of VS did not find favour with the planning inspector, and that I have not been provided with cogent arguments undermining the inspector's reasoning.

I must turn briefly again to the reasoning of the DAC. It is fortunately rare that I find myself in disagreement with the DAC whom I greatly respect. But it has to be the case here:

- i. I am not persuaded that the puncturing of roof slates will lead in time to water ingress affecting roof timbers and contents given the use of the system by others and the care with which I expect the petitioners to keep an eye on the system
- ii. For reasons I have set out above the visual detriment to a finite local heritage asset is not as great as might be in other cases.
- iii. I do not accept that the petitioners have failed to explore other alternatives. I note with some interest that another non-listed church building in Birmingham is going the same route i.e. that solar panelling is regarded as the best current method to be adopted in energy conservation.

Conclusion

Accordingly the answers to the *Bishopsgate* questions on balance point to the granting of the Faculty. I shall therefore grant the petition but subject to a number of conditions:

- i. The grant fund monies are still available
- ii. The church keeps under review the effect of the installation upon the roof tiles and reports to its inspecting architect and to the Archdeacon any problems it encounters
- iii. The church takes appropriate steps to ensure that the current trees do not obscure the sun from the roof whilst encouraging the screening from the road that they currently provide when in leaf.

Dated: 15th March 2011

His Honour Judge Martin Cardinal.