

Neutral citation: [2016] ECC Swk 9

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCH OF ST LUKE, CHARLTON

18 APR 2016

AND IN THE MATTER OF A PETITION FOR THE INSTALLATION OF SIX ANTENNAE, A TRANSMISSION DISH AND ACCESS LADDERS WITHIN THE BELL TOWER BEHIND REPLACEMENT GRP LOUVRES AND REPAIRS TO DECAYED TIMBERS AND FOR THE GRANT OF A LICENCE

DIRECTIONS

1. This is a petition by the Rector and Churchwardens of St Luke's Church, Charlton and Net Coverage Solutions Limited in respect of the installation of telecommunications equipment in the tower of the church. The Rector is Revd Erica Wooff and the Churchwardens are Ms Elizabeth Buck and Mr Robert Simson. The petition seeks a faculty to permit

the installation of six antennae and a transmission dish in the bell tower behind replacement GRP louvres, along with access ladders, and repairs to decayed timbers

in accordance with plans that are identified. It also seeks authority for the Vicar and PCC to enter an appropriate licence agreement with Net Coverage Solutions Limited for a period of 20 years in respect of the equipment.

2. Under rule 5.3 of the Faculty Jurisdiction Rules 2013, the Petitioners were required to publicise the application for the petition by displaying notice of it for a continuous period of not less than 28 days (i) inside the church, on a notice board and (ii) outside the church, on a notice board or in some other prominent position (whether on the church door or elsewhere). It was then necessary for publication of the notices to be certified by one of the petitioners and Ms Wooff duly signed such a certificate, which is dated 15 January 2015. It certified that notices had been displayed on a notice board inside the church and on the principal door outside the church between 10 December and 8 January 2015.
3. The petition attracted three objections, namely from Mrs PJ Wardale dated 3 January 2015, from Lady Zammit dated 4 January 2015 and Mrs Kitty Baden-Powell dated 5 January 2015. In their objections, Lady Zammit and Mrs Baden-Powell took the point that the church had been closed since September 2015 and that, accordingly, only a limited number of people would have seen the notices.
4. Having given the Petitioners the opportunity to respond to the concern that Lady Zammit and Mrs Baden Powell expressed, on 14 January 2016, I directed re-publication of the

notices. A copy of my judgment¹ sets out more fully the background to that order and the reasons for making it.

5. The re-publication of the notices attracted about 80 additional objections. However, of those objecting only one has opted to become a party opponent. This is Mr Michael McCarthy, who of course becomes the sole party opponent. He is concerned because he thinks that the installation may emit dangerous rays. In a letter dated 7 March 2016, he has asked for the matter to be considered at a public hearing.
6. In their Response (dated 8 April 2016) to Mr McCarthy's objection, the Petitioners say:

In the light of the clear Government guidance and applicable (and binding) precedents, the Petitioners invite the Chancellor to direct that any objections on grounds of health concerns be excluded from these proceedings. The Petitioners therefore apply to the Court to exercise its active case management duties for the summary disposal of those parts of the objections which relate to perceived health risks pursuant to rule 1.4 (2) (c). By narrowing the issues in dispute, the Petitioners believe that the court would be furthering the overriding objectives at rules 1.1(2) (b) and 1.1 (2) (d) ...

By the Court doing so at this stage, there would be a significant time and costs saving. Although these legal costs would initially fall on the Petitioners, they could fall within the scope of an inter partes costs application to the court if a faculty were granted. The legal position on these issues is now so well established that the Petitioners submit that an inter partes costs order on the grounds of substantive unreasonableness could be warranted. The Petitioners would not of course seek to pursue this in relation to costs incurred up to the date of this submission, but this response clearly puts the parties opponent on notice as to the position.

7. Government guidance to planning authorities about telecommunications equipment is short and to the point. It is now contained in paragraph 46 of the National Planning Policy Framework and is as follows:

Local planning authorities must determine applications on planning grounds. They should not ... question the need for the telecommunications system, or determine health safeguards if the proposal meets International Commission Guidelines for public exposure.

8. In my papers is a certificate dated 11 September 2015 which states that the equipment and installation proposed in the present case is designed to meet the International Commission Guidelines.
9. The relevance of the Guidelines was considered by Grenfell Ch in *In re St Margaret Hawes and Holy Trinity, Knaresborough*². He said:

... in the absence of compelling evidence of a real risk to human health as a result of transmitting radio waves up to the levels set by the United Kingdom Government in their

¹ [2016] ECC Swk 1

² [2003] 1 WLR 2568.

*adoption of the ICNIRP guidelines, it would be wrong to adopt lower guidelines for a base station just because it happens to come under the jurisdiction of the consistory court in addition to planning requirements*³.

10. This statement was expressly approved by the Court of Arches in *In re Emmanuel Church, Bentley*⁴. The Court of Arches added:

*This applies with equal force to the suggestion that a faculty should be refused because of concern (however genuine) about the possibility of a health risk, which cannot be substantiated in any way by evidence*⁵.

11. Accordingly the approach in the context of the secular planning system is that there can be no sustainable objection if a proposal meets the ICNIRP Guidelines. The Court of Arches in *In re Emmanuel Church, Bentley* was saying that the same approach was appropriate in the consideration of petitions in the consistory court; and the judgments of the Court of Arches are binding on me. It was against this background that I permitted the installation of telecommunications equipment in the case of *In re St Anne's Church, Wandsworth*⁶. (In that case, two individuals objected on health grounds but did not opt to become parties opponent).

12. Thus it is that the Petitioners in the present case assert that there is no scope for maintaining an objection to telecommunications equipment if it meets ICNIRP Guidelines; and that I should so rule. I would be saying in effect that Mr McCarthy was entitled "to his day in court" but there was in practice no relevant matter (save perhaps of detail) on which he could address me⁷.

13. I think that such a submission is essentially correct. If Mr McCarthy were proposing to call expert evidence, I can see that he might thereby seek to establish that Government guidance was wrong or inapplicable or similar; even if he might perhaps face an uphill task. But if he has no expert evidence at all, the basis for not following *Bentley* (as I remind myself, binding upon me) does not emerge. Of course Mr McCarthy is entitled to appear before me to urge upon me that there is a danger or a potential danger arising from the proposals; but I cannot refuse to grant a faculty on this basis.

³ See paragraph 84.

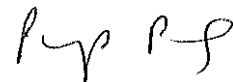
⁴ [2006] Fam 39 at para 50.

⁵ *Ibid.*

⁶ Unreported; 2 November 2015. At paragraph 23 of that judgment I explain that material supplied in the context of that case indicated that the monitoring of radio waves at existing telecommunications installations produces measurements that fall far short of International Commission Guidelines. Since 2001, Ofcom has funded and conducted a total of 724 surveys. The highest measurement recorded was 1/279th of the International Commission on Non-ionizing Radiation Protection (ICNIRP) safety threshold. No installation tested by them exceeded 0.005% of the specified radiation safety limit. This programme was continued by Ofcom until 2012. Subsequent testing has produced similar results.

⁷ He takes the point that what is proposed would be unsightly; which is slightly odd because those works would be internal.

14. His inability to make a substantive case by submissions (rather than by evidence) gives context to the second paragraph of the Petitioners' Reply set out at paragraph 6 above. Mr McCarthy is a lay person and it is perhaps likely that he will not have understood its implications, or its full implications. Also, he is unlikely to have read the *Bentley* case, which is not included in the documents which the Petitioners have produced (either initially or in response to him⁸). What the Petitioners are saying is that they will not seek any of their costs up until the date of the Reply from Mr McCarthy but that they may seek those costs where the circumstances are that he maintains his objection, causes there to be a hearing and I decide against him.
15. I do not know if such an application would in fact be made in these circumstances and, if it were, I cannot pre-judge the outcome of such an application. But by requiring there to be a hearing (as opposed to not becoming a party opponent and thus simply asking me to take his written objection into account), Mr McCarthy does expose himself to the **risk** of costs. To allow him to continue his objection as currently constituted without warning him of the risk would be inappropriate. If he is in doubt as to the position as explained in these directions, he should seek legal advice.
16. Mr McCarthy may feel that the rules of the Consistory Court should be constituted differently, so that he could make his objection at a hearing before me without being at risk as to costs. The appropriateness of there being a costs regime in the Consistory Court is not however a matter for me. It seems to me that what I need to do is to ensure fairness towards a lay person and, in particular, that Mr McCarthy is not taken by surprise by any application for costs that may be made against him.
17. It is open to Mr McCarthy to change his mind and not to require a hearing. He should let the Registrar know within 21 days if he does want to change his mind. Otherwise I direct that a hearing date be fixed. I do not think that hearing will take more than a single day.



PHILIP PETCHEY
Chancellor
15 April 2016

⁸ The have produced it in response to the cases made by the original Objectors; but that will not have brought it to the attention of Mr McCarthy.