

In the Consistory Court of the Diocese of Norwich NR123/16

**Re Heydon, St Peter and St Paul**

- 1. The Revd Andrew Whitehead**
- 2. Charles Shippam**

**Petitioners**

**- and -**

- 1. Mary Anne Shippam**
- 2. Evelina Ashbee**

**Parties Opponent**

**Judgment**

- 1. The village of Heydon has benefitted from its remote location by remaining unspoilt and almost entirely untouched since at least the nineteenth century. Its substantially medieval Grade I listed parish church is large and beautiful and it sits on the edge of the village green dominating the picturesque vista which attracts visitors and filmmakers alike. Like many rural communities, Heydon has poor broadband speeds of between 2 and 4 Mb.**
- 2. By a petition dated 30 June 2016 the team vicar and fabric officer of the parish seek a faculty for the installation of wireless broadband equipment in the tower of the church. Perhaps unusually, the churchwardens are not petitioners in this case. The reason for that will become apparent.**
- 3. The proposed installation involves the erection of transmitting and receiving equipment on a scaffolding frame on the roof of the tower, the placing of an IT cabinet in the silence chamber of the tower and the fixing of associated network and power cabling which links the equipment to the electrical fuse board inside the church.**
- 4. The equipment is intended to be installed by WiSpire Limited, a company which has significant experience in providing such**

installations within church towers in Norfolk. The specification for the works incorporates standard conditions created by the Diocesan Advisory Committee which are intended to ensure that the works are undertaken in a safe and historically sympathetic way.

5. The DAC has formed the view that the proposed works are not likely to affect the character of the church as a building of special architectural or historic interest. I agree with that assessment. The DAC recommends the works without proviso. Historic England has been consulted about the proposals and does not wish to offer any comment save to defer to the advice of the DAC.
6. The proposals have inspired greater discontent locally. Public Notices were displayed in March 2016 both at the church and on the village notice board. Rather unusually, formal objections have been received from the two churchwardens, Mrs Mary Anne Shippam and Mrs Evelina Ashbee (hence their absence as Petitioners). No other objections were received as a result of the Public Notices displayed. Mrs Shippam and Mrs Ashbee have elected to become Parties Opponent in this case, but have indicated that they consent to the determination of the Petition on consideration of written representations. The Petitioners have also agreed to that course. Having given directions on 2 December 2016, I decided that an oral hearing was unnecessary and directed that the matter should be dealt with on consideration of written representations.
7. The history of this matter within the PCC is not straightforward. In November 2015 the PCC resolved to pursue a faculty application for the installation of WiSpire equipment. Subsequently, after sight of the technical report on the installation, a vote took place in April 2016 in which the proposal was defeated by a majority of 4:3. After further discussions on 29 June 2016 the PCC took a third vote and decided by a majority of 7:2 to pursue the project. Mrs Shippam and Mrs Ashbee have been against the proposals throughout and cast the two votes registered against the proposal on 29 June. They feel sufficiently strongly about the plans that they asked for the following statement to be included in the Petition form:

“As churchwardens we feel it is our duty to preserve our church therefore we do not agree with the proposal to put WiSpire antennae on the church tower. Heydon is an unspoilt village in a conservation area and the church is a focal point. It should not be impaired by the very visible clutter of antennae on the church tower. WiSpire also would involve some unsightly wiring inside the church. We oppose its installation.”

8. The grounds of their opposition are set out clearly and in a considered way in the various letters and forms which they have filed at the Registry. Their principal points, in summary form, are set out below:

- a. The installation will be unsightly on this significant building in an unspoilt location;
- b. A certain amount of damage will be caused to the historic fabric of this listed building;
- c. There will be no benefit to the church;
- d. Alternative sources of fast internet connections are available in Heydon via satellite dishes;
- e. The PCC votes on the issue should be treated with caution.

I pause at this stage to address point e. above. The concerns about PCC voting centre on the notion of the relative value of different votes; it is suggested that the churchwardens' votes should hold a greater value than others as they have greater involvement of the life of the church and also that the votes of those PCC members who live outside the parish should hold less weight by virtue of that fact. I make clear at this stage that the vote of each PCC member is of equal value. Whether the voter in question is the churchwarden, resident in the village or even the incumbent is irrelevant. The PCC, as a largely democratic body, has decided to pursue this application. That said, the significant involvement in and contribution to the life of this church by Mrs Shippam and Mrs Ashbee clearly adds strength to their objections.

9. The Petitioners have responded to the objections in equally measured and reasoned terms in the correspondence that they have provided. Their responses can be summarized thus:
  - a. The physical impact and aesthetic effect of the installation upon this important building will be slight;
  - b. The church will benefit in missional terms from its ability to offer the service of faster broadband to its community and practically from its own use of the service;
  - c. The use of satellite for faster broadband provision is likely to be significantly more expensive for customers than the WiSpire provision, especially when streaming services are required.

10. In determining whether a faculty should pass the seal in this case I must have regard to the guidelines set down by the Court of Arches in the case of *Re St Alkmund, Duffield* [2013] Fam 158. In that case the court asked a series of questions, the first of which was "[w]ould the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?". It went on to say:

"[i]f the answer to question (1) is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the

case-law by Chancellor Bursell QC in *In re St Mary's, White Waltham (No 2)* [2010] PTSR 1689 at para 11)."


11. I have already indicated that I agree with the assessment of the DAC that these proposals are not likely to affect the special character of this building. Although this building is highly listed and therefore of great significance locally and nationally, the proposals here will have very limited impact on the fabric of the building – essentially just the fixing of cable runs. The equipment on the roof will be placed on a scaffolding frame on the roof without any significant interference with the fabric of the building. The aesthetic impact will be equally limited. The transmitters and receiver will, of necessity, protrude above the tower crenellations and thus be visible at the top of the tower but it is clear from the 'mock-up' photographs provided and the photographs of the same equipment installed elsewhere that that equipment is modest in size and of a grey or dull metallic colouring which will ensure that its visibility is not significantly intrusive. I understand that to Mrs Shippam and Mrs Ashbee even this modest change of appearance is unacceptable, but I do not think that it can be said to result in harm to the significance of the building.
12. Thus, I find that the answer to the first *Duffield* question is "no". Accordingly, the ordinary presumption against change applies and the burden of proof lies on the Petitioners to establish, on the balance of probabilities, that there are good reasons why a faculty should issue in this case. In deciding whether that burden has been discharged I must and do carefully consider the objections put before me.
13. Firstly, it is said that there is no benefit to the church from these proposals. The Petitioners have argued forcefully that there is a clear missional advantage to the church from being at the heart of the village's communications. They seek to serve the rural community in which they live by the provision of faster broadband. I have seen two letters from parishioners sent to the Registry expressing support for the proposed faster broadband provision; one in the context of a business which operates in part from the author's home in the village; and one in the context of personal use. The availability of faster broadband in rural communities provides not only financial benefits to the local economy by supporting local businesses, but also provides much less measurable, but equally (or arguably more) important benefits to individuals in that community. It enables easier communication for both practical and social reasons in a way which supports individuals in their daily life and, for the vulnerable, may help them to feel less isolated. As well as the provision of this service to the wider community, the Petitioners also argue that there are specific advantages from the provision of free WiFi in the church both at a practical level for the day to day life of running the parish and in encouraging people to stay longer in the building and make greater use

of it. I am entirely satisfied that both the church and wider village community will benefit from faster broadband.

14. I therefore move on to consider the argument that satellite broadband provision is available as an alternative to the current proposals such that the works to the church are unnecessary. The Petitioners have argued that the suggested satellite service is significantly more expensive for the community than the WiSpire service. It is clear from the costings provided by the Parties Opponent that the expense of the two schemes will depend very much on the type and extent of individual usage. If only modest data usage is needed it may well be that the satellite service is cheaper but if, as increasing numbers do, a user wishes to stream or download significant amounts of data then the WiSpire service is likely to cost much less. The evidence I have seen from Mr Broom of WiSpire suggests that in those circumstances the monthly costs of a satellite service "can quickly escalate to several hundred pounds" - which would render it unaffordable to many households. I am satisfied that for some, if not all, broadband users WiSpire will offer a significantly cheaper service in Heydon.

15. It will be apparent from the above that I am satisfied that there is good reason why a faculty should issue in this case. The benefits from the proposed scheme outweigh the presumption against what is a modest change. The Petitioners have discharged their burden.

16. It will, I hope, be of some comfort to Mrs Shippam and Mrs Ashbee to see that Mr Broom of WiSpire has confirmed in his correspondence that the WiSpire installation is unlikely to be a permanent feature of this church. Heydon has been classified by the Better Broadband for Norfolk website as an amber area which suggests that faster broadband will eventually be available, although no timescale is given for this. That means that the equipment will be installed "in the expectation that the installation is likely to be removed in the longer term" (to use Mr Broom's words). I will make it a condition of this faculty that if the equipment is not used for a period of three months or more then it shall be removed from the church and the building shall be made good.



The Worshipful Ruth Arlow  
Diocesan Chancellor

27 January 2017