Neutral citation number: [2016] ECC Swk 16

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF ST JAMES'S CHURCH, KIDBROOKE

AND IN THE MATTER OF A PETITION BY REVD CANON KIM HITCH, RICHARD PHILPOT, JENNIFER ANDERSON AND NET COVERAGE SOLUTIONS LIMITED

JUDGMENT

Introduction

1. This is a petition by the Rector and Churchwardens of St James, Kidbrooke (Revd Canon Kim Hitch, Richard Philpot and Jennifer Anderson) and NET Coverage Solutions Limited ("NET"). It was received in the Registry on 18 September 2015. It seeks permission for (i) the installation of twelve antennae and two dishes behind GRP replacement louvres in the tower of the church and (ii) authority for the Rector to enter a licence agreement for a term of 20 years with NET to permit the installation and operation of the equipment permitted. The proposal is supported by a resolution of the PCC passed unanimously on 26 August 2015[1]. The PCC and the Petitioners had the benefit of professional valuation advice; they are advised that the annual licence fee of £14,300 that is provided for in the proposed licence is in line with open market levels. The DAC considered the proposals at a meeting held on 7 October 2014 and recommended the proposals to the court.

2. The application is accompanied by an "ICNIRP Declaration", namely a declaration that the installation has been designed to comply with the Guidelines of the International Commission on Non-Ionizing Radiation on the limitation of exposure of the general public to high frequency electromagnetic fields (0 Hz to 300GHz).

3. The church of St James, Kidbrooke is listed, Grade II, the listing stating that is a large, good representative example of a mid-Victorian Gothic church building. It was designed by the partnership of Arthur Newman and Arthur Billing. The church has had a rather chequered history as is explained in the Statement of Significance prepared by Canon Hitch. Consecrated in 1867, it had to be rebuilt almost immediately because of the poor quality of its original construction. In the Second World War it was badly damaged successively by a land mine and then a V2. The original spire was thus lost, which was replaced in the restoration of the 1950s by a smaller "spike". The tower however survived. It has a bell chamber with a single bell. The proposal is to install the equipment in the bell chamber and in the chamber in the tower immediately below the bell chamber.

4. The proposals were advertised by notice on display for 28 days inside the building and on a notice board in the porch. Miss Velma Lyrae, who became a party opponent to the proposals, was

[1] Two members of the PCC were absent.

concerned that there might have been members the public who might not have seen the notice in the porch but who would have wished to object. I did not decide whether there was any legal deficiency as regards the notice in the porch, but on 20 July 2016, I directed that the notice be subject to further period of display for 28 days on the notice board of the church which was visible from the Kidbrooke Park Road (as well as, once again, on the notice board in the church and in the porch). This did, in the event, lead to some further objections to the proposal being made.

5. The Registrar received in total 14 objections to the proposal. These were from AR Apps, JE Apps, Dean Beer, Christina Coker, Jonathan Dakin, Nicolas Laugier, Brian Little, Wendy Little, Velma Lyrae, Vincent Moffat, Obiora Onuora, Peter Reynolds, David Saker and Deborah Yeo. Of those objecting, only Miss Lyrae opted to become a party opponent.

6. Miss Lyrae wished to call expert evidence and on 20 July 2016, following a hearing, I gave directions which made provision for this (and for expert evidence in rebuttal to be called by the Petitioners). However in the event, she did not file any expert evidence within the time provided for this; and by directions which I gave on 16 September 2016, I declined to extend the period for this to happen. In the circumstances, she has, of necessity, confined herself to making submissions. I held a hearing which enabled her to do this on 21 November 2016; this was held in the church. The Petitioners were represented by Mr Matthew Chinery, a solicitor of the firm of Winckworth Sherwood; Miss Lyrae represented herself.

7. On 16 September 2016, the Petitioners had made an application for security for costs. On 19 October 2016, in a reasoned judgment, I rejected that application: see [2016] ECC Swk 13. At the outset of the hearing on 21 November 2016, Miss Lyrae asked me to make a protective costs order in her favour. In response, Mr Chinery explained that, on the basis that Miss Lyrae did not seek to an appeal a judgment adverse to her, the Petitioners would not seek an order as to costs. In these circumstances I did not make a protective costs order. It will be seen in due course that I have decided that a faculty should issue in this case. If, having considered this judgment, Miss Lyrae were to seek permission to appeal, she could seek a protective costs order at that stage.

8. Even though they did not opt to become parties opponent, I am required to take into account the written objections of those who did not opt to become parties opponent. The main concerns that they articulated reflected that of Miss Lyrae. I deal with the separate points which they raise at paragraphs 54 and 55 below.

9. Miss Lyrae lives in the parish or, at any rate, in the vicinity of the church; accordingly, there is no challenge to her standing. In these circumstances, she is entitled (as the Petitioners accept) as a party opponent to require that her objection to be considered at a hearing[2].

Preliminary: the position as regards planning permission

10. In their written submissions, Mr Reynolds and Ms Hadef take the point that in their view planning permission is required for the installation of the equipment. Miss Lyrae took the same point in her

[2] See now rule 14.1 (2) (b) of the Faculty Jurisdiction Rules. (Miss Lyrae did not agree that the proceedings might be determined on consideration of written documents).Note that the petition having been lodged in September 2015 was governed by the 2013 Rules, where the equivalent provision is rule 13.1 (2) (b).

oral submissions and, with my leave, after the conclusion of the substantive hearing submitted a number of e mails which bore upon upon the matter.

11. Mr Chinery's response on behalf of the Petitioners is that planning permission is not required.

12. I would not generally wish to grant a faculty in a case of this kind without being reasonably satisfied either that planning permission is not required or that is has been granted.

13. I regret that it seems to me that this aspect of the matter has become unnecessarily complicated. As I shall explain, it seems to me that planning permission is not required for the installation of the equipment in the tower. The planning authority are well aware of the situation and it appears they take the same view.

14. The starting point is a letter dated 20 March 2015 sent by Rebecca Skerrett, a Principal Planner at GVA, the planners who were handling the matter for NET, to the Chief Planning Officer of Greenwich RBC. This identified the proposals and stated that it was not considered that planning permission was required because there would be no material alteration to the exterior of the church. Similar letters were sent by e mail to local councillors, including Cllr Geoffrey Brighty. As far as I am aware, there was no response.

15. The next matter to note is an email dated 28 May 2015 from Simon Talbot of NET to Rebecca Skerrett asking if she could ascertain from the local planning authority whether the proposal was "LN or full planning". "LN" is short for "licence notification", the procedure for notification under regulation 5 of the Electronic Communications Code (Conditions and Restrictions) Regulations 2003. On 8 June 2015 an administrator at GVA emailed Mr Talbot to say that "the planning officer was happy to accept this as permitted development so an LN is fine".

16. A letter dated 8 June 2015 from Rebecca Skerrett to the Chief Planning Officer of the Royal Borough of Greenwich gave formal notification of the proposals under regulation 5 of Electronic Communications Code (Conditions and Restrictions) Regulations 2003. There is no doubt that this letter was received. It was sent by recorded delivery and was signed for.

17. Regulation 5 gives the local planning authority 28 days to impose reasonable conditions upon the proposed installation. No such conditions were required by Greenwich RBC and, accordingly, at the expiry of the 28 day period, NET were, as far as the Communications Code was concerned, at liberty to install the equipment.

18. As regards planning permission, the letter dated 8 June 2015 made it clear that it was not a planning application or an application for a determination as to whether the prior approval of the planning authority was required as regards the siting or appearance of the equipment. As regards planning permission, the letter said

CTIL[3] intend to utilise their permitted development rights as identified in Part 16 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended. The proposals contained herein constitute permitted development under Class A (a) of Part 16.

[3] CTIL is short for Cornerstone Telecommunications Infrastructure Limited. It is intended that in due course CTIL will become the operator of the site.

19. In March 2016, Miss Lyrae raised this matter with her local Councillor, Cllr Brighty. He passed on to her a response from the Planning Department, as follows:

I would confirm that the Council has not received a planning application for this site and that we have had no contact with either the Church or their lawyers on this matter.

20. Pausing at this point, it will be seen that, although this statement may, strictly speaking, be correct – because there had been no planning application and the Council's contact had been with GVA – nonetheless, in suggesting that there had been no correspondence at all about the proposal, it does appear to have been misleading[4]. I accept that it is possible that GVA's letter dated 20 March 2015 may not have been received but I think it unlikely that GVA did not have a conversation with a planner at the Council as set out at paragraph 15 above; and in any event the notification under the Electronic Communications Code must have been received.

21. The e mail continued

I have not been able as of yet to speak directly with a CTIL representative on this matter, but I will continue to investigate this matter.

22. It may be that in the light of the Councillor's investigations that it was on 1 August 2016, Mr M Parker, Senior Planning Enforcement Officer at the Royal Borough e mailed the Parish Office at St James's Church. The e mail was headed "Possible breach of planning regulations" and was as follows:

I have an enquiry concerning the installation [of] telecommunications masts inside the church steeple. The church is a Grade II listed building and any such work would require the benefit of listed buildings consent. Would you please contact me to discuss this matter.

23. By an email dated 1 August 2016, Mr Chinery responded on behalf of the PCC, explaining that, because St James's was a church it benefited from exemption from listed building control (being instead subject to the jurisdiction of the consistory court). Thee mail concluded

Please confirm, by return, that this potential enforcement case has been closed

24. Mr Parker responded on the same day as follows:

Thank you for your prompt response; in the circumstances I can confirm that the case will be closed.

25. It does not appear that this information was relayed back to Miss Lyrae; if it was, she has not been able to find the relevant e mail. She tells me however that before the hearing she had a conversation with someone in the planning department of Greenwich RBC who told her that planning permission would be required. She further has informed me bye mail that

This morning [ie on 23 November 2016] I have spoken with Tarana Choudhury who tells me that the church has ecclesiastical exemption but would need to apply for permission for exterior works

[4] At least in the context in which it was supplied to Miss Lyrae. Cllr Brighty ought also to have received a letter dated 20 March 2015 from GVA by way of consultation upon the proposal, albeit bye mail (see paragraph 14 above). It would seem that either he never received this letter, overlooked it or had forgotten he had done so.

such as cable box, electrical equipment or anything outside of the church. She tells me she had a conversation with Rev Kim Hitch about the box and that he was supposed to get back to her on this, but has failed to do so.

26. Finally I need to refer to the Petitioners' response to Mr Reynolds and Ms Hadef. In it, they say that because the works do not materially affect the external appearance of the building, they do not constitute development[5]. This of course is consistent with GVA's letter dated 20 March 2015 to Greenwich RBC and with what Tarana Choudhury told Miss Lyrae. It is however a different position to that put forward by GVA in its letter dated 8 June 2015 where what was being said was not that planning permission was not required but that what was proposed was "permitted development" ie was the subject of deemed planning permission under the General Permitted Development Order.

27. Despite the complicated way in which this matter has unfolded, I do not think that the position is unclear. It seems to me that the Petitioners are essentially correct to say that planning permission is not required because the proposals do not materially affect the exterior of the building[6]. The position was raised with a Senior Planning Enforcement Officer at Greenwich RBC who responded not by raising the absence of planning permission but of listed building consent. He was, as has been seen, satisfied that listed building consent was not required. It seems to me inconceivable that, if he had thought that there was an issue with planning permission, he would not have raised the matter with the Petitioners. What I say above must be read with the following caveat. One of the plans shows that on the edge of the boundary of the Church with Kidbrooke Park Road there will be an electricity meter cabinet "to be located inside fence line. Meter cabinet to be painted green". I think it likely that it is this that Tarana Choudhury has spotted on the plans. It seems to me unlikely that the cabinet requires planning permission or, if does, that permission is likely to be refused. If planning permission were needed and were refused it could not, as will be seen, be refused on the basis that the installation of the equipment which it facilitates presents a health risk[7]. If the cabinet needed to be redesigned or relocated on amenity grounds, it is hard to see how this could not be achieved. However I think that I must at least contemplate the possibility that whole proposal might founder on the fact that this small detail were unachievable. Nonetheless there is a considerable difference between a situation where the installation of the equipment in the tower itself requires planning permission which it does not have and one where a small detail is outstanding. If it were to prove impossible for the situation to be sorted out, this would be a matter which the objectors would welcome; at any rate they will realise that there is now no possibility of the situation being overlooked. As far as this Court is concerned, however, I do not think that the fact that the planning position is not absolutely clear is not, in the circumstances, a reason for declining to grant the faculty sought.

28. I shall ask the Registrar to send a copy of my judgment to Mr Parker at Greenwich RBC so that he is aware of where matters now stand.

29. I hope that in any future case of this kind where an issue as to planning permission arises, the Petitioners will at the outset be able to explain what the position is more clearly.

Miss Lyrae's objections

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[5] See section 55 (2) of the Town and Country Planning Act 1990.

[6] There is no suggestion that the difference between the existing louvres and the GRP louvres will be perceptible.

[7] See paragraph 36 below.

30. Miss Lyrae considers that the proliferation of telecommunications equipment in order to facilitate the transmission of messages by mobile phones presents a general threat to health. She appreciates that the consensus of scientific opinion is, at the moment, that there is no evidence that it does so but points out that until comparatively recently the risks asbestos, for example, were not appreciated. She also draws attention to the situation that arose as regards emissions from Volkswagen cars, which were underestimated over an extended period of time.

31. More specifically she tells me that she is electro-hypersenstive, that is, she suffers from a multitude of symptoms which she considers are caused by her exposure to **existing** electro-magnetic fields. She tells me that these symptoms include peripheral nerve sensitivity and black outs which happen at least twice a day. She is concerned that if the petition is granted it will make her existing condition worse.

The development of policy and law in relation to telecommunications equipment

32. Although Miss Lyrae's views about the safety of telecommunications equipment do not represent the consensus of scientific opinion, they are by no means unusual. This has had the result that where it has been necessary to obtain planning permission for such equipment, planning applications have attracted objections on health grounds. Both because the concerns were the same in whichever part of the country a proposal was made and also because the Government has wished generally to encourage improved telecommunications, it was necessary for the Secretary of State to formulate a policy as to how local authorities were to treat arguments that the equipment represented a risk to health.

33. National planning policy for telecommunications was first promulgated by the Government in 1988 in PPG 8 (Planning Policy Guidance Note 8). This observed that *Modern communications are an essential and beneficial element in the life of the local community and in the national economy*[8]. It also aimed to give comprehensive guidance on the planning issues that might arise[9]. However it did not give any guidance as to health issues; it apparently proceeded on the basis that that no such issues arose[10]. The same approach was taken in the revised version issued in 1992.

34. However concerns about the possible health risks began to be expressed. Accordingly the Government commissioned Sir William Stewart FRS FRSE and a group of independent experts to consider the matter. The Group's Report was published on 11 May 2000. It recommended that a precautionary approach be adopted and, in particular, the ICNIRP Guidelines should be adopted as the appropriate guidelines. The Government set out its conclusion in a new version of PPG 8 which it issued in August 2001. It was as follows:

In the Government's view, if a proposed mobile phone base station meets the ICNIRP guidelines for public exposure it should not be necessary for a local planning authority, in processing an

[8] See paragraph 1.

[9] Ibid.

[10] Deemed planning permission for telecommunications equipment was fist given under the General Permitted Development Order in 1988.This would not have been appropriate if any health risks had been perceived to arise.

application for planning permission or prior approval, to consider further the health aspects and concerns about them[11].

35. PPG 8 also stated that *The Government shall continue to keep the whole area of mobile phone technologies under review in the light of further research*[12].

36. PPG 8 was cancelled in March 2012 and replaced by the National Planning Policy Framework. The policy, although more shortly stated, remains the same:

> *Local planning authorities must determine applications on planning grounds.* ***They should not*** *seek to prevent competition between different operators, question the need for* ***the*** *telecommunications system, or* ***determine health safeguards if the proposal meets International Commission guidelines for public exposure*** (emphasis supplied)[13].

37. The first case concerning the grant of a faculty in the ecclesiastical courts for the installation of telecommunications equipment in a church tower seems to have been in 1991[14]. The first case in which health concerns were raised was in 2000[15]. In that case the Chancellor decided, having considered written submissions, that there was no reason to withhold a faculty on health grounds. In 2003, a consistory court considered the health issue for the first time following the issuing of the specific Government on health contained in PPG 8. This was the case of *In re St Margaret's, Hawes*[16]. In it Grenfell Ch heard evidence from two expert witnesses, one of whom supported the application of the ICNIRP guidelines, one of whom supported a more rigorous standard. He preferred the evidence of the former[17]. He went on to say that:

> *Further I accept Mr Turrall-Clarke's submission that, in the absence of compelling evidence of a real risk to human health as a result of transmitting radiowaves up to the levels set by the United Kingdom Government in their 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*[18].

38. In *In re Bentley Emmanuel Church, Bentley*[19], the Court of Arches expressly agreed with the view of Grenfell Ch that in the absence of compelling evidence of a real risk to human health as a result of transmitting radiowaves up to the levels set by the United Kingdom Government in their adoption of the ICNIRP guidelines, it would be wrong for the consistory court to adopt more

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[11] See paragraph 98.

[12] See paragraph 92.

[13] See paragraph 44.

[14] *In re St Mark, Biggin Hill* (Diocese of Rochester).

[15] *In re St Mark, Marske-in-Cleveland* (Diocese of York).

[16] [2003] 1 WLR 2568.

[17] See paragraph 84.

[18] Ibid.

[19] [2006] Fam 39.

rigorous guidelines than those recommended by the government for application in a secular context[20].

Consideration

39. Before making any other observation on Miss Lyrae's concern, it should be noted that all operators of radio transmitters are under a legal obligation to operate those transmitters in accordance with the terms of their licence from Ofcom. If scientific research were in the future to identify a greater risk to health from operation of the equipment, it is to be expected that Ofcom would require action to be taken under the terms of that licence. Moreover clause 5.1.6 of the licence between NET, the Rector and the PCC provides for the equipment to be operated in accordance with all relevant legal obligations and the requirements of the Health Protection Agency, Ofcom, ICNIRP and of any other competent authority. If it was not so operated, the Rector would be able to terminate the agreement (see clause 10.2.2). Under clause 6, emissions are required to be monitored and the Rector and PCC notified if they were at a level where they breached any obligation under clause 5.1.6. This all goes somewhat further than a simple obligation to comply with the ICNIRP guidelines. It is also worth noting that it appears generally to be the case that recorded levels are very much less than what would be permissible under the ICNIRP guidelines.

40. However this may be, in the light of *In re Bentley Emmanuel Church, Bentley* it will be seen that, because Miss Lyrae did not call expert evidence, her basic case – that a faculty should not issue because of the risk to health –was doomed to failure. This is because once it has been established that the installation will be operated in accordance with the ICNIRP guidelines, the basis for refusing a faculty without the benefit of expert evidence to support that refusal does not arise. It is clear in this case that the installation will be so operated.

41. This being so, it was not in fact necessary for me to explain the background to *In re Bentley Emmanuel Church, Bentley* as I have done in paragraphs 32 to 38 above; that case is binding upon me and I must follow it. The reason I did set out the background is so that Miss Lyrae may appreciate that the failure of her case is not the result of the application to it of an arbitrary rule but represents a reasoned approach which appropriately reflects the fact that the ecclesiastical courts do not of themselves have expertise in this area but that there may be very real concerns about the implications for health of proposals of this kind. One may see that although there may be differing views about whether, following the Stewart Report, the Government adopted a **sufficiently** precautionary approach, it did adopt a precautionary approach, which it then undertook to keep under review. The Ecclesiastical Courts then had to consider how they were to address the issue. As has been seen, in *In re St Margaret Hawes* the Court did hear expert evidence and on that occasion preferred the evidence of an expert who was supporting the Government's approach. Its view was that in the absence of expert evidence to the contrary - preferring as it did, the evidence of the expert who supported the ICNIRP Guidelines - the basis did not exist for adopting a standard more rigorous than those Guidelines. This meant that in

[20] See paragraph 50.

future cases concerning telecommunications equipment in the Diocese of Ripon and Leeds[21], the petitioners would have been able to rely on the fact that the proposal met the ICNIRP Guidelines as addressing the health issue, provided that expert evidence was not called to the contrary. Thus the Court would not have refused to grant a faculty on health grounds in any such case where there were **no** objections; and it would not have refused to grant a faculty on health grounds in any such case where there **were** objections, but those objections were not supported by expert evidence. The effect of the approval of Grenfell Ch's approach by the Court of Arches in *In re Bentley Emmanuel Church, Bentley* was that the position that had hitherto only obtained in the Diocese of Ripon of Leeds now applied in all the Dioceses of the Province of Canterbury[22]. It may be noted that *In re Bentley Emmanuel Church, Bentley* was a case in which the Chancellor had refused permission for the installation of telecommunications equipment despite the fact that it met the ICNIRP Guidelines[23]; his decision was overruled and a faculty issued.

42. The position accordingly may be summarised as follows. There is an international body which considers the health risks arising from the installation of telecommunications equipment. It has issued guidelines which it considers appropriate. The Government instructed a group of experts to advise it. The group recommended a precautionary approach and, in particular, that it was appropriate for the ICNIRP guidelines to be applied. The Government adopted a precautionary approach and in planning cases required the application of the ICNIRP Guidelines. An ecclesiastical court, having heard expert evidence on the matter, decided that it was appropriate to apply the ICNIRP guidelines. The ecclesiastical appeal court decided that it was appropriate in cases where there was no expert evidence to the contrary for the ecclesiastical courts generally to apply the ICNIRP guidelines. However the application of the guidelines was subject to the important caveat that it was open to a party opponent to demonstrate by reference to expert evidence that, in any particular case, there was a health risk.

43. It should be noted that in adopting this approach the ecclesiastical courts and the bodies whose views it has relied upon in formulating its approach are not saying that there necessarily is no health risk. All that has happened is that a view is being taken, in the light of the current state of scientific knowledge, which seeks to balance appropriately the possibility of risk to health against the benefit that mobile phones confer. The petitioners tell me that 80% of the population own at least one mobile phone and I understand that in fact the total number of mobile phones owned is greater than the number of the population. The personal experience of most people will persuade them that mobile phones are useful and the Government's view that they assist economic development is obvious one. If the approach which Miss Lyrae is urging on me now had been adopted generally there would, on the face of it, be no mobile phones in use. Obviously this would have ensured that no–one could possibly be harmed by the use of telecommunications equipment but one guesses that for most people the price would have been too high.

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[21] Note that the former Diocese of Ripon and Leeds has now been incorporated in a new and larger Diocese of Leeds. The status of a decision in one part of the enlarged diocese in another part which formerly was part of another Diocese is not a matter for me but the Chancellor of the new diocese.

[22] Strictly speaking, the case does not bind Chancellors in the Province of York.

[23] His concern had been not with the health risk as such but with public perception of the health risk.

44. Miss Lyrae points to the fact that until comparatively recently the installation of asbestos was considered to be safe; she also makes the somewhat different point that the diesel emissions from Volkswagen cars were, for a period, understated.

45. One guesses that if the use of asbestos were proposed now for the first time that use would be subject to rather more rigorous examination than occurred at the time and greater caution adopted in regard to its use. However that may be, once the dangers were discovered, its use was discontinued. If and when it becomes apparent to the scientific community that the use of telecommunications equipment does pose or potentially pose a health risk which requires a different approach, the approach can be changed. Expert evidence that the approach is out of date or is otherwise inapplicable may be led at any time in the context of a future faculty petition; and independently of this, representations may be made to the Government that its approach is no longer valid.

46. As regards Miss Lyrae's point about diesel emissions, it must always be possible for monitoring data to be falsified. One does not have to be naive to hope that this happens rarely. Much these days is subject to rigorous public examination which hitherto would have been taken for granted; and the saying "The truth will out" proved to be true in the Volkswagen case. There is of course no evidential basis for suggesting that the Petitioners would falsify data and I am sure that if the suggestion were made they would rigorously reject it. It seems to me that the monitoring arrangements required in this case under the licence agreement and by the Petitioners' undertakings to Miss Lyrae are reasonable.

47. I have not overlooked the fact that Miss Lyrae considers that she is electro-hypersensitive. She has not put any medical evidence before me to this effect. Moreover if she were to persuade me that a faculty should not be granted in this case because of the particular effects of the operation of the equipment upon a medical condition that she suffers, I would need to have expert evidence as to that effect. If Miss Lyrae were already to suffer, as she considers that she does, from the effects of the operation of telecommunications networks it is not self-evident that what is proposed will make her situation worse. I note in this regard that the ICNIRP declaration takes into account the cumulative effect of emissions both from the proposed installation and all radio base stations present at, or near, St James's Church.

48. The existence of electro-hypersensitivity is not, I think, a matter that was referred to in the Stewart Report and was not the subject of any specific recommendation. Whether or not electro-hypersensitivity is something that, on the state of the evidence, should considered by ICNIRP or the Government as it keeps mobile phone health issues under review is not a matter for me. My position is simply that I cannot properly refuse to grant a faculty in this case because Miss Lyrae tells me that (i) she is hypersensitive and (ii) the equipment would adversely affect her particular condition. In saying this I am doubting neither her symptoms nor the genuineness of her belief that they are caused by the operation of existing telecommunications networks; as to whether there is any link between the two, I am not in a position to form a view.

Other points

49. Although Miss Lyrae's fundamental objection to the grant of a faculty was bound to fail, that does not necessarily mean that she might not other have other sustainable objections.

50. Miss Lyrae was concerned that although the Petitioners would be required to comply with the ICNIRP Guidelines as regards High Frequency Emissions, they would not be required to comply with the ICNIRP Guidelines as regards Low Frequency Emissions (1 Hz – 100 kHz). If it indeed be the case that the installation is not required to meet the Guidelines as regards Low Frequency Emissions, I think that there must be some doubt as to the relevance of these Guidelines. However this may be, the Petitioners have undertaken to meet these Guidelines. The point accordingly falls away.

51. Miss Lyrae was concerned about the fulfilment of the monitoring arrangements contained in the licence agreement. The Petitioners undertook that they would supply her with the monitoring results obtained three months after the equipment came into operation and on the anniversary of that date for a period of four years. The undertaking was in respect of both High and Low Frequency Emissions. It seems to me that this addresses any concern that Miss Lyrae may have in this regard.

52. Miss Lyrae was concerned about the position as regards insurance. Her point was that the obligation under the licence agreement upon NET to keep an insurance policy in place in the sum of £10M in respect of public liability was likely not to include liability in respect of injury arising from electro-magnetic fields because this was a risk not covered in a standard policy in the insurance market (and the licence did not require more than a standard policy to be in place). Mr Chinery took instructions and produced a letter from CTIL's brokers, making it clear that the cover is in respect of liability to pay compensation and damages in respect of personal injury (including damage as a result of electro-magnetic fields). Miss Lyrae is still unconvinced but I do not think it is appropriate for me to require this matter further to be investigated. This Court relies upon the good faith of all those appear before it. If in any case it were to transpire that that faith had been misplaced it would be a very serious matter, potentially leading to the revocation or modification of a faculty.

53. Miss Lyrae was concerned that, if further scientific research demonstrated that the operation of the equipment did pose unacceptable health risks, there was no clause whereby the Rector could terminate the agreement. This overlooks the effect of clause 10.2.2 which provides that notice to terminate the agreement could be given if the Government guidance as to the safety of the equipment changed.

54. A number of people were concerned about the adequacy of consultation. As explained in the material supporting the petition, NET consult to a greater or lesser extent depending upon how sensitive the application is judged to be (assessed against objective criteria). What this meant in the present case is that the Chief Planning Officer and local Councillors (including Cllr Brighty) were consulted[24]. If they had thought that the matter should be brought to the attention of a wider public, they could have sought to do this themselves or asked NET to do so. Further Canon Hitch circulated notification of the proposals in the streets around the church. In these circumstances, I do not think that a proper basis exists for saying that the consultation was inadequate and that the proposals should not be allowed to progress without there being further consultation. This is particularly so against the background that, once the decision to proceed had been taken by the PCC, the proposals received further publicity by the posting of notices.

[24] I accept that it is possible that Cllr Brighty did not receive a letter by way of consultation.

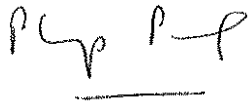
55. A number of people were concerned about the possible effect of the proposal on house prices. I do not have any evidence that there would be any effect on house prices, but in any event I do not think that this could be, of itself, a relevant consideration if it were otherwise appropriate that a faculty should issue.

Decision

56. I direct that a faculty should issue. In accordance with the advice of the DAC, the installation shall not be carried out until cabling routes have been agreed with the Church's Inspecting Architect (or, in default of agreement, as required by this Court). It shall further be a condition of the faculty that the equipment be operated in accordance with the ICNIRP guidelines in force for the time being as regard both and low frequency emissions. As is usual, the Petitioners will pay the court costs of the petition (including the costs of the hearing).

Concluding remarks

57. I appreciate that nothing set out in this judgment is likely to alter Miss Lyrae's views as to the safety of telecommunications equipment. I hope however that she will now appreciate, if she did not before, that the ecclesiastical courts, acting for the Church of England, do take this matter very seriously. As I have explained, the approach that has been taken is reasoned and not arbitrary. I would suggest also that it strikes an appropriate balance between permitting new and valuable technology and ensuring appropriate safeguards in respect of any risks which that new technology may present.



PHILIP PETCHEY
Chancellor
20 December 2016