

IN THE CONSISTORY COURT OF THE DIOCESE OF PETERBOROUGH

RE: ST MARY FAR COTTON

1. On 31st October 2005 the Petitioners (the Incumbent, two Churchwardens and QS4 Limited “QS4”) lodged a petition asking for permission to install telecommunications equipment in the spire of St Mary Far Cotton, Northampton (otherwise known as St. Mary Northampton). The PCC at its meeting on 12th April 2005 passed unanimously a resolution in favour of the proposal.
2. The church building is Grade II* listed and is of squared rubble and ashlar with a Welsh slated roof built in 1885 by Mathew Harding in the thirteenth century style. It has a vaulted interior without a chancel arch. The tower, in which it is proposed to install the telecommunications equipment, has a broach spire.
3. The local planning authority determined that planning permission is not required. English Heritage delegated its decision to the DAC, who have recommended the proposal. The DAC has also recommended that no further consultation with conservation bodies is required. The DAC recommended the works on 1st July 2005 subject to the proviso that QS4 was one of the petitioners. The public notice indicates that copies of the relevant plans and documents were available for examination at the church in accordance with rule 4(2).
3. Three people gave notice of objection. Mr Connell, chairman of the Far Cotton Residents Association, and Mr Cox filed Particulars of Objection and are parties to the proceedings. Mrs Reed objected but elected not to be a party to the proceedings but requested that her views be taken into account when the decision is made. Mrs Varnsverry applied out of time to be added as an objector, which I refused, but gave Mr Cox permission to call her as a witness. Mr Connell, Mr Cox and Mrs Varnsverry are not on the parochial electoral roll; Mrs Reed’s status is not known.
4. The hearing took place at St Mary Far Cotton on 14th July 2006 when evidence was heard from the Rev Ian Holdsworth, Mr Talbot and Mr Hoskins of QS4, Mr Connell, Mr Cox and Mrs Varnsverry and the Rev Brian Lee of the Diocesan Advisory Committee. All the parties were unrepresented. An unnamed unsigned witness statement was filed on behalf of QS4, to which I will return later, together with short witness statements from Mr Connell, Mr Cox and Mrs Varnsverry. Mrs Reed’s letter of objection was contained in the bundle prepared by the Diocesan Registrar.
5. As part of the directions I gave on 4th April 2006 I stated that in relation to the application for permission to install the telecommunications equipment I would be guided by the law as laid down by the Arches Court in *In Re Emmanuel Bentley* decided on 22nd November 2005. The parties were requested to remind themselves of the principles set out in the report, and I directed that the Diocesan Registrar would be able to provide guidance as to how a copy of the report could be obtained.

6. The petitioners seek a faculty to authorise the installation of a telecommunications mast, including antennae set in the east, south and west apertures behind new radio-transparent mesh, replacing the existing mesh. The cabinets to be supported on steel beams bolted to the walls using stainless steel fixings at first floor level. Power and BT services to enter through Abbey Road on the north side of the tower. The proposed nature of the works is contained in a letter from Mark Macauley of QS4 of 25th April 2005 and in a series of drawings dated 14th April 2005 in the court bundle.
7. The petition states that: “the PCC is engaged in a programme of refurbishment of parts of the church premises and has determined that the installation of telecommunications equipment in the tower is a beneficial use and an appropriate source of maintenance income.” The cost of the works of £48,938.00 is to be recovered by QS4 from T-mobile; the church will not bear any costs. If the faculty is granted, the Church will licence QS4 and QS4 will sub-licence T-mobile. QS4 will be responsible for recovering costs from T-mobile and paying the rent to the church. Copies of the *National Agreement on Telecommunications Installations: Agreed Access Routes and times in respect of St Mary Far Cotton* and also a copy of the draft licence to install electronic communications apparatus, including details of the licence fee of £5,000 per annum for a term of 20 years with a review every 5 years are to be found in the court bundle.
8. The public notice was affixed during the period from 2nd to 31st October 2005 on a notice board inside the church and outside the church. Copies of the relevant plans and documents were available to be examined inside the church.
9. On behalf of the Petitioners, Mr Holdsworth, the vicar, gave evidence that the PCC had unanimously decided to approve the installation. He stated that the parish share was some £20,000 and that the proposed licence fee of £5,000 would be used to meet one-quarter of it. He explained that the church did not have any benefactions from which to meet the cost of maintaining it. Rev Brian Lee on behalf of the DAC confirmed that the proposed installation satisfied the architectural and structural issues that arose.
10. It is an unsatisfactory feature of this case that Mr Talbot, QS4’s church relationship manager, was unable to provide information as to the circumstances in which the unsigned witness statement came to be prepared, or indeed, the name of the expert referred to as having prepared paragraphs 1 to 12 on health and safety issues. Further he was unable to explain any of the technical data contained in or annexed to the statement. Shortly before the hearing, the Diocesan Registrar was approached by QS4 seeking information as to whether the unnamed expert was required to attend; QS4 were informed that it was a matter for them as to how they presented their case.
11. Mr Hoskins, QS4’s project manager, was able to be of some limited assistance in explaining both the purpose and position of the antennae. Relying upon the document prepared by T mobile “*Declaration of Conformity with ICNIRP Public exposure*

Guidelines” of 13th June 2005 he was able to give some information about the estimated RF EME levels around the proposed T-mobile base station. In the tables provided for each bearing of the cellular antennae, the Power Flux Density W/m and the number of times **less** than ICNIRP ref. level (10W/m) are given. The latter figure varying from 30,467 at a distance from the antennae of 50 m to 8,077 at a distance of 250m at a bearing of 180 degrees. The note states that: “these estimations are calculated at point 1.5 m above ground level and based on worst case assumptions and local terrain the estimated levels do not include possible radio signal attenuation due to buildings and the general environment. The actual Power Flux Density (PFD) levels will generally be significantly less than predicted due to path losses and the base station automatically adjusting transmitter output power to serve established phone calls.” The document confirmed that the planned equipment is in full compliance with the requirements of radio frequency (RF) public exposure guidelines of the *International Commission on Non-Ionising Radiation Protection (ICNIRP)*. Attached to the same documentation there is also a schedule of existing and planned sites and a map showing that the present coverage in the vicinity of St Mary Far Cotton is restricted to outdoor level of coverage. He explained that the maximum effect of the arc was in the region of 500 metres from the church. He confirmed that the nursery school in the church hall attached to the church was not within the arc.

12. He also explained that the public consultation process had included sending a letter to 846 residences and businesses within a 250m radius of the church, and that people were invited to attend a drop-in information session at the church on 26th September 2005 and to make their views known if they wished. QS4 received responses from two local residents, Mr Cox and Mrs Tilaks, and were also sent a copy of a letter from Mr Connell, chairman of the Far Cotton Residents Association. About 40 people attended the drop-in session, and of these three requested the health and safety certificate for the site, which was sent. During the display of the public notice, one letter was received by the church and forwarded to the Diocesan Registrar and QS4, who duly responded.
13. Mr Connell, chairman of the Far Cotton Residents Association, prepared a short witness statement, which was supplemented by oral evidence. In his letter of 6th October 2005 he recorded that at a residents meeting on 3rd October 2005 “there was great concern that the health of families living within 250m of the church tower and the children attending the nursery school and the two schools not so far away from St Mary’s Church could well be affected by the radio waves emitted from the mast. The representative of QS4 or the leaflet he offered had not allayed any of the fears felt by the residents.” He also raised issues as to whether the fabric of the tower would be jeopardized. Mr Connell repeated his concerns in a letter to the Diocesan Registrar of 20th October 2005, in his particulars of objection of 3rd November 2005, in his witness statement, and in his oral evidence before me. He drew my attention to para 6.3 of the Stewart report to which I will return later. The response in writing from the petitioners relies primarily on the proposition that as the base station is designed to operate within the ICNIRP public exposure guidelines then it will be safe.

14. Mr Cox, a local resident, raised similar objections in his letter of 15th December 2005, his witness statement and in his oral evidence. Mr Cox drew attention to the fact that there is a day nursery on the church premises, a “Mums and Tots” group across the road, and two infant schools close by. He cautioned against accepting QS4’s evidence in a situation where mobile phone technology is in its infancy with no data on its long-term effects. He reminded me of the dangers to health subsequently found to have existed from tobacco, asbestos, carbon emissions and referred to cancer clusters from electric pylons in the local area. He drew my attention to a press release from the National Radiological Protection Board of 11th January 2005, and the need for “particular attention to be given to how best to minimize exposure of potentially vulnerable subgroups such as children.” Mrs Varnsberry, local resident, gave similar evidence in an undated letter, in her witness statement and in her oral evidence.
15. Mrs Reed, who was not an objector but asked for her views to be taken into account, relied upon two documents, the Stewart report and a report by GJ Hyland on *“How Exposure to GSM and TETRA Base-line radiation can adversely affect humans?”* She drew particular attention to section 6 in the Stewart Report on base stations near schools where after considering the absorption by children of more energy per kilogram of body weight from an external electromagnetic field than adults (a one year old could absorb around double, and a five year old around 60% more than an adult), it goes on to state that: “we suggest that a better approach would be to require that the beam of the greatest RF intensity from a macrocell base station sited within the grounds of a school should not be permitted to fall on any part of the school grounds or buildings without agreement from the school or parents. Similar considerations should apply to macrocell base stations sited near to school grounds.”
16. The decision I have come to is informed by the decision of the Arches Court of Canterbury **In Re Emmanuel Church, Bentley**, where the background is set out to telecommunication installations in churches. The Archbishops’ Council approved a model form of licence for use between a parish and QS4, which includes “Best Practice Commitments” requiring QS4 to take a precautionary approach, to proceed through only rigorous controls and to hold meaningful consultation. The decision of the Arches Court helpfully sets out the general principles extracted from the cases, in particular cited with approval from **Re St Margaret Hawes and Holy Trinity Knaresborough** [2003] 1 WLR 2568, where Grenfell Ch said: “In my judgment, there is no reason why a faculty should not be granted for wholly secular and commercial use of part of a church building. Each case must be considered on its own merits. It is for the petitioners to show that there is a good reason why a faculty should be granted, and once the issue of whether it involves risk to human health, it is for the petitioners to satisfy the court that the grant of a faculty will not give rise to a real, as opposed to a fanciful, risk to human health. In my judgment a real risk is properly described as being measurable or, put another way, significant.”
17. I am satisfied that the installation of the telecommunications equipment itself is largely out of sight and unobtrusive. The detailed drawings prepared by QS4 show the location of the antennae behind the replacement netting over the openings in the spire,

and the hooped access ladder, cabinet and cabling in the tower itself. As I have already said the church was constructed in 1875 and is Grade II* listed. English Heritage delegated its decision to the DAC, who having considered the proposal carefully recommended it to me. I am satisfied that QS4 has satisfied the “Best Practice Commitment” of making the antennae and supporting equipment unobtrusive.

18. The church is situated in a densely built up residential and business area close to the centre of Northampton, where there are two schools in the vicinity. The day nursery in the church hall attached to the church is open 51 weeks each year. The documentation produced by QS4 indicates that public consultation was undertaken with letters sent to all residents and businesses within a 250m radius of the church. A drop-in session was organized on 26th September 2005, which was attended by about 40 people. Two letters of objection were received, from Mr Cox and Mrs Tylaks. It is unclear to me whether the consultation formally included those who operate the day nursery at the church or the parents of children who used it. Nevertheless, the public notice was displayed externally and internally at the church for a period of 28 days from 2nd to 31st October 2005. There was only one letter of objection to the proposed installation following the public notice.

19. Mr Cox and Mr Connell were critical of the way in which the drop-in meeting was conducted complaining that QS4’s representative referred questions to Mr Holdsworth who was not prepared to answer them. I adopt what was said **In re Emmanuel Bentley** that:

“The local consultation was not required by law, so that the question of “curing a deficiency” in a technical sense is not strictly relevant. It was “Best Practice” which was not complied with, although we consider that thanks to Ms Machin those directly interested were in fact given a fair opportunity to hear their proposal and to express their views. We hope that lessons will have been learnt in this case and that rigorous steps will be taken to ensure that such communication errors do not occur again elsewhere. We consider that the deficiencies we have identified here underline the advisability of publishing details by way of notices in local newspapers in addition to properly addressed individual notification to those living in the close vicinity of the church. If such advertisements are not placed voluntarily by petitioners in cases such as this, which may give rise to particular concerns in the locality, the petitioners should be ordered to do so by the chancellor under rule 13(2) of the Faculty Jurisdiction Rules 2000.”

20. In my judgment, QS4 did insufficient in this case to bring the matter to the attention of the parents of the day nursery at the church. I have heard no evidence of direct communication or notification of the proposed telecommunications installation with the operators or parents of the day nursery, or indeed, any nurseries or schools nearby. They should do well to heed the warning set out in the decision of the Arches Court **In Re Emmanuel Bentley**, which I should add was delivered after the public consultation in this case had taken place. It is important that those persons who have

or have responsibility for children within the area of a proposed installation have the opportunity for direct communication with QS4, which may by proper explanation allay their concerns and fears.

21. However, I am satisfied that the telecommunications installation proposed by QS4 is consistent with the precautionary approach, and that the beam of greatest RF intensity will not fall on the church hall or surrounding grounds used by the day nursery. I accept the evidence of Mr Hoskins on this issue. I am also satisfied that the proposed measurements of emissions in clause 6.1(b) of the draft licence should satisfy concerns genuinely held by the objectors in this case.
22. In reaching this decision I am guided again by the decision of the Arches Court when in citing **Re St Luke, Maidstone** [1995] Fam 1 at page 7 it said:

“in the absence of words expressly limiting the wide jurisdiction long enjoyed by chancellors section 1 [of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991] cannot be said to apply to chancellors since they are not persons carrying out functions of care and conservation. Rather, in carrying out their functions under the faculty jurisdiction, the chancellors are to “hear and determine ... a cause of faculty” (see section 6 of the Ecclesiastical Jurisdiction Measure 1963)” This means looking at all aspects of a “cause” and exercising the court’s discretion in a fair way”

23. I have considered carefully the Government’s policy on telecommunications as contained in PPG8, in particular the *Appendix of Supporting Guidance in relation to health and public concern about mobile phone base stations* which says:

“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 application for planning permission or prior approval, to consider further the health aspects and concerns about them.” (paragraph 98).

I adopt the passage in the Arches Court decision **In Re Emmanuel Bentley** where they refer to the judgment of Grenfell Ch in **Re St Margaret’s Hawes** at para 84 when they said:

“We agree with Grenfell Ch that “in the absence of compelling evidence of a real risk to human health as a result of transmitting radio waves up to the level set by the UK 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.”

24. In doing so I have in mind clauses 5.1.6 and 6 of the licence and the provisions for Direct Monitoring of Emissions; the former requiring compliance with current safety

standards, and future more stringent requirements, which may be imposed in the light of further research, and the latter enabling the PCC to maintain an independent check on the level of radio emissions. Whilst I accept they fall short of the guarantee of safety sought by Mr Connell and Mr Cox “these safeguards should offer reassurance that a close check will be kept on the use of the QS4 aerials in the church to ensure that they comply with standards set from time to time by the bodies expert in these matters.”

25. Therefore, I conclude that the benefit of the income of £5,000 per annum over 20 years to the substantial cost of maintaining the church, the benefits to the local community of improving the quality of transmission in the area, the support of the incumbent and PCC, the absence of wide-scale opposition in particular from those parishioners on the electoral role points only in one direction. Whilst I fully accept the sincerity with which Mr Connell, Mr Cox, Mrs Varnsverry and Mrs Reed have expressed their views, in the absence of the full beam falling on the day nursery at the church their objections fall away in the light of the expert evidence. Accordingly, I exercise my discretion in favour of the petitioners and grant the faculty.

26. I direct that the incumbent and parochial church council enter into the licence agreement, and permitting the appellants thereafter to proceed with the installation and use of the apparatus. Subject to the following conditions:

- (1) all parties to the licence and any assignees or sub-licenses thereof shall observe and perform its requirements as if they were conditions of the faculty;
- (2) the PCC shall exercise their right under clause 6.1.2(b) of the licence to receive reports at three-monthly intervals of direct radio frequency measurements, and shall communicate the contents of such reports to any person in the parish requesting them.

I also direct that the Petitioner QS4 shall pay the costs of the petition to include the hearing.

Dated 2nd August 2006

Chancellor David Pittaway, QC