

Neutral Citation No: [2017] ECC SEI 1

IN THE CONSISTORY COURT
DIOCESE OF ST EDMUNDSBURY & IPSWICH

IN THE MATTER OF ST MARY THE VIRGIN, WALSHAM LE WILLOWS

-and-

**IN THE MATTER OF THE INSTALLATION OF TELECOMMUNICATIONS
APPARATUS**

Judgment of the Chancellor

January 31, 2017

JUDGMENT

1. By petition April 24, 2016, and following the unanimous resolution of the Parochial Church Council (PCC), permission is sought to enter into a licence under faculty with Net Coverage Solutions Ltd for a term of 20 years, reviewable every 5 years, in accordance with the draft licence submitted. The cost will be borne by the operator.
2. The proposal is to mount the antennae so as to cause the least impact on the exterior of the building and the minor effect on the fabric caused by minimal cabling and connections will be reversible if removed. The location of the equipment will be within the curtilage of the church.
3. The need to be addressed by these proposals is that of generating income to assist in the care of the building and which will likely bring to the parish better mobile and internet service.
4. The church is situated on the crossroads at the centre of the village. It is Grade I listed. The tower and font are 14th century. The present roofing in the nave and aisles are fifteenth century and lead covered. The interior of the church, which has had a number of alterations, also has some fine features, but these are not relevant in the particular circumstances of this application.
5. The proposal is to place the base equipment within the clock chamber (except for a meter cabinet beside the boundary wall). The louvres in the tower will need to be removed and replaced with sympathetically coloured glass reinforced plastic louvres which permit the signal to transmit.
6. The petitioners have received specialist legal advice as to the licence and throughout have obtained and followed expert advice from a recognised surveyor.
7. Net Coverage Solutions Ltd, on behalf of Vodafone/O2 has undertaken to provide the relevant planning authority with the ICNIRP certificate that will certify that the installation complies with the relevant health and safety standards.
8. The Diocesan Advisory Committee (DAC) has recommended to me in its Notification of Advice that I should accept these proposals. It has further advised me that in its opinion the proposals are not likely to affect the character of the church as a building of special architectural or historic interest or the archaeological significance of the

church or any archaeological remains existing within the church or its curtilage. It has not recommended to me that English Heritage, the local planning authority, the Church Buildings Council or any other body or person should be consulted. This presumably reflects the fact that the petitioners have been advised that planning consent would be required in any event.

9. There are two letters that have been submitted following public notices: one from Alison Martin and Cheryl Mabutt (opposed) and one from Matthew and Kate Larkin (in favour). All four individuals live in the parish and have the requisite standing. The Larkins believe that the proposal will make a difference to the presently poor mobile phone coverage and Ms Martin and Ms Mabutt object to the proposal on the ground that it will bombard the village with potentially dangerous radiation.
10. Ms Martin and Ms Mabutt do not wish to join the proceedings as Parties Opponent. Accordingly, I will take their views into account in reaching my decision.
11. Unsurprisingly, the consistory courts have had to consider the issue of installing telecommunications apparatus before and, in particular, the question of real or perceived threats to human health. The leading case from the early 2000s makes clear that: “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 UK Government, 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: in *Re Emmanuel Church, Bentley* [2006] 1 Fam 39, Court of Arches at para. 50 approving *Re St Margaret, Hawes and Holy Trinity Knaresborough* [2003] 1 WLR 2568 para 84.
12. Although not binding on me, I adopt the observation of Chancellor Downes in the Norwich consistory court at first instance. “The consistory court, like any other court, can only come to conclusions on evidence and proof. The views of others, however genuinely held, which do not take the matter under consideration beyond the bounds of the realm of anxious possibility only, can never be substituted for evidence and proof which is positive in nature and capable of evaluation” - *Re All Saints Postwick, Norwich Consistory Court (Downes Ch.)* [2011] adopted in *Re All Saints Sharrington, Norwich Consistory Court (Arlow Ch.)* [2014].
13. In the letter of objection, what I have is Ms Martin’s and Ms Mabutt’s review of scientific opinion on the issue of electromagnetic radiation. I have read with care what they write but, first, it is impossible for me to evaluate competing opinions on any dangers posed by electromagnetic radiation and, second, it is even more difficult to evaluate how the observations, said to be the accepted views of scientists in the biotechnological sphere, apply, not to the topic of electromagnetic radiation generally, but to these proposals specifically. Whether or not these proposals succeed, people in this parish will still be using mobile phones – to which a number of these observations are directed. The usual tools of evaluation open to a court, reading and, if necessary, listening to oral evidence; cross-examination of witnesses and reasoned submissions presenting both sides of the argument are not available here as no expert evidence against these proposals has been produced by a relevant expert because no-one has become a Party Opponent to this petition.
14. I return to Chancellor Downes’ pertinent observation: “the views of others, however genuinely held, which do not take the matter under consideration beyond the bounds of the realm of anxious possibility only, can never be substituted for evidence and proof which is positive in nature and capable of evaluation.” Scientific proof and evidence for a court in a contested case can only come from witnesses with sufficient expertise who can be tested.

15. I entirely understand the strength of feeling of Ms Martin and Ms Mabutt about this issue. I also understand that what they say represents their view of the existing scientific evidence on the topic. I am also aware that sometimes dangers that really do exist are insufficiently recognised by governments and their advisers at the time. Equally, I must follow and indeed respectfully agree with the Court of Arches that “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”.
16. The particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Peshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund, Duffield* [2013] Fam 158 in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. It is this in part:
 - (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
 - (2) If the answer to the first question is in the negative, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
17. In my judgment that is the position here and I am satisfied as to need.
18. Accordingly, I allow this petition and order that a faculty should pass the seal, subject to the grant of the appropriate civil planning consent.