



The court directed that the faculty be set aside pursuant to rule 20.3(1)(a) of the Faculty Jurisdiction Rules 2015 in the interests of justice, and that the letter be treated as having been received by the registry in time. The correspondent did not respond to the invitation to become a party opponent, and upon considering the petition afresh, taking the letter into account, the court directed that a faculty should pass the seal as sought.

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Re All Saints, Scotby

Carlisle Consistory Court: Lander Dep Ch, 5 July 2023
[2023] ECC Car 3

Heating system – ‘due regard’ to net-zero guidance – mitigation conditions

Jack Stuart

The petitioners wished to replace its existing gas-fired heating with a modern gas boiler. The DAC did not consider that non-fossil fuel systems, particularly air source heat pumps, had been sufficiently considered, and declined to support the petition; but the petitioners nevertheless wished to proceed.

Rule 4.4(2)(b) of the Faculty Jurisdiction Rules 2015, in force from 1 July 2022, required petitioners in appropriate cases to submit an explanation of how they had had ‘due regard’ to the CBC’s net-zero guidance. The DAC must then state whether it regards that explanation as adequate. In interpreting the phrase ‘due regard’, the court applied the explanation given by the Church of England Legal Office in the context of the statutory requirement to have due regard to safeguarding guidance:

What does ‘due regard’ mean?

Where legislation – whether an Act of Parliament or a Church Measure – imposes a duty on a person to ‘have due regard’ to guidance of this sort, the law understands that duty in a particular way. The legal duty to have due regard means that the person to whom the guidance is directed is not free to follow the guidance or not as he or she chooses. As a matter of law, the guidance should be given great weight and must be followed unless there are ‘cogent reasons’ for not doing so [...].

The court considered the guidance, and extracted from it five common-sense principles. First, churches need to be properly heated. Second, the proposed and likely uses of the building must be considered in assessing its needs. Third, any

proposed heating system must be affordable. Fourth, a proper appraisal of heating options will generally involve placing all possible systems in order of merit in terms of meeting the net-zero target; and identifying the highest-placed system which meets the needs of the church. Fifth, the court should consider whether conditions should be imposed when granting a faculty, particularly in relation to offsetting.

The court considered these principles in the present case, and concluded, contrary to the view of the DAC, that the petitioners had followed the guidance. The needs and resources of the church had been assessed; all available options had been considered and assessed with the help of professional heating experts; and the analysis included a well-reasoned discussion as to why the DAC's preferred option of air source heat pumps would be inappropriate on engineering, energy supply and financial grounds. That being the case, it was not necessary to consider whether the petitioners had cogent reasons for not following the guidance.

The court concluded that the proposed new gas boiler was the only viable option, as the only affordable option which met the needs of the church. Accordingly, a faculty was granted. However, when giving permission for a new fossil fuel boiler, a robust approach to conditions was appropriate; the starting point should be that the church should take steps to mitigate the effects of the decision. The faculty would be subject to a condition that the church either switched to a green gas tariff or entered into a separate arrangement with a carbon offsetting scheme to offset the carbon emissions from all non-renewable gas used.

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Re St Mary & All Saints, Willingham

Ely Consistory Court: Leonard Ch, 26 July 2023

[2023] ECC Ely 4

Disposal by sale of historical assets

Naomi Gyane

The petitioner sought a faculty to dispose of by sale a 16th century communion cup valued at £18,500, a 16th century paten valued at £8,500 and a 17th century silver footed paten valued at £5,500.

The 16th century items were not used by the parish for health and safety and security reasons; the 17th century item was not used for security reasons alone.

The petitioners sought the sale of the items as the parish was struggling to pay its parish share and cash reserves were severely depleted. The parish