

16 November 2011

In the Consistory Court of the Diocese of Chichester

And in the matter of conjoined petitions relating to the theft of metal from various church buildings

And in the matter of a like application for dispensation from faculty

(1) St Michael and All Angels, Bexhill	CH 138/10
(2) All Saints, Danehill	CH 066/10
(3) St Matthew, St Leonards-on-Sea	CH 158/10
(4) St Mary, Balcombe	CH 163/11
(5) St John the Evangelist, Upper St Leonard	CH(DFE) 150/11

## Judgment

1. The theft of lead is endemic. Ecclesiastical buildings are not immune. On the contrary, churches seem to be deliberately targeted since they often provide rich pickings with easy access and poor security. The Diocese of Chichester, I suspect, is probably representative of the Church of England as a whole and the increase in the volume of work in the Consistory Court arising from such theft reflects a worrying trend.
2. As the First Epistle of Paul to the Thessalonians reminds us (Ch 5 v 2), thieves tend to come in the night, or at least when they are not expected. Their activities generally leave the church denuded of part of its roofing and exposed to the elements. This places upon clergy, churchwardens and PCCs a pressing emergency which needs immediate action requiring the involvement of police, insurers, the inspecting architect and local builders. In these times of crisis they are fortunate to have the assistance of the archdeacon and the staff of the diocesan registry.
3. This judgment relates to three principal faculty petitions, one more recent petition, and an application for dispensation from faculty. In each case permission to undertake the works in question has already been given. Those permissions were expedited due to the obvious urgency and this Court's determinations were based on limited evidence without the detailed scrutiny which the faculty jurisdiction otherwise requires. Accordingly, the Court made directions on 30 November 2010 in relation to the three principal petitions as a prelude to this full and reasoned judgment which is intended to give guidance for future cases in the diocese. The directions required the service of evidence from the petitioners as well as consultation with the Diocesan Advisory Committee (DAC), English Heritage, the Church Buildings Council (CBC), the Ancient Monuments Society, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society, the Twentieth Century Society, and the local planning authorities in which each of the petitioning churches is situated. The directions also invited representations from the insurers concerned.
4. It may be that the Court should have been more robust in securing timely compliance with the directions made a year ago, but this is not a matter where penal

sanctions are appropriate. So much time has passed that a judgment must now be made on such material as is currently available. In the intervening period, the prevalence of lead theft has received significant publicity in the popular press and within the conservation world. The Court now has the advantage of:

- i. English Heritage's Guidance Note, *Theft of Metal From Church Buildings* issued in September 2011 and replacing an earlier note of 2008. This most recent Guidance is more fully discussed at paragraph 12 below.
- ii. Written Advice from the CBC, added to its Church Care Website in June 2011, the content of which is discussed at paragraph 9.
- iii. *Theft of Metal: Guidance Notes* (version 3) prepared by Ecclesiastical Insurance Office plc (EIO) which is addressed in paragraph 20.

### **Consultation**

5. The directions yielded the following input from the DAC, the CBC, English Heritage, a number of the national amenity societies, the local authorities and the insurers. I am pleased to record my thanks to each of them for their assistance. It is also worth recording that in spite of public notice being on display in each of the three principal petitioning parishes for the requisite period pursuant to rule 6 of the Faculty Jurisdiction Rules 2000, no letters of objection were received in the registry in respect of any of the petitions. Whilst not wishing to overplay the significance of 'negative affirmation', it is perhaps significant that none of these proposals has caused any level of unease within the communities which these churches serve.
6. Turning then to the results of the consultation process, this can be summarised as follows.

#### *The Diocesan Advisory Committee*

7. Although the DAC wrote a helpful letter on 12 November 2010, substantial compliance with my directions was not effected until 10 November 2011 when it provided a very full document dealing with the issue of lead theft generally and the work proposed in each of the petitions more specifically. I do not consider it fruitful to enquire into the delay, particularly in light of the detail and quality of the advice now tendered.
8. The DAC, quite correctly, considered it important that each case should be considered on its own merits but offered some general guidance:

*Visibility:* the appearance of the replacement materials will be a significant factor, particularly when applied to large areas and on a listed building.

*Reversibility:* it is possible that the demand for lead and copper will reduce over the next five to ten years, with a consequent fall in price and metal theft will decline. At that point, the parish should be able to replace the current material with a more traditional covering, if they so wish.

*Durability and longevity:* as yet there is very little concrete evidence on the long-term performance of non-metallic materials when applied to church roofs. The Committee would therefore have reservations about using such materials on significant historic buildings and would encourage parishes to look at alternative metals such as terne-coated steel.

The Committee endorses the advice of English Heritage that lead should be retained wherever possible for technical, practical and aesthetic reasons and because traditional materials are an important part of the character of historic buildings. When replacement is necessary it is desirable to use lead on a like-for-like basis, with appropriate security measures installed to deter theft. The Committee strongly supports the installation of security systems where appropriate to protect roofs and notes that Ecclesiastical Insurance feels that there is

evidence to suggest that these are effective in deterring theft. However, members recognise that there are some circumstances in which like-for-like replacement following a theft is not prudent; for example where a building has suffered previous thefts and there is a significant possibility of further theft.

New materials are still appearing on the market, each with different characteristics and methods of application [...] It is important that each material is considered on its own merits and on its suitability for use on either listed or unlisted buildings.

*The Church Buildings Council*

9. By letter received on 31 January 2011 from Janet Gough of the CBC, reference was made to the conclusions of a working party which were shortly to be presented at a meeting with the Home Secretary. A copy of these submissions was subsequently forwarded to me, the content of which I found informative and persuasive. The CBC did not proffer specific advice on each of the three principal petitions which were referred to it, but gave generic advice for cases of repeated theft of metal roof coverings.

The Council considers it is good stewardship for PCCs to consider alternatives in such circumstances. Nevertheless, metal roofs, in particular lead, can contribute significantly to the historic character of church buildings, and the Council considers that, as with all matters relating to change to church buildings, a balance needs to be struck between the necessity for the work and the historic interest of the existing roof covering. Issues that need to be taken into account include:

- the significance of the original covering and its contribution to the historic character of the church;
- the contribution of the original covering to the appearance of the church, i.e. whether it is, for instance, a feature of the show side of the church or hidden behind a parapet;
- the experience of the PCC in relation to metal theft, and whether measure such as alarms are likely to be effective in the circumstances;
- whether an alternative would provide a reasonable aesthetic solution and good value for money in the long term.

To expand on the final point, a common solution is to replace lead with terne-coated stainless steel. Although this material is perhaps not properly described as 'synthetic', it is a replacement for lead that has a similar, though not identical, appearance, a substantial lifespan, and is not currently prone to theft.

[...] Decothane is a liquid applied roof waterproofing substance based on polyurethane that is supplied in kits. It is marketed as an economical alternative to roofing felt or asphalt, or as a coating to encapsulate asbestos, as well as coating to prolong the life of failing materials. The variants Beta 10, Omega 15, Gamma 20 and Delta 25 have assumed working lives of 10, 15, 20 and 25 years respectively. The system has been assessed for use on substrates of concrete, asphalt, mineralized bitumen roofing felt, non-mineralized roofing felt over plywood, galvanized steel, glass reinforced plastic, aluminium paint, spray applied polyurethane foam insulation and existing Decothane.

Apart from the visual appearance which is of a flat grey (or can be coloured) smooth surface, this material falls far short of several qualities expected of a lead, or other sheet metal covering. The assumed life is similar to ordinary roofing felts, and is shorter than high performance felts or asphalt. Lead correctly installed and left undisturbed is expected to last 70-100 years or more, and other sheet metals in excess of 50 years.

Lead is usually laid on softwood boarding with ventilation underneath and gaps between the boards, so that moisture from condensation can evaporate. Gap boarding is not a suitable substrate for liquid plastic so new layers must be installed over the boarding. The position of a

vapour control layer and insulation needs to be carefully considered for each situation to avoid the potential problem of interstitial condensation and consequent mould growth, decay etc. [...] It would be a matter of concern if liquid waterproofing is proposed to be applied onto just a layer of plywood or other composite board. The detail at abutments needs to allow for weathering and differential movement; the manufacturer's information is unclear but appears to rely on adhesion and range of trims.

Terne-coated stainless steel and zinc are possible suitable alternatives to lead sheet roofing in vulnerable areas of roof not generally on view. Any change of material requires careful consideration of detail, i.e. potential condensation risks and reaction with adjacent materials (zinc is vulnerable to corrosion), how to counteract the noise of rain on the roof, and whether insulation can be practically and economically incorporated as the roof is re-covered.

The Council assumes that the liquid applied material is proposed in these cases because it is cheap to buy and apply. Decothane is recommended to be installed by trained and approved personnel but is more likely to be available from a local roofing contractor than sheet metal which requires specialist skills. The short term cost is low. However the cost planning over 100 years is likely to show this to be a more expensive option than a higher quality, longer lasting covering for roofs. Decothane apparently can be coated over with more of the same, but is not 'reversible' without renewal of its substrate.

To conclude, the Council would therefore recommend assessing possible use of this material only in situations on unlisted buildings and insignificant non-historic extensions where the existing or alternative is roof felt, and where only a short-term view is being taken. The Council would generally hope that a long-term view could be taken and more long-lasting materials used, even if additional fundraising is necessary.

Turning to the insurance questions, the Council notes, regrettably, insurers have had to lower the amount of cover for metal thefts in order to keep premiums at manageable levels. The Council hopes that, should the level of thefts decline, the cover levels can be increased, but in the meantime, it is necessary for parishes with vulnerable metal roofs to consider measures such as alarms.

10. The CBC referred me to its guidance with the singularly uninspiring title, *Materials for roofing that are used or considered as alternatives to lead: Advice from the Church Buildings Council* available on its Church Care website, [http://www.churchcare.co.uk/pdf\\_view.php?id=223](http://www.churchcare.co.uk/pdf_view.php?id=223). This is an extremely useful document which collates technical data on a variety of alternatives to lead roofing, both metal and synthetic. I have been greatly assisted by its content.

#### *English Heritage*

11. By letter dated 11 February 2011 from Mr Tim Foxall, English Heritage indicated that it would not expect to be consulted on proposals for changing roofing materials on unlisted buildings (such as Bexhill) or grade II listed (Danehill). This is also articulated in the Code of Practice for the Ecclesiastical Exemption, para 4(ii), footnote 25. Its observations, therefore, were directed primarily towards St Matthew, St Leonards-on-Sea although, of course, they are of wider application. English Heritage expressed great sympathy for church communities which are the victims of lead theft and referred to its *Guidance Note* (since updated and reissued, as mentioned above). It is a thorough and well-informed document, underscored with pragmatic good sense, and all those concerned with the exercise of the faculty jurisdiction are indebted to English Heritage for the time and effort which has obviously been taken in providing up-to-date, articulate and practical advice for a pressing, widespread problem.

12. English Heritage continues to encourage the use of authentic and appropriate sheet metals on historic church roofs. Sand-cast and rolled lead sheet are regarded as being most appropriate for important historic buildings, not merely on philosophical and aesthetic grounds, but also in terms of technical performance. A departure from this principle might be justified in the case of repeated theft. Of particular utility is section 5 of Part 1 of the *Guidance Note* which poses and answers the question, ‘What does English Heritage need to know if [the parish] wants to use a different roofing material – And why is this information needed?’. It helps to focus the mind on what is of particular relevance. The *Guidance Note* is also particularly helpful in expounding the value of lead as a roofing material and in addressing the utility of security systems. Anecdotal evidence, however, suggests that even the most vigilant security may not be enough to eliminate the risk of theft. The document needs to be read in its entirety, but for the purpose of the current petitions, I make one short quotation from Part 4 at page 7:

Every case is assessed on its own merits, but we appreciate that there will be instances in which a change of material will be appropriate, especially when the area of roof is not visible from ground level [...] but support for the use of plastic or other non-traditional materials would be exceptional.’

*The Ancient Monuments Society*

13. By email dated 6 January 2011, the Ancient Monuments Society endorsed the *Guidance* of English Heritage (since revised) and EIO. It encouraged the use of Smartwater which had, it maintained, a proven deterrent effect. Once theft had taken place, however, it ventured that ‘conservation imperatives should be informed by pragmatism’. It stated:

On subsidiary roofs, especially those that are out of sight, we would be content for lead and copper not to be reinstated where there is clear risk of repeat thieving. It is almost axiomatic that thieves and burglars will return to the same scene for a repeat attempt, especially where the roofs in question are low and easy of access.

The Society voiced its concerns about ‘liquid plastics’ as a substitute on the basis that it knew little about them and would expect there to be assurances sought and given as to ‘durability, waterproofing, the effects of solar gain and immunity or (lead-like) creep’. The Society’s concerns would be much greater where principal roofs have been stripped in which case traditional metals should, in nearly all cases, be reinstated. It raised no concerns with the three principal petitions in relation to which the detailed directions had been made.

*The Georgian Group*

14. By letter dated 2 March 2011 from Mr Stuart Taylor, the Georgian Group deferred to the Twentieth Century Society and the Victorian Society in respect of the respective petitions due to the dates of construction of the buildings. It made no observations or representations on the issues of principle and policy which these conjoined petitions raised.

*The Society for the Protection of Ancient Buildings*

15. The Society for the Protection of Ancient Buildings confirmed in a letter dated 11 January 2011 that it did not wish to make representations on any of the petitions.

*The Victorian Society and the Twentieth Century Society*

16. Disappointingly, in spite of the significance of the issues raised in these conjoined appeals which are of widespread concern throughout the country, no response has been forthcoming from either The Victorian Society or the Twentieth Century Society.

#### *Local planning authorities*

17. By letter dated 17 December 2010, Rother District Council indicated that it had no comments to make with regard to St Michael and All Angels, Bexhill.
18. The Head of Planning and Building Control at Wealden District Council, Mr Kelvin Williams, wrote on 21 December 2010 in relation to All Saints, Danehill. He indicated that the local authority would be prepared to consider an alternative material for the recovering of the south-east roof to the vestry following the theft of the original copper covering. However he also advised that this would constitute an alteration to a listed building and would therefore require the benefit of listed building consent. On this he was wrong because, as he ought to have realised, the ecclesiastical exemption applies equally to the vestry as to any other part of the church building. His recommendation that the proposed liquid plastic roofing material be assessed as part of any application for listed building consent was therefore not particularly helpful.
19. One S Batchelor, the Planning Officer (Development Control) for Hastings Borough Council wrote on 14 January 2011 in connection with St Matthew's church, St Leonards-on-Sea indicating that it was unlikely that there would be any objection to the proposed works but that further information would be of assistance.

#### **Insurance companies**

20. I took the somewhat unusual step of including within my directions an order that the insurers for the three principal petitioning churches be served with the papers and be invited to make written representations. In each case EIO confirmed that it has no objection to replacing external lead which had been stolen with cheaper metal assuming the requisite permissions had first been obtained. Regrettably, EIO did not assist with any statistical information which would have been useful nor with the likely effect on insurance premiums generally in the event that like-for-like replacement were to be insisted upon by chancellors even in the case of persistent or repeated theft. However, I have been much assisted by EIO's document *Theft of Metal: Guidance Notes* (version 3) which provides useful information about security measures and practical guidance on what needs to be done immediately a theft is discovered.

#### **Liquid plastic roofing systems**

21. All those bodies consulted in the course of these proceedings noted that liquid plastic roofing systems represented new technology and there were self-evident difficulties in estimating its long-term performance. English Heritage, for example, in its letter of 11 February 2011, indicated that it had little experience of liquid plastic roof coverings which were only beginning to be specified for historic roofs. It had seen various products over the years which come with long guarantees but which have proved disappointing. Much depends on where the roofing material is to be used: the greater the exposure to the weather and differential climatic movement, the more its performance is likely to be challenged. Changes in colour and texture may

also occur over time, whereas lead is a known commodity of almost infinite durability.

22. In its *Materials for roofing* Advice (above), the CBC summarises the various alternatives to lead which might be considered. These include the following:

**Fibre Glass/GRP**

Fibre glass as a roofing material will not puncture or tear and has a lifespan over 30 years. It is available with an anti-slip finish, and any colour. Most examples of use are on flat roofs, or very gentle slopes, and for gulleys and flashings.

**Plastic coatings**

Liquid plastic coatings are available with a variety of trade names, for example Decothane, and the material is available in various grades with a range of working life from 10 to 25 years. Most of the applications shown are on flat or gently pitched roofs. The material will not work on a traditional boarded roof, unless a plywood (or other appropriate) substrate is provided, and any resulting issues for interstitial condensation addressed. Replacing the material requires the substrate to be replaced.

23. Having set out the opinions of the various stakeholders (to use that loathsome term now commonplace) I turn to the merits of the individual petitions and the application for dispensation from faculty.

**St Michael and All Angels, Bexhill**

24. By a petition dated 29 September 2010, the Reverend Stephen Huggins (team vicar) and Mr Ian Fishwick and Mr Michael Gregory (district churchwardens) of St Michael and All Angels, Bexhill seek a faculty to re-cover the flat roof adjacent to the west tower and the flat roof adjacent to the east vestry roof following lead theft. Prior to this, on 30 July 2010, I had given permission for the work to proceed in advance of faculty provided that a petition was lodged within 14 days. I suspect the reason that my deadline was not met was that the petitioners mistakenly believed that sending papers to the DAC was sufficient to initiate the faculty petition. Previously an archdeacon's faculty had been granted on 2 June 2010 for the replacement of lead stolen from the vestry roof, making this second theft all the more galling. The DAC issued a 'no objection' certificate on 10 September 2010.
25. As the Statement of Significance makes plain, the church dates from 1929. It is unlisted and not situated in a conservation area. It is described as being in a 'loose Gothic revival style', the most distinctive feature being a tower or turret over the main entrance porch. The product proposed for the roof is Decothane Gamma 20 Roofing System marketed by Liquid Plastics Limited based in Preston. It is a waterproofing membrane the composition of which is apparent from the technical data sheet lodged with the papers. This material is commended as suitable by the parish's inspecting architect, Mr Richard Crook, who is experienced in the care and conservation of ecclesiastical buildings. The cost of these works was put at something in the order of £4,000 for the whole roof, compared with nearly £7,000 for terne-coated stainless steel. Replacing part only of the roof with lead would have cost £3,400.
26. In compliance with the court's Directions the petitioners submitted a very helpful witness statement dated 3 January 2011. It records the history of lead theft and the successful completion of the work in accordance with the expedited permission to proceed in advance of faculty. It indicates that the number of thefts was such that insurance cover would cease to be available to replace lead for lead and that synthetic

- products needed to be considered, however reluctantly. Decothane Liquid Plastic has a lifespan of between 10 and 25 years but is capable of repair without the removal of the whole. The stainless steel product is less malleable and can be visually intrusive. The petitioners make the point that the areas of roof to which the petition relates are less visible than that in respect of which the Archdeacon's earlier faculty had issued. They also remind the court that in this instance, the use of Smartwater on the lead did not deter the thieves.
27. In addition, a witness statement from Mr Crook deals very fully with the background to the petition. He refers to the removal of lead in April 2008 which was replaced with lead following approval from the Archdeacon. When the second incident arose, it had such a dramatic effect on the limit of the insurance cover available that Mr Crook undertook research on synthetic replacements. He had some experience of the Decothane product dating from 2004 and work to Eastbourne Pier. Mr Crook had particular regard to the unlisted nature of the church and the fact it was not in a conservation area, the history of lead theft and the likelihood of further incidents in the future; the limit of insurance cover for stolen lead to a maximum of £5,000 in any one year; the high relative cost of terne-coated stainless steel; the achievable colour match; the lack of visual prominence of the affected parts; and the 20 year guarantee. Mr Crook asserts that generally the use of traditional lead must be preferable in all cases where roofs are visible from the ground, but alternative roofing systems could be used where roofs are hidden from sight. He considers that the fact that liquid plastic products can be moulded and worked round difficult corners makes it preferable to stainless steel, and the incorporation of timber rolls means that the appearance of lead can be readily achieved. Liquid plastic requires no burners or other heating equipment and repairs can easily be carried out in situ. It has no value if stolen.
28. In relation to this petition, the DAC considered that in view of the history of theft and the fact that the church is an unlisted building it felt that to require lead to be put back would be inappropriate. In the absence of evidence as to the longevity of synthetic products such as that proposed, a 'no objection' certificate was issued.
29. The registry has also received a letter from Mrs Judith Platt, secretary to the Deanery of Battle and Bexhill, dated 29 September 2011 addressing the widespread problem of lead theft and requesting the court, where appropriate, not to insist on like-for-like replacement of stolen lead.

### **All Saints, Danehill**

30. By a petition dated 16 June 2010, received in the Registry on 29 October 2010, the Reverend David Hall (vicar) and Mr Gerald Alexander and Mrs Jenny Virtue (churchwardens) seek a faculty to re-cover the south east vestry flat roof with a new Liquid Plastics Roofing System following copper theft at the church of All Saints, Danehill. The church dates from 1836 and is grade II listed which, I suspect, does not do justice to its historic and aesthetic merit. It is the work of architect G F Bodley, a pupil of George Gilbert Scott and a patron of William Morris and C E Kempe. It benefits from a fine organ screen and case and a Comper altar piece and canopied font. The Statement of Need indicates that copper was stolen from the south east vestry roof, which is concealed from view by a stone parapet. It is proposed that the Decothane Gamma 20 Roofing System be used by way of replacement. The DAC issued a 'no objection' certificate on 27 October 2010.
31. On 3 June 2010, I gave permission for work to be carried out in advance of the issue

- of a faculty on condition that faculty papers be lodged with the registry and sent to the DAC within 28 days. Works commenced on 29 July 2010 and are now complete. In compliance with my directions, a witness statement has been lodged from Mr Mark Anderson, the inspecting architect. He reports that the copper was stolen from the vestry roof in March 2010. The churchwardens notified the police and the insurers, EIG. The affected area was made weatherproof using polythene sheets to protect the interior. Mr Anderson discussed with the churchwardens the various options open to them, based on his own experience and those of colleagues in his practice. His initial suggestion had been for like-for-like replacement with copper treated with Smartwater.
32. As the photographs provided helpfully illustrate, the south vestry roof is completely hidden from view from the ground by the high stone parapet wall and is also screened by tree growth from the east. This is relevant for two reasons: first, visual amenity and aesthetics, but secondly because it indicates increased vulnerability to further theft in the future. EIG indicated that cover for any roof replacement of damage is limited to £5,000 in any one year. Replacement with copper would cost in excess of £7,000 once all professional fees and expenses were factored in, and the risk of repeated theft remained significant.
33. The churchwardens therefore approached the Venerable Philip Jones, Archdeacon of Lewes and Hastings, to discuss the use of liquid plastic as an alternative at a cost closer to £3,000. By this time there had been some water penetration through the emergency weatherproofing and the church officers were rightly concerned that the building was made properly watertight and any possible structural damage avoided.
34. A detailed proposal was collated and sent to the Archdeacon on 28 May 2010 with a view to a dispensation being sought. The Archdeacon referred the matter to the registry by email at 14.43 on 3 June 2010; the registry emailed me at 15.42. I replied immediately making the following directions which were communicated to the archdeacon and the inspecting architect at 16.16 the same day:
- I note the urgency of this matter. I do not consider it to be appropriate for a dispensation from faculty. What is proposed is controversial and I am reluctant to set a precedent.
- I therefore require papers to be lodged with the DAC and the formal process to be undertaken. However, provided the prior written approval of an architect member of the DAC is forthcoming, I am prepared to authorize the work to commence forthwith, in advance of faculty approval.
- I require the faculty papers to be lodged with the registry and sent to the DAC within 28 days. The faculty fee must also be paid before the works are started.
35. I have set out the precise timings of these communications to demonstrate that, contrary to criticisms which are occasionally voiced about the faculty jurisdiction, the consistory court has both the capacity and the desire to move with great expedition when the circumstances so demand. Unfortunately despite my express direction approving the commencement of the works forthwith it would appear that the condition precedent (namely the prior written consent of an architect member of the DAC) was not forthcoming until 22 July. Work was apparently commenced on 29 July 2010 and completed the following week. I confess that I was surprised and disappointed to learn that seven weeks were allowed to pass before my 'forthwith' direction was implemented. I shall not enquire into the reasons for this delay: had the matter been referred back to me at any time during that period I would have given a further direction by return of email. I appreciate, however, that we are in largely uncharted waters in terms of practice and procedure, and I hope that the declaratory

- nature of this judgment will ensure that a proper process is in place for future cases such as these and that unnecessary delays can be eliminated altogether.
36. Moving on, I am grateful to Mr Anderson for commenting on the completed works. His professional opinion is that they are not to the detriment of the character of the church building's architectural and historic interest. He indicates that the work is reversible in that the existing substrate to the roof remains beneath the liquid plastic and thin layer of plywood. The church has a weather-tight roof which is flexible, durable and of low maintenance. He provides a balanced reflection on the current climate and the occasions when the use of a synthetic product can be justified.
  37. The DAC was not enthusiastic about using a liquid plastic covering, rather than a more traditional material, such as high performance felt, having regard to the Grade II listing. However, it considered that the parish's inspecting architect made a good case for using Decothane, including the fact that it could be applied cold whereas high performance felt requires hot works which could increase the risk to the church from fire. It was noted that the area of roof to be covered was hidden behind a parapet and the new covering would be invisible from ground level.

#### **St Matthew, St Leonards-on-Sea**

38. By a petition dated 6 December 2010, the Reverend Michael Coe (rector) and Mr Stephen Watters (churchwarden) seek a faculty to undertake repairs to the roof of the rector's vestry using Decothane Gamma 20 liquid plastic. St Matthew's is a Grade B (II\*) listed building dating from 1884 and designed by J L Pearson. It is a large red brick church built in the Early English manner. The single story vestry was added in 1935, its flat lead covered roof concealed from public view by a brick parapet.
39. A request for dispensation from faculty was sent to the registry on 1 October 2010. It was not considered appropriate for dispensation, but I indicated that the court would consider an application for permission to proceed in advance of faculty if a petition were lodged coupled with sufficient compelling reasons. This was done in the knowledge that a substantive judgment was anticipated on the Bexhill and Danehill petitions, and in the expectation that the gathering of evidence and submissions would be far swifter than transpires to have been the case. By letter dated 10 December 2010, the registrar communicated to the incumbent that permission to proceed in advance of faculty had been granted.
40. By letter dated 1 December 2010, the rector relates the three or four occasions since March on which thieves had systematically stolen the lead from the rector's vestry roof. On the last, the lead flashing which was being used to hold down the temporary plastic weatherproofing was itself stolen. As in so many of the other instances, the lead was Smartwater protected which proved futile as a deterrent. The resultant water ingress caused considerable damage to the interior. In consequence of there being scaffolding in place on another part of the church building at the time, the insurers have declined to make any payment in respect of this loss. Mr Coe has provided a very helpful witness statement sent to the registry under cover of a letter dated 17 February 2011. Its reasoned and compelling content emphasises the clear inference that the repeated thefts are suggestive of targeting by the same individuals and that as the flat vestry roof cannot be seen 'unless you are standing on it' the selection of roofing material makes no difference to the external aesthetic of the building. He emphasises the damage occasioned to the interior of the vestry in consequence of the ingress of water.

41. Mr Terence Sullivan, the inspecting architect, produced a witness statement dated 17 February 2011. It sets out the history of lead theft and points to the evident failure of security lighting and Smartwater as any form of deterrent. He advocates the use of a modern synthetic material in a location where its non-traditional appearance will not be visible. He describes the proposed system as ‘a medium term economical and reversible repair’ and indicates that it is reversible and that lead could be substituted at some future date in the event that its value as a global commodity were to fall markedly. The lifetime of the liquid plastic is thought to be 20 years in contradistinction of an estimated period in excess of 120 for lead. The cost of using Decothane Gamma 20 liquid plastic is approximately £4,000, whereas lead would run to £12,000.
42. The DAC noted that the church is listed Grade II\* but the roof in question was behind a parapet wall and therefore would not be visible from ground level. In these particular circumstances it was felt that Decothane would be an acceptable material for use on the vestry roof. English Heritage accepts a change of material in principle on the basis that the lead roof has been repeatedly stolen, adequate surveillance in the future may be difficult, and it is a well hidden roof in a less significant part of the church building. It expressed a preference for a tried and tested alternative, such as terne-coated stainless steel, close in appearance to lead but more difficult for thieves to remove, and in concealed locations it would not object to durable roofing felt which is relatively cheap and has a proven track record.

### **St Mary, Balcombe**

43. By a petition dated 6 November 2011, the Reverend Desmond Burton (priest-in-charge) and Ms Rosemary Corder and Ms Angela Wentzel (churchwardens) seek a faculty for replacing lead stolen from the flat roof with GPR fibreglass. Although the church itself is listed grade I, the exterior toilet dates from the 1990s. The cost of the work is estimated at £650 as opposed to a figure for lead of nearly double.
44. The inspecting architect, Mr Nicholas Rowe, raised the matter of the theft by email dated 24 October 2011 sent to the registry. A reply sent the same day indicated that a petition would be required. However the petition was not supported by adequate evidence and Mr Rowe was informed of this on 9 November. A letter and accompanying documentation were duly lodged by email on the afternoon of 11 November. Mr Rowe’s statement included the following:

In September, the lead roofing over the little outside WC at St Mary’s Balcombe was stolen. In the past, the church would have replaced the lead like-for-like with lead, but, as you can see from the photos, it was very easy for the lead to be stolen. The WC [is] difficult to see through greenery, small, single storey, by the footpath from the roadside parking area. The church is beside the B2036 which leads to the A/M23 at Maidenbower, but unfortunately, the WC is out of sight of the road and set well above it, but still easily accessible from the parking spaces and side access steps - whilst not visible to those visiting the church.

An alternative would be to replace the lead with felt, which the church would like to do as a temporary emergency measure. The risk in replacing the lead, is that it is believed the thieves will return as soon as lead is fitted. However, the WC building is only door height, and a felt roof would be visible from the footpath, and therefore not acceptable visually. An alternative suggestion is to replace the lead with “lead coloured” GRP, a look-a-like which would give a more acceptable appearance

[...] The WC is a new building (1998), ... out of sight of the main entrance (north porch), and footpaths to the lychgate and churchyard which is the setting of the church seen by the congregation and other visitors. I am attaching the plans of the WC building ... together

with photographs of the WC and its setting, to help in illustrating the appearance and location of WC building.

I commend the submission now made by the parish in request for an expedited faculty.

45. The submissions were considered and it was noted that the ingress of water was 'now becoming serious', in the words of Mr Howard Deck, the PCC member responsible for church fabric matters. Permission to proceed in advance of faculty was granted within 10 minutes of receipt of the documentation from Mr Rowe and this was communicated to him and Mr Deck shortly thereafter.

#### **Determination of petitions for faculty**

46. In large measure, this judgment is academic in that permission has already been given in each instance for the works to proceed. It is however comforting to note that nothing has arisen in the intervening consultation to suggest that the earlier exercise of discretion was ill-founded. Nonetheless this judgment can act as a pointer towards how future applications will be determined in this diocese. Although it has no value as a precedent in the consistory courts of other dioceses, it may be that other chancellors are already adopting similar approaches.
47. A confirmatory faculty will issue in respect of the petitions for St Michael and All Angels, Bexhill, All Saints, Danehill, St Matthew, St Leonards-on-Sea and St Mary, Balcombe for the following reasons common to all four:
- i. that each church had been subject to repeated theft of lead roof coverings;
  - ii. that such theft had been in spite of taking all reasonable precautions, including the Smartwater system;
  - iii. that each church no longer had the benefit of insurance cover for like-for-like replacement;
  - iv. that the cost of replacement with lead was disproportionate to that of an alternative product;
  - v. that the area affected was inconspicuous and not readily visible from the ground;
  - vi. that the proposed liquid plastic material is considered suitable for location proposed.
48. I have proceeded with somewhat greater caution in the cases of St Matthew, St Leonards-on-Sea since it is Grade B (II\*) listed and St Mary, Balcombe, Grade I. In the former, I accorded due weight to the measured and persuasive arguments advanced by English Heritage. Whilst I acknowledge that this case is closer to the borderline, I am nonetheless convinced that it is appropriate that a faculty issue. English Heritage has properly accepted that a lead replacement product is appropriate in this situation, and it is a matter of judicial discretion whether (in this instance) that is to be durable roofing felt or Decothane Gamma 20 liquid plastic. I am persuaded on all that I have seen that in these particular circumstances it should be the latter. I did not deem it necessary or expedient to refer the matter of St Mary, Balcombe to English Heritage, the CBC or the DAC. Although the church building is listed Grade I, the toilet is a modern characterless addition abutting the exterior wall on the west side of the church. It contributes nothing to the aesthetic and historic integrity of the building and the replacement of its flat lead roof with a fibre glass substitute would inevitably be regarded as uncontroversial.
49. In the light of the fact that liquid plastic is a comparatively modern product without a proven track record of any length, it will be a condition of each faculty that the

inspecting architect report on the state of the installation on the first anniversary of the completion of the works and further will include an express reference to the performance of the product in each subsequent quinquennial report. Copies of these reviews are to be lodged with the DAC and the registry. I will invite the DAC to take steps to secure compliance with this condition and to keep a detailed dossier and record of the performance of liquid plastic roof systems throughout the diocese. This will be invaluable to future generations and perhaps to other dioceses.

#### **Determination of application for dispensation from faculty**

50. I shall deal briefly with a recent application for dispensation from faculty. On 21 October I received a bundle of papers from the registry. They concerned the church of St John the Evangelist, Upper St Leonards. The papers include an email of 13 October 2011 from the Archdeacon of Lewes and Hastings, a further email dated 16 October 2011 from the incumbent, the Reverend Andrew Perry, setting out the details of an emergency PCC meeting held on 16 October 2011 and a letter from the parish's inspecting architect, the highly experienced Peter Pritchett, enclosing a Statement of Need, a Statement of Significance, a specification of works and various photographs.
51. The Statement of Significance is a model of clarity, citing at some length the listing statement explaining the church's grade II\* status. The church is a post-war reconstruction of an elegant Victorian gothic church originally designed by Arthur Blomfield. There have been four thefts or attempted thefts of lead in the last two years. The flat vestry roof forms no part of the aesthetic church as the listing statement makes plain and it is not visible from the ground. It is vulnerable to repeated theft. The proposed Decothane membrane (discussed elsewhere in this judgment) would be laid so as to emulate a lead roof. As with St Matthew, St Leonards-on-Sea, I was of the opinion that in this instance despite the grade II\* listing of the church building, consultation with English Heritage would have been otiose as the works were both pressing and, more importantly, uncontroversial.
52. In the light of the urgency of the situation, with tarpaulins being an inadequate stop-gap provision with the looming onset of winter, I authorised the works to proceed on the day I received the application. As part of this judgment, I formally order that a dispensation from faculty will issue on the usual terms together with what will become a standard term in cases such as these for the periodic reporting on the performance of the replacement roof structure. I commend the parish and its architect for the exemplary approach to this application and the orderly comprehensive paperwork lodged at the registry. I hope it will act as an exemplar throughout the diocese.

#### **Future cases**

53. The consistory courts do not have a sophisticated doctrine of binding precedent and *stare decisis*. Nonetheless, consistency of judicial decision making means that similar cases should be treated similarly. Having taken time to dispose of the current matters, and having had the benefit of considerable input from interested parties, I cannot conclude this judgment without setting out some observations which I trust will serve as guidance throughout this diocese when, as inevitably is the case, parishes are faced with theft of lead, copper and other such items from their church buildings.
54. The faculty jurisdiction provides a bespoke process for regulating changes to the

structure, appearance and content of Church of England places of worship which is equally as rigorous as listed building control but which remains mindful that such buildings are a local centre of worship and mission. As such any application for an alteration to a church requires proper scrutiny, particularly where the building is listed. The fact that the change is necessitated by force majeure (the intervention of thieves) as opposed to a considered desire for change emanating from the PCC does not affect the general approach.

55. That said, theft of roof coverings creates an emergency situation. The integrity of the structure of the building is compromised. It is no longer weather-tight. The risk of damage to the interior in consequence of the ingress of water is significant, and the extent of that damage to the fabric and furnishings is potentially huge. The following approach should be adopted. In the immediate aftermath, tarpaulins and the like will need to be deployed to make the building weather-tight and secure. The archdeacon can sanction these temporary emergency measures, reporting such intervention to the registry and seeking further directions, particularly where listed buildings are concerned. The police and the insurers should be informed promptly. A medium term expedient must then be considered and thereafter a strategic and consultative process initiated to determine a long-term solution. In this the health and safety of church officers, the congregation and the public must be a paramount concern. With the benefit of modern electronic communications a response can be given via the registry within hours either from the chancellor or the deputy chancellor. In the past I have dealt with matters such as these out of office hours and from abroad, and in several of these cases permissions have been forthcoming within ten minutes. I anticipate that most registries and chancellors are equally able to provide immediacy of response of a similar level when circumstances so demand.
56. Once the building has been rendered safe and weather-tight, consideration must be given to repair and replacement. The faculty jurisdiction makes provision for different approaches depending on the type and extent of the proposal.
  - (a) *Minor Works* – Appendix A to the *Chancellor's General Directions Concerning Churches and Churchyards* (Issue 2, 2007) comprises a List of Minor Works Not Requiring a Faculty, a revision of which is shortly to be promulgated. Certain minor repairs are covered in this list, which may be carried out without the need for a faculty. In certain instances the prior written consent of the archdeacon is required. However, it is unlikely that the replacement of a lead roof with a synthetic product would fall within this list.
  - (b) *Dispensation from Faculty* – The procedure of dispensing from faculty was introduced in the Diocese of Chichester some years ago, emulating systems which were already in place in certain other dioceses. Though slow to be utilised in the early years, they have gained currency latterly to the extent that the system will be reviewed in 2012. Its operation is set out in paragraphs 7.1 and 7.2 of the *General Directions*. The experience of the current batch of cases suggests that for the future, applications for dispensation from faculty for replacement roof coverings will be considered only in the following circumstances:
    - i. where the church building is unlisted (or in exceptional cases, where the affected part of a listed building is of no material significance);
    - ii. where the church has been subject to repeated or targeted theft (despite the existence of appropriate precautions) or where the risk of future theft is significant;

- iii. where the affected area is not visible from the ground and/or forms no part of the overall historic or aesthetic importance of the church building;
- iv. where the cost of the work (excluding scaffolding) does not exceed £7,500 net of VAT.

Each application for a dispensation will be considered on its merits and, if granted, may well require prior written approval from an architect member of the DAC before works can proceed. In all other cases, a petition for a faculty will be required.

- (c) *Interim faculty* – in each of the four substantive petitions under consideration, this court gave permission for the works to proceed in advance of faculty. Many dioceses have similar systems in place as a pragmatic expedient where urgent works need to be carried out. The term ‘interim faculty’ is used in the Faculty Jurisdiction Rules 2000 to denote ‘any licence or order made by the chancellor in respect of any works or proposals pending the final determination by him of a petition for faculty for such works and proposals’. I shall endeavour in future to adopt the expression ‘interim faculty’ in cases such as these so as to be clear, consistent and transparent. I have noted elsewhere that there should never be occasion for an application for a retrospective faculty, save for those very rare circumstances where works are undertaken unlawfully. The following is a non-exhaustive list of cases which might be suitable for consideration for an interim faculty:

- i. where the building is unlisted (or in exceptional cases, where the affected part of a listed building is of no material significance) or where English Heritage, the Church Buildings Council and any relevant national amenity society has indicated its consent to the works;
- ii. where the church has been subject to repeated or targeted theft (despite the existence of appropriate precautions) or where the risk of future theft is significant;
- iii. where the affected area is not visible from the ground and/or forms no part of the overall historic or aesthetic importance of the church building;
- iv. where the damage or risk of damage to the interior of the building or its structure is such that, in the opinion of the chancellor, immediate intervention is deemed expedient.

I propose issuing a short check list of the information which the court would expect to have provided from parishes seeking either a dispensation or an interim faculty. The sample questions from the English Heritage Guidance will be a helpful model for this purpose.

- 57. Mindful of the resource implications for the CBC and English Heritage (particularly in the current age of austerity), I would encourage them each to put in place procedures to deal with cases of genuine emergency within truncated time limits when referrals are made. I am pleased to record in this judgment that in my experience, these organizations have been consistently obliging in cooperating with the consistory court, and I would hope that with goodwill and mutual respect that will continue. Although in two of these cases I have not consulted English Heritage despite the grade I or II\* listing status of the building, I have explained my reasons for not doing so, and I am tolerably confident that English Heritage would have endorsed that decision in each specific instance. I make

clear that had the proposed works been more extensive or more visible than was in fact the case, I would have unhesitatingly referred the matter.

58. Likewise, I acknowledge the assistance of the DAC over many years, by its successive chairmen, secretariat and members, and I express my hope that both the committee, and its architect members in particular, will continue to provide a swift turn around of consideration of papers in cases of genuine emergency. The work they perform is undertaken in their spare time and is wholly unremunerated, but the expertise which they put at the disposal of this Court is invaluable.

**Costs**

59. Inevitably the additional costs of the various directions and this judgment in this conjoined matter, to include the correspondence fee of the registrar, will be borne by the petitioners. This was flagged up in the directions of November 2010 in the anticipation that they form part of the petitioner's insurance claims where applicable. I shall consider an equitable basis upon which the costs should be divided as between the various petitioners and will allow 21 days from the delivery of this judgment for the petitioners, if any so wish, to make written representations on the question of costs generally and apportionment in particular. The registrar will provide an estimate of the overall total sum.

The Worshipful Mark Hill QC  
Chancellor of the Diocese of Chichester

16 November 2011