



policy guidance on exhumations, and Mrs McGuigan challenged that policy, arguing that the refusal infringed Article 8 ECHR (respect for private and family life). It was also argued that the Department's reliance on the consent of the owner of the exclusive rights of burial before exhumation, save in exceptional circumstances, was inconsistent with the requirements of Article 8. The Department contended that it had carried out a proper balancing exercise and that the application was not 'an exceptional case which would warrant overriding the private law rights of the grave owner'. In a preliminary hearing, Mrs McGuigan sought leave to seek judicial review of the Department's refusal of authorisation.

The court was of the view that exhumation decisions engaged Convention rights because they might legitimately raise issues under Article 8, 'particularly regarding the determination of the resting place of the remains of a loved one' – although any interference might be justified under Article 8(2) – and, although not applicable in the present case, an exhumation decision might also engage Article 9. Rooney J rejected the Department's contention that the balancing exercise had been what it claimed to be and not, in reality, an 'exceptionality test': 'If the focus of the policy is only on exceptional circumstances, then the test of exceptionality is not the same as the application of a test of proportionality'. The 2021 policy did not specify what were 'exceptional circumstances' in the absence of agreement by a grave owner; and

'the respondent should at least specify its reasons for applying more weight to the owner of the exclusive rights of burial than the nearest surviving relative. Furthermore, if the respondent intends to rely upon Article 8(2), it must specify each and every respect in which it is claimed that the interference was in accordance with the law, serves legitimate aims and is accordingly justified.'

Leave to seek judicial review was granted. [Frank Cranmer]

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Re St Mary the Virgin, Dedham

Chelmsford Consistory Court: Hopkins Ch, 23 May 2022

[2022] ECC Chd 2

Heating – 2030 carbon neutrality target

The oil-fired heating system in this Grade I-listed church had come to the end of its life, and the petitioners sought a faculty for the installation of replacement

gas-fired boilers. The DAC was disappointed that the parish had not opted for the more environmentally friendly option of under-pew heating, which it believed would take full account of the General Synod's 2030 carbon neutrality target. Likewise, the court was concerned that the petitioners had given insufficient consideration to the impact of the net zero target and the CBC guidance on ways of moving from fossil fuel heating systems, and also that insufficient regard had been given to the DAC's preferred option. In the light of the petitioners' responses to specific questions, the court concluded that:

- (a) The petitioners had considered, with some care, the implications of their proposal for the carbon neutral agenda; and
- (b) On the basis of the available material, there were proper grounds for concluding that the gas heating system proposed by the petitioners was the more appropriate system in the circumstances.

The court accepted that an under-pew heating system would not be satisfactory, because there would be issues in running the necessary cabling, and potential cracking and damage to pews caused by the heat emitting from fixtures under the pews.

The court considered *re St Thomas & St Luke, Dudley* [2021] ECC Wor 2 and *re St Peter's, Walsall* [2021] ECC Lic 4; had it been necessary to do so, it would have considered the environmental implications of the proposal whether or not the petitioners had done so. However, given the conclusions set out above, the approach to be adopted was inconsequential.

The court noted the hope that, in future, it may be possible to convert the gas-powered system to use hydrogen. In the meantime, a faculty would be granted, subject to conditions including, so far as was practicable, the use of gas supplied under a green tariff (the additional cost of doing so being a *quid pro quo* for being permitted to install a gas boiler) and the off-setting of carbon emissions created by any non-renewable gas. [Naomi Gyane]

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Re All Saints, Isley Walton

Leicester Consistory Court: de Mestre Ch, 25 May 2022

[2022] ECC Lei 1

Felling of trees – List B—confirmatory faculty

Two lime trees in the churchyard had been felled following consent given by the archdeacon under List B. Such consent can be given if (a) the tree is dying or dead or (b) the tree has become dangerous.