



## CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

### Broadband installations in churches

#### *Preliminary Comments of the Chancellor of the Diocese*

##### **Introduction**

- i) The use of churches as a means of communication is not a novel development. For many centuries, church towers were used as a means of signalling, not least by the use of flags; and the role of church bells to warn of imminent danger, as well as to celebrate happier events, has an important place in our nation's history.
- ii) Nevertheless, churches were not built for the purpose of hosting telecommunications installations or broadband equipment, and in consequence there are some important matters which need to be considered when such proposals are put forward.
- iii) I want the roll out of broadband to succeed in the Diocese. It is a medium of communication which should now be widely available, though many people in smaller and remote communities do not yet have access to it. Our churches are well placed to respond positively to the opportunities which this offers. I commend the engagement of parishes with their local communities and, in this particular context, the wish of churches to help and support those living and working locally, by providing the means by which high-speed internet access will be very significantly improved for the local community.
- iv) If the provision of such facilities draws more people into church, that can only be a positive consequence, especially if some of those people come to join in the Church's primary purpose: the worship of Almighty God.

##### **Key issues**

- v) There are some important matters which will need to be addressed by any PCC considering a proposed broadband installation. These include the following:
  - a) dual use of the church (i.e. both as a place of worship and for other purposes)
  - b) legal liabilities and responsibilities
  - c) safety
  - d) financial considerations

- vi) It should be remembered that when everyone is enthusiastic and everything is going well, no one may envisage any problems arising. It is tempting to assume that plans will work out as envisaged, equipment will work exactly as intended and that relations between parties will always remain positive and flexible. However, it is when something goes wrong (and we know that it often does) that the effort put into careful preparation comes sharply into focus. Giving a matter proper consideration, taking relevant advice and exercising appropriate care should lead to a decision about the way forward which could save the parish and all those concerned an enormous amount of anxiety, time and money in the longer term. In some circumstances, it could be the difference between something simply going wrong and a disaster. (It is only an illustration, but in the 1970s, a successful school had to be closed and sold because there was under-insurance to cover a pupil's claim for damages after an accident.)
- vii) An area of major concern to local residents is often 'health issues'. In cases relating to telecommunications installations (which are clearly different from broadband installations, but share a number of characteristics), the law is absolutely clear. Whilst I do not doubt the sincerity of most objectors, the well-established principle is that there would need to be specific justification for departing from HM Government policy on such matters, and that any such departure would only be justified in exceptional circumstances. Thus, as long as the form of Licence provides for strict compliance with the relevant statutory or other official guidelines, it will not be for the Court to apply stricter requirements. Nevertheless, this does not absolve the PCC from considering the impact of pursuing a proposed installation if there is considerable local objection.
- viii) A further area of concern, in some cases, relates to the use of the equipment and the type of material which the equipment could facilitate the communication of. The equipment, situated as it would be on sacred ground, would be used for the transmission of a wide range of material. Much of it would be positive and helpful, but inevitably, some of it would be regarded as inappropriate by many people. This is likely to include pornographic and violent material. *In this very specific respect and context*, it is not for the Court to substitute its view on the moral desirability of the proposed installation for that of the PCC, and so it is important that the PCC has considered this particular implication of the proposals and has determined that it is nevertheless content to proceed before petitioning for a Faculty.

#### PRACTICE DIRECTION BY THE CHANCELLOR OF THE DIOCESE

- 1) A number of applications to permit broadband wireless internet installations in or on Church buildings within the Diocese have been submitted recently, and I understand that the volume may be likely to increase. These directions are intended to help Petitioners to ensure that the correct information and evidence is supplied at the outset so as to obviate unnecessary delay.

#### Law

- 2) PCCs must remember that they are governed by ecclesiastical law, charity law and by common law duties of care such as in negligence. PCC members are under a duty to act prudently and to obtain the best terms reasonably available in all the circumstances. They are also under a duty to obtain, to consider, and to act in accordance with appropriate professional advice, including legal and valuation advice (where relevant). They have a duty of care for the safety of all people coming to the church.

- 3) PCCs should also be mindful of the provisions of the law more generally which are engaged in this type of transaction. It is for the PCC to take appropriate legal advice in this respect, but I would expect a responsible PCC to wish to be clear about the following, amongst other matters:
- a. its contractual obligations (and entitlements);
  - b. issues of potential liability and insurance matters  
(e.g. who pays for the electricity the equipment uses? Who is liable if someone trips over a loose cable? What if a contractor causes damage to the church? Etc.);
  - c. any health or safety issues  
(e.g. electrical matters; issues relating to access to the equipment; slipping hazards; falling risks).
  - d. practical matters, such as the extent of the use of the building by others, and how that might affect, or be affected by, the proposals.

### **PCC Responsibility**

- 4) It is imperative that PCC members turn their minds to the proposals and take responsibility for them. They should consider the proposals carefully before resolving to petition for a Faculty to authorise them. It is helpful if evidence of that process is included with the Petition. It is unacceptable for a PCC to abdicate responsibility for important matters, especially where legal, financial and other aspects of charity trusteeship are engaged.

### **Licence**

- 5) There are several model forms of contractual licence document. In each recent case, the original form submitted was deficient. The latest versions would still benefit from further review. Nevertheless, I hope that an appropriate form of licence can be settled. In most cases, it will then significantly expedite the application if this form is used (and written confirmation received from the Petitioners or their legal advisers that the proposed licence is in that form).
- 6) The model form will, of course, usually require careful adaptation to reflect the particular circumstances and terms of each individual case.
- 7) Appropriate legal advice needs to be obtained in every case. As charity trustees, the PCC must satisfy itself that any advice sought is being provided by an appropriately qualified person with relevant expertise and experience. When considering the need for legal advice, a PCC would do well to consider not so much the apparently modest impact of the equipment on the building or the size of the licence fee, but the potential risks and liabilities to which the PCC may be exposed by the proposals. The intended form of licence, as settled between the parties, should accompany the Petition.
- 8) The majority of the proposed forms of Licence received to date have not stated the correct parties (or have not stated them correctly). This is not only fundamental to the validity of the contractual agreement, but gives a very strong indication of the extent to which the Petitioners understand the legal position – or not.
- 9) The law requires that the proposed licensee be a party to the Faculty proceedings, and so the licensee should always be joined as a Petitioner and sign the Petition.

## **Licence Fee**

- 10) A PCC must give careful thought to the proposed licence fee, and put it into proper context. It will not be acceptable for a PCC simply to report that the licence fee offered was accepted without due consideration. Where a commercial entity is concerned, the value of the site to the broadband company must be a key factor in determining the appropriate level of the licence fee, as may be the level (or likely level) of the company's profits.
- 11) Where a PCC considers that a particular proposal advances its own charitable objectives, it may come to a view that it would be willing to accept a licence fee below the full market value. In such a case, it will be essential for the PCC to set out clearly its reasoning in a PCC minute in order to demonstrate its compliance with the requirements and relevant principles of charity law.

## **Initial physical work and later operation of the equipment**

- 12) The Petitions received to date have sought authority only for the physical works of the installation of the broadband apparatus. Whilst I have been able to infer from the papers accompanying the Petition that the Petitioners intend (perfectly logically) to enter into contractual arrangements and to operate the equipment, those matters should properly be included in the schedule of proposals, as well as explicitly referred to in the requisite PCC minute. This should also, of course, be reflected in the wording used on the public notice.

## **The petition and accompanying documents**

- 13) The Petition should also be accompanied by the following:
  - (i) Form 1A (unless it has been previously supplied to the Registry AND none of the information given has changed).
  - (ii) the Notification of Advice from the Diocesan Advisory Committee for the Care of Churches, together with the signed and stamped documents seen by the DAC.
  - (iii) a copy of the Public Notice displayed at the Church (with duly signed certificate of publication if already available).
  - (iv) a certified copy PCC resolution in appropriate form. Petitioners should take care to answer fully question 19 (section K) on form 3A.
  - (v) evidence (usually in the form of PCC minutes) of the PCC's consideration of the matter, if not contained in the formal resolution. This must include all variations and options considered and a note of advice received and from whom. It should also specify the reasons why the PCC has decided to pursue a particular course of action.
  - (vi) a copy of the final form of the proposed licence (i.e. in the precise form in which it is intended that it be signed by the parties).
  - (vii) an original signed letter from the Petitioners' legal adviser confirming that he/she has advised the Petitioners on the proposed transaction (including, but not limited to, the form of licence) and that the draft licence submitted with the Petition accords with that advice. The legal adviser should also confirm whether or not the form of licence submitted accords with any agreed model form.

- (viii) an original signed letter from one or more appropriately qualified person (e.g. a surveyor or valuer) confirming that he/she recommends the licence fee and other commercial terms of the proposed contractual licence as being the best reasonably obtainable in all the circumstances having regard to current market conditions and the length of the licence period

OR

clear evidence (usually a comprehensive PCC minute) of the PCC's consideration of the issue of valuation, including details of the points discussed, and of the basis on which the PCC decided to proceed without professional valuation advice. If appropriate, this should include a clear explanation of how the PCC came to attach a particular financial value to the transaction, and full details of any other considerations the PCC has taken into account, recognising the scope of its charitable objects. It may be relevant for a PCC to consider local demographics and communication networks, as well as issues of wider public benefit generally.

- (ix) a copy of the response of the PCC's insurer to the PCC's notification of the proposals.
- (x) evidence of the Licensee's public liability indemnity insurance in a sum of not less than £10 million. This will normally be in the form of a copy of the relevant certificate. (This must also be seen annually by the PCC, and so such a requirement will be part of the licence.)
- (xi) a copy of the relevant planning consent OR confirmation that such consent is not required, together with an explanation as to why it is not required.
- (xii) where the DAC has advised the Petitioners that a bat report is required from Natural England (in relation to the physical works proposed), a copy of the bat report.
- 14) Missing, incomplete or inaccurate information is often the cause of delay. It is the responsibility of the Petitioners to ensure that the application is in order. For this reason, no Petition can be considered by the Court unless the above directions are complied with. It greatly assists the Court if all the correct documentation is presented in a clear and ordered way (e.g. tabbed with an index at the front), and it often also assists the Petitioners to ensure that they have included everything which is needed.
- 15) Any prospective Petitioner experiencing genuine difficulty in complying with these directions should contact the Registrar with a full explanation of the position.



30th August 2015

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**The Worshipful George Pulman Q.C.**  
**Chancellor of the Diocese of Chelmsford**