

Neutral Citation Number: [2021] ECC Wor 1

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

CASE NUMBER 2020-056535

RE ST PETER, POWICK

IN THE MATTER OF A PETITION REQUESTING THE INSTALLATION OF A TRENCH ARCH DRAIN

JUDGMENT

Delivered on 23 April 2021

Introduction

1. A petition comes before me dated 10 February 2021 for a faculty in respect of St Peter's Church, Powick. The petitioners are the Rev'd Gary Crillin, Vicar, Mrs Hanna Grayson, Architect and Mr Jonathan Slade, PCC Secretary. They seek permission to (1) Excavate, inspect and repair the current trench arch system; and (2) If found to be beyond repair, instal an extended trench arch drainage system within the churchyard, connected to existing facilities.
2. I granted an interim faculty for the first part of the works, the investigations, on 22 February 2021, subject to conditions which included provision for the immediate publication of the petition prior to works commencing and for the work to cease pending further directions if any objections were received. An archaeological watching brief was also made a condition of the interim faculty. The DAC specifically recommended dealing with the case in two stages, with investigation and possible repair as the first stage, as they have not had previous experience of a trench arch drain failing.
3. The investigative stage of the work is now complete. There have been no objections to the work and the archaeological watching brief has taken place during the interim investigative works. The petitioners now wish to proceed to a full faculty, specifically to permit an extended trench arch drain to be created.

Background

4. St Peter's is a Grade 1 listed mediaeval church, that is thought to be located on a pre-Christian sacred site. It is set in a four-acre churchyard that has been used for burials for hundreds of years and remains open for burials. This is one of the largest churchyards in the country. At some point in the past, believed to be during the 1990s, a toilet, washbasin and single kitchen sink were installed at St Peters, with the drainage into the churchyard. The drainage was thought to be via a trench arch drain, but no records could be found for the works.

5. According to the statement of significance and need the church started to have problems with foul water drainage in 2019 and reached a point that the toilet became blocked and is no longer usable. Dealing with this problem has been delayed due first to the extensive flooding suffered by Powick in February 2020 and subsequently due to the restrictions imposed nationally due to the Covid-19 pandemic. The DAC recommended that investigation was undertaken to confirm what drainage arrangements were already in place, why they were not working and what proposals were being made to remedy the situation. The petitioners agreed with that approach.
6. Following the grant of an interim faculty excavation and investigation took place. It has been confirmed that the drainage was by way of trench arch drain, and that the drain had failed because it was not large enough, nor at a steep enough angle to allow the waste foul water to drain properly.

The detailed proposals

7. Accordingly, the parish has formulated proposals as to what steps they now wish to take to restore functionality for their kitchen and toilet as soon as practicable.
8. It is proposed to install a new trench arch drain to running south from the south side of the south transept, where the toilet and kitchen are located. This will follow the route of the existing short drain, and will be extended to be very much longer.
9. A trench arch drain allows waste foul water to run underground along a narrow chamber at a gentle incline and to seep away into the earth. The addition of a macerator at the beginning of the trench at the junction between the trench and the waste pipe from the toilet and kitchen is proposed. This, it is intended, will reduce the risk of blockage within the trench from solid matter that is being disposed of. Because this type of drain involves the disposal of waste matter to the ground it is necessary to obtain a permit from the local Environment Agency office to ensure there is no risk to public health from the use of such a system.
10. There are no marked graves along the route of the proposed trench. However, there are several close by and the existence of unmarked graves is likely given the age and significance of the church. It is rightly anticipated that human remains will probably be disturbed when installing the extended trench. Further, in light of the age of the church there is a distinct possibility of other archaeological remains also being uncovered. It is intended that the relative shallowness of the trench compared to modern burial depths should minimize the disturbance of both human and other archaeological remains in installing the trench. Nevertheless, the operation of the trench will also alter the environment of the surrounding land by the introduction of more foul water waste, which is likely to impact on such archaeological remains as are present under its route.
11. The specific proposals have been formulated in consultation with Caroe & Partners, Architects, who have drawn up the plans for the proposed route for the extension of the drain. The length and size of drain proposed for sufficient drainage has been based on calculations following advice given in 'Waste Water Flows from Churches' commissioned from Elemental Solutions in 2001 by Gloucester DAC and British Water Codes of Practice for flows and loads. The trench is proposed

to be 12 metres long with a base width of 800mm. A new inspection chamber and macerator will be installed at the end closest to the church building where it meets the pipes discharging from kitchen and toilet. The trench itself will slope downwards away from the building. This is set out in the drawing numbered 2487/4/200A. Other proposals for a longer trench set out in drawing 2487/4/200 and another showing potential routes for the trench running respectively east and west from the pipe outlet numbered 2487/4/100 have been superseded. My understanding it is the route running south depicted in plan numbered 2487/4/200A that has been decided upon and it is permission for the proposal as described in that drawing and drawing numbered 2487/4/700A that is sought. The latter drawing confirms that the incline of the drain will be 1:12 for the first 6 metres and then fall to 1:500 until the final metre when it will rise by 1:5. The maximum depth will be 2 metres.

12. The hollow part at the bottom of the trench will be roofed with stone slabs and the trench above it will be filled in and re-turfed. Once the ground has settled the trench will not be visible, save for the access point to the inspection chamber and macerator.
13. The petition is supported by the PCC which voted unanimously in favour of seeking the faculty proposed at its meeting on 26 January 2021. Public notice has been given, despite the difficulties caused by the pandemic. The notice was displayed on the lychgate of the church and published on the church's website. This complies with the general direction I made dated 5 February 2021 relating to all faculty application in the diocese. That direction set out requirements for giving notice to the public of the intention to seek a faculty, which differ from those required by rule 6.3(3) of the FJRs. The changes made are temporary but will persist for so long as there are national or local restrictions on movement due to the Covid-19 pandemic.
14. I have been concerned to ensure that the notice given of the petition was the best reasonably possible in the circumstances, as matters involving the potential disturbance of human remains can cause local controversy. In the event there has been no objections raised arising from the publication of the notice or from sight of the works being undertaken under the interim faculty. I am therefore content, as far as I reasonably can be, that there is no opposition from the local community to this work being done.

Alternatives considered

15. Consideration has been given by the petitioners to alternative methods of foul water drainage but all have been discounted for the reasons given below.
16. Connection to mains drainage would require very extensive disturbance of the ground and will be prohibitively expensive at around £44,000. This is because the church sits in such a large, ancient churchyard. There would need to be excavation of a trench of at least 120 metres to enable connection to mains drainage. Digging such a large trench would inevitably cause a greater disturbance of the ground, with a proportionately greater likelihood of disturbance of human remains and a greater risk of disturbance of other archaeological material.

17. A cess pit was considered but the level of ongoing maintenance and expense it would require, caused it to be rejected.
18. Similarly, a septic tank was considered, but again the level of archaeological disturbance caused by digging out the space to instal it would be greater than that caused by the narrow trench for the trench arch drain. Although not specifically cited by the petitioners, it also seems to me that periodic desludging of a septic tank would pose the same difficulties as emptying a cess pit in light of the distance between the most likely location for such a tank and vehicular access to the vicinity of the church.
19. I am grateful to the petitioners for properly considering the other options, and agree with their assessment as to why they are not suitable in this case.

The legal test

20. In all cases where an application is made to build on consecrated ground, the legal test for whether a faculty should be granted is set out in *Re St Alkmund, Duffield* [2013] 2 WLR 854 which asks the following questions:

1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals.
3. If the answer to question (1) is “yes”, how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.

The harm

21. In this case the harm that will be caused to the church is the potential damage to the archaeological significance of the church, caused by the drain being cut through the churchyard and the drainage into the churchyard of foul waste water through the trench.

22. In order to help me assess the significance of such harm I directed, as the Faculty Procedure Rules require me to do, consultation with Heritage England, the Church Buildings Council and the Local Authority in respect of these proposals. Both HE and the CBE responded and were content to offer no objections and to defer to the views of the DAC.
23. The CBC did wish to ensure that any human remains disturbed in the installation of the trench were treated properly, in accordance with the advice of the Advisory Panel on the Archaeology of Burials in England. From the outset the petitioners proposed an archaeological watching brief and obtained a quote to provide this from Red River Archaeology. I understand that such a watching brief was in place during the initial investigations under the interim faculty. I am satisfied that the petitioners take this aspect of their proposals seriously and am sure they will have no difficulty complying with any condition made requiring the continuation of such an approach.
24. The Local Planning Authority, Malvern Hills, has not responded following a full 42 days consultation period and therefore I will assume that they too have no objection to the proposed works.
25. The advice given to me by the DAC was to recommend that the works be undertaken, subject to the two-stage process and the appointment of an archaeological watching brief.

The need for the works

26. The principle of installing a toilet and kitchen into St Peters has already been made, and it is not one that I would wish to reverse. Such a decision having been made, it is obvious that such facilities, given that they exist, should work properly and be available to the users of the church. The need for a functioning and hygienic toilet is easily made out, and it therefore follows the need for a proper means of dealing with the waste that it will produce is required and is likewise made out.
27. This need outweighs the harm to the archaeological significance of the church, which itself will be ameliorated by the archaeological watching brief that is proposed.

Conclusion

28. I am therefore satisfied that that a faculty should issue in respect of this petition, subject to a condition requiring a continuing archaeological watching brief.
29. As set out above it is necessary to obtain a permit for the works from the Environment Agency. The Architect notes that such an application will be made shortly, together with an application for building regulations approval. The successful obtaining of all necessary secular permissions will form further conditions to this faculty.
30. A further condition will require that if any human remains are disinterred, such remains must be stored carefully and re-interred elsewhere in the churchyard in a reverent and discrete manner

at the direction of the incumbent as soon as practicable after they are disinterred. Such remains must not be removed from the church or churchyard without a further faculty being granted.

31. If remains of archaeological significance are exposed, they must be recorded and dealt with as directed by the DAC Archaeological advisor (or as directed by this court) taking into account the published advice of the Advisory Panel on the Archaeology of Burials in England.
32. A full record of the drain as installed must be kept both with the Churchwardens' Terrier and Inventory and lodged with the DAC's records. This should avoid any re-occurrence of problems due to a lack of record of the works.

Jacqueline Humphreys

Chancellor of the Diocese of Worcester

Feast of St George, 2021