

In the matter of St Paul's, Eastville

And in the matter of an application under s 18(1)(a) Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

PROVISIONAL JUDGEMENT

1. I have before me an application that I should make an instrument under my hand under s. 18 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 for the demolition of St Paul's Eastville as being necessary in the interests of safety or health and, having regard to the urgency of the matter, there is insufficient time to obtain a faculty.

2. If there is no emergency or if the demolition is not necessary, the procedure for consideration of demolition of a church is quite different. In those circumstances I must proceed by way of Faculty under s 17 of the Measure after a hearing in open court. This requires me to be satisfied, amongst other things, that another church is to be erected on the site to take the place of the demolished church.

3. In this matter it is submitted to me that the appropriate procedure is s 17: it is necessary that this church should be wholly demolished on grounds of safety and health and because there is insufficient time to obtain a faculty.

Background

4. St Paul's Church is a small early Victorian Gothic church built in flat fenland 12 miles north east of Boston. It was the last of 6 churches built under the Fen Churches Act 1816 and was completed in 1840. It is Grade 2 listed. It is not in a conservation area. The CBC pastoral measure report dated 12 July 2010 is before me and states that it has only local landscape value due to its isolated location within a churchyard 1 ½ miles north of the village: several trees mask it in the summer. The last Quinquennial in June 2005 (ie 8 years ago now) stated that the church was in generally a good condition with some minor repointing and drainage work necessary but 'nothing serious'. The CBC report noted that at the time of their report 3 years later that damp ingress and flaking plaster were then evident.

5. The CBC assessment of its significance was that it was an unusual building but with little architectural significance and some landscape value. The interior was unchanged since 1840. The CBC considered that the church was in reasonable condition and ‘inherently sustainable in terms of construction and materials’.

6. The Church ceased to be used for worship in around 2007 because there were signs of movement in the structure and the congregation could no longer support the financial burden of maintaining the building. The next church in Midville is going through a closure process and the congregation now worship in New Leake a small chapel on the border of Eastville/New Leake village.

7. Although no longer in use, St Paul’s has not been made subject of a formal closure process due to delays caused by pastoral reorganisation. I understand that if that process is to begin now it would take at least 18 months for it to be completed.

The current position

8. On 18 October 2012 the local authority received a complaint about the condition of St Paul’s Eastville to the effect that it was now in a dangerous condition. As a result Mr Ian Henton FBEng, DBS, Principal Consultant Surveyor of Lincs Building Consultancy, Rob Walker, Conservation Officer, Fred Feary a builder and Judy Crowe of the DAC attended the church. According to the email from Mr Henton dated 5 April 2013 to the DAC secretary (attached as an annex to this preliminary judgement), although they were unable to gain access to the church, external inspection raised concerns. As a result the perimeter of the church was secured by a Herras fence line to protect persons from falling masonry if they were accessing the graveyard to tend graves. The DAC instructed a consulting structural engineer, Ayling Associates Ltd, to report on the structural damage to the church and to make recommendations.

9. That report is before me dated November 2012. I attach that report also as an annex to my judgement. Mr Ayling inspected on 24th October and made a more detailed inspection on 6 November 2012 when the interior was inspected. It was a visual inspection only. In summary the most significant findings were as follows:

(i) the church has been untended since it closed for worship (approximately 2007) since when the trees have grown considerably.

(ii) the fenland soil on which the church is built provides seasonal movement which has been exacerbated by the presence of a group of young sycamore trees close to the south east corner of the building.

(iii) external problems : significant cracking on west side; the chancel and south end ('many open joints'; 'indicating serious structural movement'), the east side where bricks have recently fallen away and a recently opened crack is 15-20mm wide and 2.5 cm long running through the bricks and joints and down the edge of the buttress.

(iv) internal problems: movement is now greater on the east side and is 'now dangerous'. Recent cracking on the west side wall; historic movement of the tower has now opened a 10-15 mm vertical crack between the vestry and the north end wall. There are 'a number of very serious cracks in the east end wall of the East Transept' corresponding to external movement'. The most serious crack is 30-40 mm wide. It is recent and corresponds to an external crack. Mr Ayling lists a series of serious cracks at para 5.4 of this report. He states in this sub para

"The main timber is effectively supported by a cracked section of the wall which has a severe eccentric loading and could break away at any time. This could cause the main cross timbers to collapse which would in turn initiate a progressive collapse of the roof....The stability of the roof and wall at this point is clearly dangerous'.

The south wall and chancel have been very severely affected by damp penetration and the plaster has largely fallen away There are significant cracks. The longitudinal roof timbers are pulling out from the wall showing recent movement. If the cracking in the crown of the arch continues then the whole of the arch and the wall above could cause a collapse bringing down the south wall and the roof:

'The Chancel arch and the wall above is unstable and in a very dangerous condition'.

Additionally there is evidence of the serious large scale movement of the floor as the south east corner moves out relative to the main structure.

(v) the church can only be stabilised by complete underpinning which is theoretically possible. However the delicate condition of the Chancel arch and the North Transept means that they could collapse at any time, which would bring down the roof and if that happened the progressive collapse of the building. His opinion is that 'any form of underpinning would be dangerous in this situation'. He questions whether any specialist contractor would be

prepared to undertake piled underpinning of the church with the level of risk that would inevitably be involved.

(vi) At para 7.2 he concludes that the church could collapse ‘in the very near future’. The majority of the damage has occurred in the last 8 years due to the presence of fast growing trees at the south east section of the building which are drawing moisture from below the foundations and causing very serious ground shrinkage. The underpinning process if it was embarked upon could itself cause collapse. At para 7.5 he states ‘ as the building is no longer used and the damage is extremely serious, careful demolition would be the safest option in this situation’

10. Mr Henton places emphasis in his analysis on the use by Mr Ayling of categorisation of the damage as category 5 taken from the BRE Digest 25. This is damage which raises concern of severe instability. Mr Henton sets out in his careful email 5 April his concerns about an imminent collapse of the church and the danger to members of the public who are affected as follows:

- (i) they have access to tend graves
- (ii) there is a shared access with dwelling houses on both sides
- (iii) it is impossible to fence off an area to prevent danger to the public from a potential collapse of the tower. The residents of nearby dwellings could not live within a cordon that would have to be imposed.

11. Mr Henton has reached a decision that the danger must be removed and would seek an order under a s 77 Notice before the Magistrates Court, if the church does not act to remove the danger. He expresses the hope that a s 77 application would not be necessary.

12. By his email to me dated 5 April the DAC Secretary submits that Mr Ayling’s report establishes the risk of imminent collapse which would be a threat to the safety of the public. He submits that even after a closure process is completed in 18 months time (so so), it seems that demolition would be the most likely outcome.

Provisional view

13. The report of Mr Ayling and the analysis by Mr Henton of the risk to the public by the building's collapse are compelling and I am minded to accept what is said, namely that demolition is necessary and there is insufficient time for a faculty process. I am most concerned about the threat to members of the public particularly of course those that live close by. Mr Ayling has carefully considered whether underpinning is a practical solution and concludes that this step is likely to lead to the collapse of the church. He doubts that a specialist contractor would be prepared to undertake the work in the circumstances.

14. The conclusion that I would reach if I did accept their evidence is that the church should be carefully demolished under s 18 of the CCEJM with suitable recording of the interior by photographs and proposals for their display, and suitable arrangements being made for the retention if possible of the objects within the church for their use in the worship and life of the Church elsewhere. I would also want to approve plans for the continued safe use of the churchyard.

15. However, before reaching such a final conclusion in respect of a church that has stood there since 1840, I am conscious that this is a Grade 2 listed building and English Heritage have yet to be asked to express their opinion. Also, CBC wrote a report in July 2010 and have not yet been given an opportunity to comment on the situation that has arisen since then. In these circumstances, I consider that it is appropriate for both English Heritage and CBC to be given an opportunity to make representations to me, before I make any final decision. I therefore direct that this provisional judgement (with the report of Mr Ayling annexed thereto together with Mr Henton's email dated 5 April 2013) should be submitted to the CBC and EH and that they may have 28 days to make any representations to me. If no representations are made by them within 28 days I shall make my final judgement on the matter in accordance with my indication set out at para 13 and 14 above, unless any new material is placed before me. If any representations are made within 28 days they must also be submitted to Mr Henton and the DAC for their comment, and I will give further directions. This is a tight time scale I acknowledge, but it would seem from Mr Ayling's report that there is a danger of imminent collapse and people are at risk. In these circumstances, it is reasonable to request a quick response from CBC and EH.

16. I also direct that as a matter of courtesy a copy of this preliminary Judgement should be sent to Bishop Christopher and the Archdeacon for their information.

Mark Bishop

Chancellor

13 April 2013

In the matter of St Paul's, Eastville

And in the matter of an application under s 18(1)(a) Care of Churches and Ecclesiastical Jurisdiction Measure 1991.

FURTHER DIRECTIONS

1. Further to my provisional judgement of 13 April 2013 I have now received the following documents:

(i) a letter dated 3 May 2013 from David Walsh of English Heritage

(ii) an engineer's report by Stephen Parris, senior engineer for EH with input from Penny Evans, heritage at risk architect/surveyor dated 22 April 2013

(iii) a letter from Anne Sloman Chair of ChurchCare reporting the views of the CBC dated 15 May 2013.

2. I have also viewed the church with the Secretary of the DAC on 25 June 2013.

3. The EH advice is that the extent of the damage can be categorised as serious and there is concern that the chancel arch and cross beam supporting the main roof could collapse. They advise urgent temporary support to prevent problems escalating. Their view is that there is insufficient information in the form of monitoring and on site investigations to identify the cause of the damage which could justify immediate demolition under s 18 of the 1991 Measure

4. Mrs Sloman's letter expresses the view of the CBC which was to accept that there were exceptional difficulties with this church and they would not offer any objection to the proposed demolition. They requested adequate recording of the Church.

5. On my site visit to the Church on 25 June I inspected the church both inside and outside. It was clear to me that it has been a much loved parish church as evidenced from the artefacts left inside the church with the dedication of book cases and a children's corner. It would be a tragedy if it was necessary to demolish this Victorian jewel in the Fens.

6. It was obvious to me that although the church has been closed for some years, the churchyard continues to be a focus for this community. I noted a very recent burial in 2012 and a significant number of well cared for graves.

7. However, my assessment under s 18 of the Measure is a practical assessment of the following : emergency demolition of the whole church can only be authorised if it is necessary in the interests of safety or health and there is insufficient time to obtain a faculty in respect of it, and in respect of a listed building (which this is) it is not practicable to secure safety or health by works of repair (or works for affording temporary support or shelter), and the works to be carried out are limited to the 'minimum measures immediately necessary'.

8. I am not satisfied on the material placed before me at present that it is not practicable to secure safety or health by works of repair. The report of Mr Parris makes the valid point that there is as yet no understanding of the cause of the damage. However, it is also clear that whatever is causing it, the chancel arch looks precarious and is getting worse. There were more pronounced cracks when I visited in June 2013 than in the pictures provided to the report of Ayling Associates dated November 2012. At present on the material before me I cannot be satisfied that demolition of the church is the 'minimum measure immediately necessary'.

9 It would be helpful if Mr Ayling and Mr Parris (together with an engineer whom the diocese may wish to instruct) could jointly inspect the church again and draw up a joint report listing their points of agreement and disagreement. In particular I would like assistance with these practical questions:

(i) How close to collapse is the chancel arch?

(ii) What preventive steps are **practicable** to support the arch to prevent collapse?

(iii) if the chancel arch was supported by such measures, to what extent would the risk of collapse be reduced?

(iv) what is the minimum measure immediately necessary to take to secure the safety of neighbours and visitors? For these purposes the engineers should assume that the church will be closed and no one permitted entry and there will be fencing around the church.

9. I direct that the sycamore trees be removed subject to an assessment of risk for this work and an appropriate method statement being agreed with the engineers before this work is done. Notification also needs to be given to the local authority.

10. It may be that the engineers will be unable to agree. However their views on these questions would assist me, as well as a clear statement of what they agree about the condition of the church and what they disagree about. Once the joint report has been placed before me, I will determine finally whether or not the conditions are met under s 18 of the Measure for the emergency demolition of the church.

11. I request the report to be provided within 28 days. If this is time table is not possible, I ask the engineers to contact the Registrar so that the report can be obtained at the earliest possible date.

Mark Bishop

Chancellor

15 July 2013

In the matter of St Paul's, Eastville

And in the matter of an application under s 18(1) (a) Care of Churches and Ecclesiastical Jurisdiction Measure 1991

JUDGEMENT

1. I have given a provisional judgement dated 13 April 2013 and further directions on 15 July 2013. Since those directions were given I have now received the following further documents:

(i) report dated August 2013 by John Ruddy B Eng MA(Conservation) CEng MICE MStructE for Capstone Consulting Engineers Ltd instructed by the Diocese

(ii) e mail comment on that report by Stephen Parris, Senior Engineer for English Heritage dated 15 August 2013: he was the author of an earlier report dated original report relied upon by 22 April 2013.

(iii) further report from Mr Ayling dated 29 August 2013 giving answers to the 4 questions I raised in my July directions.

2. I have further considered all the reports and correspondence considered when writing my provisional judgement and when giving further directions.

3. In my July directions I directed that Mr Ayling, who wrote the report upon which Mr Henton, Principal Consultant Surveyor of Lincolnshire Building Consultancy based his opinion that the church was in imminent danger of collapse such that the danger must be removed by demolition, and Mr Parris for English Heritage (together with any engineer appointed by the Diocese) should answer the 4 questions set out at Paragraph 9 of the directions. They should also discuss the matter between themselves after a joint inspection and draw up a document in which they list their points of agreement/disagreement. I do not have the document that I had hoped for, but it is clear that each engineer has seen the report

of the other and has commented upon it: they have all answered the 4 questions I posed. I am grateful to them for the work that has been done on this matter so far.

4. Mr Ruddy has provided me with a full report with which Mr Parris agrees. Mr Ruddy considers the following areas of the church:

(i) the north end: a portion of the northern and eastern masonry has moved and is possibly moving. Some movement is recent. The crack between the studwork of the vestry partition and the north wall is not indicative of rotational movement of the tower but more likely an indicative shrinkage of the strata below the nave floor. He explains that this means that the stud wall is pulling away from the tower and not the other way round. He does not believe that the tower is showing outward signs of distress: it does not appear to be out of plumb when viewed by the eye. He considers that the tower and the north east area of masonry are not currently a high level of concern subject to the proviso that the movement may be ongoing and the situation may change, and the tower should be checked by a plumb line survey. There are some localised areas of concern which he sets out at paragraph 4

(ii) the south east corner: the south eastern corner and the eastern part of the chancel have moved (and are possibly still moving) and this has led to extensive cracking. Despite this

“the corner of the masonry does not appear to show significant outward signs of being close to failing...at this time my view is that this corner is not imminently in danger of collapsing in its own right” .

This is subject to the same provisos as in respect of his views concerning the north end.

However, the greatest area of concern is the chancel arch

“ this area of masonry is in a state of ongoing collapse”.

Should the arch fail the masonry within the area of cracking above the arch would also collapse and this would in turn cause the collapse of the chancel roof. Other parts of the ceiling may also collapse with wider sections of the nave roof. This has to be addressed as a priority.

(iii) the ground below the nave floor: he considers that the floor is shrinking pulling the floor away from the wall within it.

5. Mr Ruddy and Mr Ayling's answer to the 4 questions set out in my July directions are as follows:

(i) how close to collapse is the chancel arch?

Mr Ruddy: localised collapse could occur at any time: it is in a state of ongoing collapse.

Mr Ayling agrees with this.

(ii) what preventive steps are practicable to support the arch to prevent collapse?

Mr Ruddy: the arch needs to be propped. Heavy plant operated remotely will be required because he considers the risks to operatives working below are too great. Once the propping is in place other works could be safely commenced. A specialist masonry contractor will be required. He discusses a controlled demolition following by rebuilding. This would involve the risk of wider collapse and therefore an internal scaffolding structure would be required to support the roof. He also suggests consideration of remote working with ground chemical injection /improvement techniques raising the building and 'jacking' back together the masonry over the arch.

Mr Ayling appears to agree with this analysis and emphasises that the risk to operatives beneath the chancel arch are too great for them to erect propping in that way. He doubts that ground chemical injection techniques would work in this soil. He considered that removal of the sycamore trees will lead to heave which would cause further damage to the structure. He suggests the following:

"If the less damaged areas of the building are to be retained, this could only be safely achieved by 'controlled' demolition, using machinery working remote from the building. However the degree of control of the demolition process is limited and there would be still significant risk of a progressive collapse developing"

All of this requires specialist advice.

(iii) if the chancel arch was supported by such measures, to what extent would the risk of collapse be reduced?

Mr Ruddy: the risk would be removed.

Mr Ayling considers that the risk would be ‘greatly reduced’. However he repeats that the erection of internal supports would involve unacceptable risks

(iv) what is the minimum measure immediately necessary to take to secure the safety of neighbours and visitors?

Mr Ruddy: The church should be kept closed and the churchyard closed as a temporary measure. A precautionary plywood hoarding needs to be positioned to protect the adjacent old school house to the south should anything collapse. Mr Ayling agrees with this.

6. Mr Walsh on behalf of English Heritage in his email dated 10 September expresses confidence in the light of Mr Ruddy’s report that with input from a ‘temporary works engineer’ to determine a safe method of supporting the chancel arch, the building can be stabilised. Mr Parris provides his answers to the 4 questions discursively in his email dated 15 August 2013. His view is that with the use of a temporary works engineer

“ the risk of collapse will be significantly reduced”

He considers that the stability of the structure could be restored.

7. I am satisfied that if the only way in which demolition of the church could be prevented was by operatives standing beneath the chancel arch in an effort to prop it, then this would involve too great a risk for it to be attempted. In those circumstances there would be no alternative to a controlled demolition. However, Mr Ruddy (supported by Mr Parris) makes a number of suggestions of remote working perhaps also involving an injection technique, which would mean that operatives would not be exposed to this unacceptable risk. They require further advice from a specialist temporary works engineer specialising in dealing with the problems which face this building. It is not clear to me whether there is a practical and safe way in which the chancel arch can be secured, but plainly Mr Ruddy and Mr Parris think

this can be done with advice from a specialist engineer. I note that Mr Ayling raises as a possibility the retention of the less damaged areas of the church only being achieved by using machinery working remotely from the building (as suggested by Mr Ruddy).

8. Section 18 of the Measure provides me with a power to order the demolition of a church which is a listed building without a faculty where I am satisfied that

(i) the demolition of the whole or part of a church is necessary in the interests of safety or health, and

(ii) having regard to the urgency of the matter, there is insufficient time to obtain a faculty in respect of it, and

(iii) it is not practicable to secure safety or health by works of repair (or works for affording temporary support or shelter), and

(iv) and the works to be carried out are the minimum measures immediately necessary

9. In the light of the professional opinions of Mr Ruddy and Mr Parris (and to some extent of Mr Ayling), I am not satisfied that I can exercise the power under s 18 to order the demolition of the church. This is because given the engineering opinions of Mr Ruddy and Mr Parris in particular, I am not satisfied that it has been established that a demolition is necessary in the interests of safety or health. Nor am I satisfied that that it is not practicable to secure safety or health by works of repair. Nor am I satisfied that demolition is the ‘minimum measure immediately necessary’. The provisions of s 18 are not met.

10. Obviously, there are very serious problems with this church, and the diocese must now move to draw up a plan of necessary remedial measures to secure the chancel arch from collapsing and taking other necessary steps to repair the church. Advice from specialists must be taken.

11. The diocese must take these next steps with urgency, as I am sure all realise. If a plan is adopted for remedial measures and works of repair, then a faculty application will need to be made in the usual way. If the works involve the outside of the building then planning permission will be required, too. I stand ready to make any necessary emergency orders if this is required.

12. I have already authorised the emergency cutting down of the sycamores that appear to have done damage on the north side of the outside wall. I note the concerns of Mr Ayling about this. It seems sensible for the trees to remain in place until the specialist advice has been taken and a plan adopted for this church.

Mark Bishop

Chancellor

1 October 2013