

Neutral Citation Number: [2018] ECC New 2

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

In the Matter of an Application for the removal and installation of paving in the Baptistry area and west end of the South Aisle of St Aidan, Bamburgh and in the Matter of a Petition by Sheila Bacon and Christopher Turner, Church Wardens

JUDGMENT

1. This is a petition by the Church Wardens following a resolution of the PCC on 13 June 2018 to uplift the sandstone and slate paving forming the floor of the Baptistry area and west end of the church of St Aidan, Bamburgh and re-lay with new matching sandstone and re-use the slate, supplemented as appropriate, in the South Aisle to form a continuous slate floor in that location.
2. Having duly notified the Church Buildings Council (CBC), Historic England (HE) and the Society for the Protection of Ancient Buildings (SPAB) ahead of the petition and received a variety of responses, the petition was lodged on 3 July 2018, notice having been given on Form 4A in accordance with rule 6.2, and no objections have been submitted by either these or any other amenity bodies, the petition was duly referred to me for determination.

The facts

3. St Aidan's is a Grade I listed church with C12th origins. Bede described a wooden church built by Aidan outside the walls of nearby Bamburgh Castle. No traces of this church remain but the forked beam in the ceiling over the Baptistry is traditionally believed to be the beam against which Aidan leant when he died in AD 651. A modern shrine to Aidan, with whom the church is most closely associated, is to be found in the C13th chancel. The south aisle was reconstructed in the late C14th. Major works were undertaken in the C19th although none of those have a direct bearing on the petition under consideration.
4. The Baptistry area is situated at the west end of the nave. The font is mounted on a sandstone pedestal which itself stands on a sandstone floor albeit it is interspersed with large slate flagstones. The floor is described in the petition as 'very worn, uneven and heavily patch repaired sandstone' which is mis-matched with slate paving. The state of the sandstone is such that it attracted attention as a tripping hazard in the two quinquennial inspections preceding the petition. The proposal is to re-pave the Baptistry in local Doddington pink sandstone, said to be a good match with the existing albeit in larger slabs, and re-locate the slate on the south side to complete the paving

of the South Aisle in slate, all but the west end of that aisle already being paved in slate.

5. In their response to consultation the CBC pointed to available guidance, urged assessment of the significance of the floor as well as consideration of whether wholesale replacement was necessary under the guiding principle of conservative repair but concluded by deferring to the DAC whilst offering further help if such were sought.
6. HE raised no objection to the proposal but, recognising that the disturbance of the ground levels may have archaeological implications, urged that advice be sought of the DAC's archaeological advisor.
7. SPAB, by contrast, opposed the proposal. Whilst it was noted that the paving materials differed in type and size, there were worn and uneven areas and patch repairs which had been executed with unsuitable materials that had likely exacerbated problems, it advised that the accompanying photographs 'illustrate the great character of the floor and the attractive patina from years of wear'. It suggested that the mismatch of materials, wear and patina were all part of the building's 'special interest and character' which, once lost, could never be recreated and urged targeted work to address problem areas to ensure conservation. It opposed wholesale replacement.
8. Having raised this principled objection, which is not accepted by the petitioners, SPAB failed to submit any objection to the Registry, its email of objection having been sent, I think, first to the petitioners and then, on 23 April 2018, to the DAC. In the circumstances, no legal requirement has arisen for me to have regard to its views. Furthermore, the DAC, in full possession of SPAB's views, has recommended the petitioners' proposal to me.
9. However, having noted SPAB's views, observed the response of the architect to the petitioners, to which I will come, and considered the photographs, I formed the view that I should conduct a site view so as to give appropriate attention to a petition in respect of a church of such significance. This I did on the afternoon of 17 July 2018. Although somewhat overcast, it was still a relatively bright afternoon and the area in question was well able to be visualised in very good natural light admitted by the west and south windows. In keeping with the church's significance, its association with Aidan and the time of year, there was a heavy footfall of visitors throughout the time of my site view.

The law

10. The law is well established and definitively set out in St Alkmund Duffield [2013] Fam 158. I am obliged to consider the five questions there posed:
- (i) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
 - (ii) If the answer to (i) 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 nature of the proposals;
 - (iii) If the answer to (i) is 'yes', how serious would the harm be?
 - (iv) How clear and convincing is the justification for carrying out the proposals?
 - (v) Bearing in mind the 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 consistent with its role as a place of worship and mission) outweigh the harm?

In answering (v), 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 listed Grade I or II*, where serious harm should only exceptionally be allowed.

Discussion

11. Having noted the objection of SPAB prior to the petition being lodged (in unamended terms) I gave consideration to whether to hold an informal directions hearing at the church and invite it to attend, the period for objections from interested parties having by now passed. I had regard to the course adopted by Chancellor Hill QC in Re Holy Trinity Poynings [2017] ECC Chi, followed by Chancellor Gau in the even more recent case of St Philip and St Jacob Bristol [2018] ECC Bri 1. Whilst the latter case was analogous to the situation arising here, I noted that the former case involved Particulars of Objection having been filed and the objector becoming a party opponent. In the circumstances, and having carried out an informal site view, I reached the conclusion that such a step was neither necessary nor proportionate, was likely to result in significant delay and unlikely to result in any attendance by a party that had not taken the step of filing Particulars of Objection.
12. In answering the points made by SPAB, the architect made the following points:

- (i) having considered the CBC guidance document on historic flooring, the age of the sandstone flooring in this case was likely early C19th and the slate almost certainly post 1840, not being a local product and likely to have been brought via the railways;
 - (ii) an 1870 plan suggests that the area in question was situated behind the then organ, appears to have been a utility area or a choir vestry or both from which I take it to mean not a public area or area of any great significance;
 - (iii) the sandstone paving is in very poor condition. It has been heavily patched with concrete, resembles a patchwork and will inevitably deteriorate further. In his opinion ongoing patch repairs will make it even more unsightly and he rejected the description of it being either attractive or characterful;
 - (iv) the area is now subject to heavy footfall as much from visitors accessing nearby historical displays as the congregation in acts of worship and it poses a tripping hazard that warrants removal rather than simple warnings.
13. I found the site visit particularly helpful. Having seen the photographs, like SPAB, I questioned whether the patchwork character of the floor and apparent patina pointed to repair rather than renewal. Such questions were immediately answered on inspection where the extent of the damage and wear, as well as the concrete and other forms of patching, demonstrated that the photographs, whilst showing much wear and patchwork, were far more flattering of the area than was justified.
14. Although this flooring may be up to 200 years old, that has to be seen in the context of a medieval church and, looking at the use to which the west end was then put, it is questionable how much thought, care and attention went into laying it even then. A large patch comprising slate is wholly out of place and has the feel of a repair carried out with whatever happened to be available. Several of the sandstone flags have been subject to very heavy wear and erosion and many of them are small and out of keeping with their neighbours.

Decision

15. Whilst the views of SPAB, formed from photographs without a site visit, are deserving of respect, I am quite satisfied that, objectively, the proposals to relay the area sympathetically with local, well matched sandstone and utilise the uplifted slate to continue the south aisle floor to the west wall will not result in harm to the significance of the church as a building of special architectural or historic interest.
16. The presumption of leaving things as they stand is readily rebutted by the need to make good the accumulated and extensive patching and mixture of materials, as well as making the area safe, a process that

cannot adequately be met by focused repair work and can only be met by the sensitive renewal that is proposed.

17. Regard must be had to the advice of HE in respect of any archaeological implications arising from the work but a faculty will issue in the terms prayed for with the work to be completed within 6 months or such further period as may be sought.

Simon Wood
Deputy Chancellor
18 July 2018