

In the Consistory Court of the Diocese of Chichester
In the matter of Holy Trinity, Poynings

No 0497

Between:

(1) –
(2) PATRICK POLLICOTT-REID
(3) ALAN RICHARD STEWART CURRER

Petitioners

and

THE SOCIETY FOR THE PROTECTION OF ANCIENT BUILDINGS

Party Opponent

Judgment

1. The procedural history in this matter is somewhat unusual and I propose to deal with it briefly at the outset.

Parties

2. By a petition dated 21 October 2015 (but apparently not lodged at the diocesan registry until 19 May 2016), a faculty is sought for the following works:
Installing under floor heating beneath a new stone floor; providing a discreet tea point; preserving and displaying memorial slabs; and introducing heritage boards, all in the south transept, and heritage boards by the west door.
3. The petitioners were originally (1) Revd Dr Caroline Currer (priest-in-charge), (2) Mr Brian Izzard (churchwarden), and (3) Mr Alan Currer (churchwarden). Due to the passage of time Mr Izzard has stepped down as churchwarden and I formally gave leave for Mr Patrick Pollicott-Reid to be substituted as second petitioner. Dr Caroline Currer ceased to be priest-in-charge on 30 September 2017, and the parish is now in vacancy.
4. Mr Alan Currer, her husband, has ceased to be churchwarden but remains as a petitioner. He is styled 'project lead' in the paperwork, although in his email to the registry of 8 November 2017 he says: 'I am, however, continuing my commitment to this project (and am still on the electoral roll) - although now sensitive to and at the service of the PCC on the matter rather than leading on the project'.

Directions Hearing: 19 October 2016

5. Following the Society for the Protection of Ancient Buildings filing Particulars of Objection in Form 5 and becoming party opponent, I took what, for Chichester Consistory Court, was an unusual step and directed the convening of a directions hearing in the church. I required the principal parties to attend but also requested the participation of representatives of Historic England, the Church Buildings Council and the Diocesan Advisory Committee. I invited all parties to focus in advance on the *Duffield* framework, with the hope that issues could be narrowed and common ground identified.

6. The directions hearing was, to my mind, a very productive gathering when a variety of views were openly expressed in a round table atmosphere and by its conclusion it appeared that a *via media* had emerged which was worthy of consideration.
7. Subsequently, the petitioners presented an amended proposal which, to the surprise of the party opponent and various of the consultative bodies, was not much different from what had originally been proposed. On 17 May 2017, I gave directions for the disposal of the matter by way of written representations including provision for the exchange of evidence and submissions, and soliciting input from Historic England and the CBC, notwithstanding that they were not parties opponent. These directions were revised and reissued on 5 June 2017 by the registrar, who also issued a second set of directions of his own notion on 6 July 2017. The court papers were received by me from the registry on 24 November 2017 for disposal on written representations under r 14.1. I have sought to complete this judgment within the customary turnaround time expected of consistory courts.
8. Since there had been a widespread canvassing of views at the directions hearing, I invited the parties to consider whether they wished me to determine the matter or pass it to the deputy chancellor. None of the parties invited me to recuse myself. I considered whether to do so of my own motion, and concluded that there was no reason to do so. To the extent that I had given any preliminary indication, it was in the presence of all the parties and the others who attended the directions hearing. I was not privy to private conversations with one or other party nor was I in receipt of any privileged material. I considered that I would be better placed than the deputy chancellor to deal with the matter having had a site visit at which I had observed and participated in an animated and informed conversation between individuals and bodies with a concern for the church and the proposals.

The amended proposal

9. The petitioners' document, running to 42 paragraphs set out their revised proposals and their justification for them, to which was attached a revised Specification and Schedule of Work prepared by the parish's inspecting architect, Mr Richard Andrews, and labelled October 2015B. There is no separate statement from Mr Andrews.
10. Paragraph 7 of this document states:

The petition is re-submitted and amended as follows:

 - No memorial slabs will be lifted for deeper burial, placement elsewhere or display
 - The proposed floor construction is amended as at paragraphs 28-29
11. I directed that there be further public notice, notwithstanding that the amendment to the proposal was not of particular significance. The revised public notice made no reference to the removal and relocation of two pews from the west end for the introduction of information boards, but nor had the first (although it had mentioned the boards themselves). Having regard to the procedural history, and to the fact that these matters would have been clear from the plans in any event, I considered that it would be disproportionate to delay matters yet further by a third public notice.

12. The second public notice produced letters from Mr Brian Izzard and Mrs Helen Izzard objecting to the works. The former was a little surprising as Mr Izzard had originally been a petitioner, when he was churchwarden. They each elected for their letters to be taken into account without becoming parties opponent. Mr Izzard drew attention to misstatements in the public notice, but for the reasons already given, justice demands a prompt resolution of the substantive proceedings rather than further prolongation of procedural matters.

The petitioners' case

13. The petition relates to the south transept and concerns the installation of underfloor heating beneath a new stone floor; the provision of a discreet tea point; and the introduction of heritage boards. In addition the petitioners seek permission for heritage boards to be introduced by the west door. The historic memorial slabs (laid into the floor at present) will be left in situ, covered by the heating elements and the new floor.
14. The petitioners' Statement of Needs is dated 19 October 2015 and speaks of the proposal evolving over a period of some five years, in response to a wish to heat the church which is 'intolerably cold' for several months of the year and to provide a 'flexible meeting place' for church and community activities. Overhead radiant heaters, which were introduced in 2007, have proved totally ineffective.
15. The DAC was first consulted on an earlier iteration of the current proposals in 2014. The Statement of Needs suggests that the DAC approved the principle of the underfloor heating and raised floor, but was concerned at the risk of damage to the fragile tomb slabs. The parish then sought advice from Dr Robert Hutchinson and the conservators Sue and Lawrence Kelland. Relying on these reports, the proposal was revised so as to move and display three of the better-preserved tomb slabs. This later changed again so as to apply solely to the slab tomb of Lady Bexley (or Ruxley, or Roksley), with the others effectively being buried. Explanatory heritage boards would also be created and installed. It was also intended to erect a plaque honouring George Washington, former president of the United States of America, who was a distant descendent of Sir Michael de Poynings. A discreet tea point, fabricated as an oak sideboard, would occupy an unobtrusive position served by a new mains water supply. There is an inchoate plan for providing toilet facilities at some future time where a dilapidated shed currently stands in the churchyard.
16. The full documentation submitted by the petitioners is retained on the court file, but I trust I do it justice by summarising the salient features as follows:
 - i. That alternatives to the south transept have been considered, but none met the aspirations on the parish as articulated in the Statement of Needs;
 - ii. That experienced conservators have advised that the underfloor heating and related works for the new floor will not harm the memorial slabs, whereas they will continue to deteriorate if left in situ;
 - iii. That the proposal for a wooden floor, which was discussed at the directions hearing, was rejected because of various difficulties and drawbacks with no balancing advantages. It would appear the PCC decisively rejected the reversible timber floor alternative at its meeting on 26 June 2017;

- iv. That following the directions hearing, and with the encouragement of the CBC, representatives of the heating specialists, Martin Thomas Associates visited the church and advised by email dated 4 January 2017, which included the following:

With your particular case where it is already appreciated that the space is unlikely to ever reach typical comfort temperatures due to being connected to the rest of the unheated church, we see no reason why electric underfloor heating could not provide a suitable small heating effect within a screened area of the church, so long as appropriate construction, floor finishes, and a suitably robust product is selected. If designed correctly we would expect the electric underfloor heating to provide a perceivable heating effect within the zone provided.

[emphasis added, and I observe parenthetically, that the proposal under consideration in Schedule of Works in these proceedings (both as originally drafted and in its revised form) makes no provision for turning the south transept into a screened area]

- v. That Martin Thomas Associates did not recommend perimeter radiators or storage heaters.
- vi. That the inclusion of a damp proof membrane into the works would, according to the expert conservators, better protect the memorial slabs and minimise damage by moisture and/or salts. Further, it is said that since relocating the slabs has been ruled out, it must therefore follow that covering them is the only method of protecting them and extending their lives?
- vi. That portioning off some of the rear section of the nave (as suggested by some of the consultees) 'is considered abhorrent by the parish'. It would destroy the proportions and integrity of the church, and be detrimental to the visual and spatial significance of the church.
- vii. That the alternative proposal of using the north transept would need to address issues such as the existing organ and vestry and its function for storage. It is regarded by the petitioners as an inferior space, poorly lit and not benefitting from sunlight to the same degree as the south transept.
- viii. That reflecting on the various matters discussed during the directions hearing has served to confirm to the petitioners the strength of the proposals.
- ix. The petitioners point to a letter of support from the (civil) parish council dated 13 January 2016 commenting that the proposal would 'enable many other community activities to take place'.

The party opponent's case

17. The party opponent, in common with the other consultees, has devoted considerable time and expertise to engaging with the petitioners in exploring the proposal before the court and a range of alternatives. As with the petitioners' evidence, it ranges over a number of documents and they are retained on the court file. The party opponent's position, I think, can fairly be summarised as follows:
- i. That the proposals, if implemented, would result in substantial harm to the special interest of the church.
- ii. The memorial slabs add greatly to the significance of south transept as a chantry chapel.

- iii. That installing informative interpretation board does not compensate for placing the memorial slabs out of sight beneath a heating system and a new stone floor.
- iv. That there has been no investigation into the cause of damp in the south transept, notwithstanding that the moisture is damaging to the memorial slabs and the fabric of the church more generally. The proposed works are likely to exacerbate the damp problems elsewhere in the church.
- v. The proposed underfloor heating will not have the beneficial effect on ambient temperature as anticipated.
- vi. That underfloor heating is not suitable for churches (or parts of churches) which are used only occasionally and thus the heating is intermittent.
- vii. That the informal advice on heating secured from Martin Thomas Associates was not holistic and directed solely at the south transept and not the body of the church as well.

The Diocesan Advisory Committee

18. On 30 November 2015, the DAC issued a Notification of Advice recommending the original proposal subject to detailed provisos. In its letter of 12 April 2017, the DAC expresses its continued support for the principle of the proposal, noting the growing congregation, and its wish to help the parish adapt the building to make it suitable both for worship and for its mission to the local community. It favoured the south transept over the north for the provision of additional facilities. However, it expressed its preference for a timber floor, with some form of suitable inspection hatch.

The Church Buildings Council

19. The CBC commented on the proposal by letter dated 14 January 2016, supplemented by an email of 1 August 2016. It noted the parish's need for warmth and a degree of flexibility. It advocated engaging a specialist heating consultant to secure adequate year-round heating of the nave which could meet all the church's needs by way of mission and worship, and made constructive proposals for tea facilities and even a small extension beyond the sealed north doorway to accommodate toilets.
20. The CBC expressed concerns as to the irreversibility of what is proposed, and suggested that the parish might consider 'the option of a floor covering of a more temporary and less intrusive nature, such as a raised timber floor'. I interpose to correct the impression given by the petitioners in their document in support of the amended proposal which refers in paragraph 5 to the wooden floor proposal being something made by me at the directions hearing on 19 October 2016. On the contrary, although I facilitated a wide-ranging conversation which included reference to a wooden floor, the proposal did not originate with me; it had been raised by the CBC some nine months previously.
21. In responding specifically to the amended proposal, the CBC adopted the observations of the SPAB, noting that it was little changed from what had originally been sought. Whilst supporting the parish's desire better to equip the church for community use, and whilst not formally objecting to the proposals, it considered that there were more sensitive means of achieving the parish's worthy objectives. In common with other consultees, the CBC remarked on the parish's reluctance to seek the advice of experts other than in an ad hoc and informal fashion. The CBC considered that, properly and professionally conceived, a

wooden floor with ‘viewing hatches’ could be conceived which would accommodate heating and protection from damp and moisture penetration.

Historic England

22. The views of Historic England are to be found in letters dated 23 November 2015, 13 July 2016 and 20 July 2017. The latter records the impression which they, and I suspect others, had taken away from the directions hearing, namely that a compromise had been reached that if there were genuinely no other suitable location in the church for a small meeting and worship space, apart from the south transept, that a suspended timber floor should be used instead of a stone tile floor. This would be wholly reversible and, with inspection hatches, would allow the memorial slabs to be viewed both for historic interest and for monitoring. With the benefit of reflection, and on considering the petitioners’ revised plans, Historic England state ‘we think that a timber floor has advantages over a stone tiled floor in that it is reversible and enables environmental monitoring’. Historic England advocated that the parish turns its focus to the north transept, which would be more effective, not least because it could be ‘sealed’ thereby becoming a self-contained unit with its own micro-climate for hearing purposes.

Letters of objection

23. In his letter of 24 July 2017, Mr Izzard draws attention to what he regards as the highly misleading content of the public notice, referring to ‘preserving and displaying memorial slabs’, whereas the most significant historic slabs will ‘disappear under Hyperlon sheets, foam insulation, glue, fibreglass, electric underfloor heating and new tiles’. He points to material on the *Churchcare* website that suggests that underfloor heating should generally be used in continuously heated buildings, which will not be the case in Holy Trinity. He further states that to his knowledge no community group has expressed any interest in using the south transept. He also notes that expert advice from several consultative bodies, particularly the CBC, seems to have been overlooked or ignored.
24. Mr Izzard concludes, ‘the prime movers for these works are the Rev Dr Caroline Curren and her husband Alan. They are leaving Holy Trinity this September’, as indeed they have. The summary document produced in support of the amended proposal reads, ‘... the lead petitioner, Alan Curren, has written this summary, and the whole is endorsed by the petitioners, architect and PCC’. Absent evidence to the contrary, the Court must accept this assertion at face value.
25. Mrs Izzard’s comments are directed to the negative impact which the proposed works would have on the integrity of this historic church. She further contends that it would be a better use of PCC funds to heat the main body of the church which is in regular liturgical use. She considers that it would be ill-advised to proceed with a controversial project such as this during an interregnum.

The law

26. The legal approach is uncontentious and is to be found in the familiar *Duffield* framework (*Re St Alkmund, Duffield* [2013] Fam 158) which takes the form of a series of questions to be considered sequentially. There should first be enquiry to establish the special architectural and/or historic interest of the listed church: see *Re St John the Baptist, Penshurst* (9 March

2015, unreported) at para 22(a) and (b). Thereafter the following questions fall to be addressed:

- (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. Questions (3), (4) and (5) do not arise.
- (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 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? 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 to a building which is listed grade I or II*, where serious harm should only exceptionally be allowed.

When applying the *Duffield* framework, the court should bear in mind that the desirability of preserving the listed church or its setting or any features of special architectural interest which it possesses is a consideration of considerable importance or weight: *Re St Peter, Shipton Bellinger* [2016] Fam 193 at para 48.

27. I therefore turn to assess the evidence in accordance with the *Duffield* framework. I emphasise that I have taken into account all the material placed before me, although I may not have recorded each and every item of the evidence individually in the course of this judgment.

Special architectural and/or historic interest

28. Holy Trinity Poynings lies in the South Downs National Park and is grade I listed. Its listing statement is surprisingly brief, and reads:

Cruciform buildings of chancel, north and south transepts, nave and north porch with central tower. Built about 1370 by the brothers Thomas and Richard de Poynings under the will of Michael de Poynings, who died in 1369. One of the finest village medieval churches in Sussex.

29. The Statement of Significance traces the presence of a place of worship at the site to Saxon times. It refers to the south transept as the site of the Poynings chantry chapel, where generations of the family were buried until the male line became extinct in the fifteenth century. Specific reference is made to two coped coffin lids with crosses in flat relief, and six marble slabs, probably shorn of their brasses in the early 1550s, probably to Michael de Poynings and other members of the family. An old tier-beam in the south transept bears the name of Francis Killingbeck, a former rector who died in 1625.
30. The CBC describe the chantry chapel to the Poynings family as of 'considerable significance'. Historic England refer to the monuments as being 'of high significance

as a result of their early date and the story they tell of the history of the church and its founders'. It considers the church highly unusual, being the little altered survival of a fourteenth century building in the gothic perpendicular style, and asserts that its grade 1 listing means that the church is of exceptional significance.

31. The petitioners remark that the memorial slabs are not expressly mentioned in the listing statement, and suggest that their placing in amongst the highest grade 1 listed churches is misplaced. Whilst the petitioners are entitled to their opinion, I prefer the professional opinions which point to considerable historic interest in the building in general, and in the memorial slabs housed in the south transept in particular.

Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

32. There is broad consensus that the proposals would result in some harm to the significance of the church as a building of special architectural or historic interest. The petitioners cannot sensibly argue against this.

How serious would the harm be?

33. Opinions differ as to the seriousness of such harm. For example, Historic England state 'we have strong concerns regarding the impact of the proposal on the important and vulnerable monuments in the south transept'.
34. The petitioners suggest that the party opponent and others have overstated both the significance of the building and the severity of the harm. They say that two elevated memorials will remain visible. The petitioners rely upon a somewhat partial reading of the conservator's evidence to suggest that in covering and enclosing the memorial slabs they will be safe from harm. I consider this argument to be flawed for two reasons.
35. First, the balance of the scientific material, though speculative, points to a problem of damp which may continue to affect the slabs notwithstanding the insertion of a damp proof membrane. Placing the slabs beneath an electric heating system and a stone floor where they cannot conveniently be inspected and monitored would, in my assessment, place them at risk of harm. Further, displacing the moisture to other parts of the church is also likely to result in harm to the fabric of this grade I church.
36. Secondly, the historic interest of this building is largely to be found in the memorial slabs in the chantry chapel commemorating the founding family. Burying them out of sight beneath heating paraphernalia and a stone floor will cause real and measurable harm to the heart of the historic interest of the church. It troubles me that in the repeated and robust submissions of the petitioners this does not seem to be appreciated. Harm cannot readily be expressed on a linear scale, but taking the totality of the evidence as a whole, I am drawn to the conclusion that the likely harm in this instanced would be considerable.

How clear and convincing is the justification for carrying out the proposals?

37. The petitioners rely on two separate strands of justification and I propose to address them separately, although it is their cumulative effect that will weigh in the balance.

38. First I turn to the need for heating a building which can be unbearably cold in the winter months. I regret that I find the petitioners' case in this regard far from convincing. As the CBC point out, there have been vast improvements in the effectiveness and cost of heating systems since the ill-fated project back in 2007. It strikes me as particularly unfortunate that the parish has not heeded the sound advice from various sources to commission a specialist independent heating consultant to draw up a proposal which would render the nave usable throughout the year. Historic England, for example, point to various possible alternatives to underfloor heating, such as wall-mounted radiators or storage heaters. It also notes that the north transept might be a better alternative if the parish needs a meeting room: it has fewer monuments and can be properly enclosed with a wood and glass panelled screen, albeit that the work would be necessary in respect of the vestry and organ. The petitioners say that all of these alternatives have been considered and rejected. However, their evidence in this regard is unconvincing. I have particular regard both to the informal manner of the 'consultation' with heating experts, and the limit in the scope of the instruction solely to the south transept. This is perhaps suggestive of a closed mind.
39. The second strand of justification is flexibility for liturgical and secular purposes. In relation to community need, the petitioners concede that the actual evidence of this is minimal, but continue 'experience elsewhere in the benefice (Pyecombe Church and Fulking Village Hall) suggests that once there is availability and opportunity, demand will follow'. I do not consider that optimistic aspiration of an unquantified future need greatly assists in evidencing justification. Equally, the laudable activities throughout this benefice in increasing its parish share and building larger congregations are worthy of considerable respect and praise, but cannot (of themselves and without more) provide a justification for the purposes of the *Duffield* framework.
40. Even taking the two strands in tandem, I regret that I do not find the justification for these specific proposals either clear or convincing. I share with the party opponent and with the other consultees a sympathy for the parish. I acknowledge the need for a warm environment both for worship and for unparticularised community activities. But the burden of proof lies on the petitioners to demonstrate a clear and convincing case not for some generalised concept but for the specificity of what is actually proposed. I find this to be conspicuously lacking.

Will any resulting public benefit outweigh the harm?

41. The CBC and others indicate, with some force in my view, that the parish may ultimately be disappointed by the results if it implements what is currently proposed. It will produce a cramped space for occasional use which would be disproportionately expensive to heat when it is needed.
42. The preponderance of the evidence suggests that the implementation of the proposal is unlikely to achieve what the parish seems to want. Even on the petitioner's best case, the underfloor heating in the south transept will only provide a partial solution, and one which will be largely compromised due to that inability to isolate the chantry chapel as a sealed environment. In my assessment, the parish will gain relatively little from undertaking the proposed notwithstanding considerable harm to the historic interest of this grade 1 building.

The petitioners have not advanced a sound and compelling case for displacing the strong presumption against change and tipping the scales in favour of granting the petition.

43. It follows that this petition must be dismissed. The costs of the petition will be borne by the petitioners, to include a correspondence fee for the registrar.

Postscript

44. The petitioners invite me to grant a faculty for those elements of this petition which are uncontentionous. As the revised Schedule of Works is specific and holistic, I struggle to identify any standalone element which can survive the dismissal petition. If however, the petitioners are able to identify a severable part of the proposed works which ought properly to proceed, I would be content to give consideration to that. Equally, I should indicate that were the timber floor proposal to find favour with the PCC when it comes to review the outfall of this judgment (as it did with those who attended the directions hearing) this is something which is likely to achieve expedited faculty approval. All concerned wish to see this church and its community thrive, and it may well be that a more ambitious scheme that aims at bringing the nave into year-round use is a more appropriate way forward.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

6 December 2017