

**GREAT NESS: ST. ANDREW**

**JUDGMENT**

- 1) The church of St. Andrew in Great Ness dates from the Thirteenth Century and has a Grade I listing. The church is built of red sandstone although as the photographs provided to me show there is considerable variation in the actual colour of the red or pink stones with a number of cream coloured stones also being present. The bulk of the proposed works will be to the tower where pale pink stones predominate.
- 2) On 9<sup>th</sup> January 2014 a faculty was issued to the incumbent and churchwardens on the direction of the Archdeacon of Salop authorising stonework repairs and replacement. In simple terms the repairs involve the removal of perished stonework and the insertion of new stonework in the spaces created. It was a condition of the faculty that the works be performed in accordance with the specification provided by Baart Harries Newall (Mr. Mark Newall being the Church Architect). The specification stated that the new stone was to be “Grinshill Red Sandstone”. In the circumstances set out below I now have to consider an application to amend the faculty to permit the use of Cove sandstone instead of “Grinshill Red Sandstone”.
- 3) The Court’s power to amend a faculty derives from **Rule 19.3** of the **Faculty Jurisdiction Rules 2013**. I am entitled to amend a faculty provided I am satisfied that it is “just and expedient” so to do. In cases where an amendment amounts to a substantial change in the works proposed I am to give such directions as to further notice as I consider just.
- 4) It will be immediately apparent that the choice of the type of stone to be used in repairing a historic listed church is an important matter. The new stonework will be a readily visible and important part of the structure. Both because of the significance of this church, as shown by its listing, and because it is a building erected to the Glory of God it is important that the stone used in repairing its

structure is of high quality and matches the existing stonework to the extent that this is possible.

### **The Application to Amend the Faculty.**

- 5) The proposed change in the type of stone was initially being regarded as something of a formality with neither Mr. Newall nor the Diocesan Advisory Committee Secretary appearing properly to appreciate the steps needed to obtain an amendment of the faculty. However, the intervention of Mr. Shute to which I will refer below has assisted in ensuring that the matter has been properly and fully considered. I have treated Mr. Newall's letter of 3<sup>rd</sup> July 2014 to the Diocesan Advisory Committee Secretary as an application to amend the faculty. There have been detailed submissions from Mr. Newall on behalf of the Parochial Church Council in support of the proposed amendment. As will be seen my consideration of the matter has been assisted by input from the Diocesan Advisory Committee and English Heritage together with Mr. Shute's comments.
  
- 6) There was originally some inconsistency in the reasons being put forward by Mr. Newall for the change of stone. Thus in his e-mail of 16<sup>th</sup> June 2014 he said that *"the current red Grinshill is quite dark red in colour and extremely soft"*. At that stage Mr. Newall was saying that red Grinshill was not, in fact, a suitable stone. On 26<sup>th</sup> June 2014 he said that red Grinshill was *"not currently available"*. In his letter of 3<sup>rd</sup> July 2014 Mr. Newall referred to Myddle Sandstone (which is the stone which Mr. Shute says should be used and which he, Mr. Shute, says is the correct name for red Grinshill stone). At that stage Mr. Newall had obtained a technical data sheet for Myddle Sandstone and seen some photographs but not seen a sample. Then he believed that Myddle Sandstone would not be a good colour match for Great Ness and that it had a greater porosity than Cove Sandstone although he noted that it had *"reasonably good building properties"*. Since then Mr. Newall has seen a sample of the Myddle Sandstone and concluded that it *"actually looks very good"*. As a result of those further investigations the positions of Mr. Newall and the Parochial Church Council as to the respective merits of the stones are as follows:

- a) Both Cove Red Sandstone and Myddle Sandstone are New Red Sandstones of Triassic age. The former would come from a quarry in Scotland whereas the latter can be obtained from Shropshire.
- b) Mr. Newall continues to prefer Cove Sandstone for use on this church. He makes that recommendation after close inspection of the church and after consultation with the contractor and the stone mason. Mr. Newall believes that Cove Sandstone will be harder-wearing than the alternatives and that it is a suitable colour match for the pale pink sandstone of the tower. However, having now seen a sample of the Myddle Sandstone his earlier concerns about that stone have been removed and Mr. Newall now accepts that it would be an appropriate stone to use at Great Ness and he would be content for it to be used.
- c) There is a marked difference between the costs of the two stones with the cost of Cove Sandstone being £3,360 per m<sup>3</sup> and that of Myddle Sandstone £4,800 per m<sup>3</sup>.
- d) The approach of the Parochial Church Council is to prefer Cove Sandstone because it is markedly cheaper than Myddle Sandstone and is harder-wearing while still being a good match in terms of colour and general type of stone for the existing stonework.

**Mr. Shute's Concerns.**

- 7) Mr. James Shute is a director of Shropshire Stone and Granite Ltd which operates (in Mr. Shute's words) "*the only remaining red sandstone quarry in Shropshire*" at Myddle producing Myddle Sandstone. He explains that this stone is often referred to as Grinshill red because the Grinshill quarry was nearby and formerly operated under the same ownership.
- 8) Mr. Shute learnt of the proposal to use Cove Sandstone at Great Ness and this caused him to protest on 24<sup>th</sup> June 2014 in strong terms to the Diocesan Advisory Committee a protest which was passed to the Registry and to me. It was Mr. Shute's action which ensured that proper attention was given to the proposed amendment of the faculty. In particular Mr. Shute's intervention ensured that the

change of stone was not treated as a mere formality. I am grateful to him for that. Although Mr. Shute clearly has a commercial interest in this matter I am satisfied that he is also motivated by a real concern to ensure that stone which he believes to be appropriate is used (and also that stone which he believes is inappropriate is not used). It is for that reason that I directed that Mr. Shute should be informed of the matters being put forward by Mr. Newall and the Parochial Church Council in support of the proposed amendment together with the advice of the Diocesan Advisory Committee and the views of English Heritage and invited to comment thereon. To the extent that authority was needed for that step it derives from **Rule 19.3 (2)**. Mr. Shute has taken up that invitation and has provided detailed comments.

- 9) The gravamen of Mr. Shute's comments is that Myddle Sandstone should be used rather than Cove Sandstone and in his various letters and e-mails he puts forward the following reasons for such an approach:
  - a) The church was built using stone from the local Nesscliffe quarry. That quarry is no longer in operation but he contends that the Myddle Sandstone is geologically identical to the stone which was used to build the church.
  - b) He appears to accept that Cove Sandstone will be harder wearing than Myddle Sandstone but says this is not a good reason for using an otherwise unsuitable stone and he makes the point that although made of a stone which is geologically identical to Myddle Sandstone "*St. Andrew's has managed pretty well since the 13<sup>th</sup> Century*".
  - c) Mr. Shute makes a point of principle as to the approach which he believes the Church (and hence this Court) should adopt. He says that the reason Cove Sandstone is cheaper than Myddle Sandstone is that the producers of the former are a large operation able to take advantage of economies of scale whereas Myddle Sandstone is produced by a small local quarry. In this regard Mr. Shute says that the Church and English Heritage have a duty to protect smaller operators quarrying local stones to avoid them being driven out of business by larger operations which would then impose a drab uniformity of approach. Mr. Shute makes an analogy with the difference

which many people see between eggs from free-range or battery-farmed chickens. He contends that the former are more expensive because they are produced on a smaller less intensive scale but that the increased price is thought to be worth paying because of the moral preference for free range chickens. In the same way, Mr. Shute says, it is appropriate to support small local quarries for reasons of good taste and social responsibility. He believes that it is part of the Church of England's responsibility as an important user of stone to protect and encourage the smaller local quarries.

- d) Mr. Shute emphasises the strength of his feelings by generously saying that he (or rather his company) will sell Myddle Sandstone to the Parochial Church Council or to its contractor for the same price as that at which the Cove Sandstone is being offered. He will do this even though it will cause him loss because he "*cannot bear to see a travesty of my doorstep*".

**Advice Received.**

- 10) I sought the advice of the Diocesan Advisory Committee and caused English Heritage to be consulted. The Diocesan Advisory Committee has advised that it does not object to the use of Cove Sandstone. I have been provided with details of the reasoning leading to that conclusion. It is apparent that there was some difference of opinion in the Diocesan Advisory Committee but that the deciding factor was that Committee's knowledge of Mr. Newall as a highly regarded conservation architect with considerable experience of working on historic churches. The Committee took account of the investigations which Mr. Newall had undertaken and concluded that his preference for Cove Sandstone was a legitimate view. In essence the Committee concluded that it had no reason for believing that Mr. Newall's preference was in any way perverse and so it was prepared to be guided by the assessment which he had made after considering the matter on site with the stone mason who was to do the work.
- 11) Although not objecting to the proposed use of Cove Sandstone the Diocesan Advisory Committee did take the view that this stone might, over time, weather differently from the other stone on the building. This was not sufficient to cause

the Committee to decline to follow Mr. Newall's preference but it did cause the Committee that the Parochial Church Council should be informed of this potential difference in weathering.

- 12) On behalf of English Heritage Mr. Alan Taylor contributed to the Diocesan Advisory Committee's consideration of this matter. I have been provided with his comments. In substance these accord with the conclusion of the majority of the Diocesan Advisory Committee. Given that Mr. Newall is an experienced and respected conservation architect who has considered the matter with care and whose conclusion is not patently unsound then English Heritage is prepared to respect his judgment and preference for Cove Sandstone.
- 13) Although accepting Mr. Newall's judgment Mr. Taylor did point out that the normal course should be to use local stone if it is available because it is "*likely to be the best match in colour, texture and performance to the original*". I interpolate to say that this is clearly a sound approach. Mr. Taylor said that such a preference for local stone is dependent on it being of appropriate quality and fit for its purpose. At the time of Mr. Taylor's comments Mr. Newall's stance appeared to be that red Grinshill was not an appropriate stone to use. Mr. Taylor's own experience of that stone had been that it could be "*very variable in quality*". It is to be noted that the latest position is that Mr. Newall accepts that Myddle Sandstone would be appropriate for use at Great Ness although he believes Cove Sandstone is preferable being markedly cheaper and of comparable quality.

#### **Analysis.**

- 14) Given the uncertainty as to what is meant by Grinshill Red Sandstone it is clearly "just and expedient" to amend the faculty if only to the extent of ensuring that all are clear what stone is to be used.
- 15) The more difficult question is whether the amendment should permit the use of Cove Sandstone (as the Parochial Church Council supported by Mr. Newall wish) or should require the use of Myddle Sandstone (Mr. Shute's contention). There is no suggestion that the use of one of these stones rather than the other would affect the special character of this listed church. It is also common ground that

Myddle Sandstone would be an appropriate stone which could properly be used at Great Ness. The area of dispute is as to whether Cove Sandstone should be permitted.

16) That dispute is to be determined by deciding whether Cove Sandstone is an appropriate stone for use at this church. If it is appropriate then its use can be permitted. Where a stone is appropriate for use then that use can be permitted even if there is another stone whose use would also be appropriate. However, in my judgment, a distinction needs to be drawn between stone which is adequate for use and that which is appropriate. Stone which functions in a satisfactory physical manner may well be adequate for repair works but may well not be appropriate. I have already said that St Andrew's is a Grade I listed church built to the Glory of God and the use of second-best materials would not be justifiable or permissible. In deciding whether a particular type of stone is appropriate for use as part of a church building account must be taken not only of the functional qualities of that stone but also of its appearance and of the nature of the stone alongside which it is to be inserted. As Mr. Taylor has said where local stone is available it is likely to be the appropriate stone to use as being the best match for the stonework alongside which it is to be placed. However, if such stone is not available then clearly it cannot be used. Similarly, if such local stone as is available is not fit for its purpose then its use will not be compelled. In addition there may be stone which although not locally produced is appropriate in terms of matching the original stonework in appearance, texture, and performance. In those circumstances the fact that the stone comes from some distance away does not, without more, make its use inappropriate. The purpose of the control exercised by the faculty jurisdiction in cases such as this is neither the imposition of an artificial antiquarianism nor to seek an illusory historic integrity. Rather it is to ensure that such stone as is used on historic churches is both functionally sound and aesthetically fitting.

17) It follows that the fact that Cove Sandstone is cheaper, even markedly cheaper, than Myddle Sandstone is not of itself a justification for allowing the former if it is not otherwise an appropriate stone for use at this church. As I have already explained the use of second-best materials is not justifiable in these

circumstances. It follows that if Cove Sandstone is not an appropriate stone then its use cannot be permitted even if such use would achieve a substantial saving of cost.

18) However, if the position is that Cove Sandstone is otherwise an appropriate stone then its use is not to be forbidden because it is produced by a large business which is able to achieve economies of scale and so sell the stone at a lower price than its competitors. Smaller local quarries such as that operated by Shropshire Stone and Granite undoubtedly perform a valuable function. In addition it is of benefit to the Church of England to have multiple sources of high quality stone available so that those effecting repairs to historic churches have a proper choice of supplier and so that quality stone is available for use in such repairs. Nonetheless, it is not permissible to impose artificial restrictions on the type of stone to be used nor to make restrictions based on the scale of the operation producing the stone. The analogy which Mr. Shute puts forward to the choice between eggs from free-range or battery-farmed chickens does not hold good. It is not for this Court to express any moral or ethical preference as between eggs from those sources but I am entitled to say that there is no moral or ethical distinction to be made between different types of stone based on the size of the business producing the stone. It is neither more nor less ethical for a contractor or a Parochial Church Council to use stone from a large producer than from a small producer. The size of the business producing a particular stone cannot be a relevant factor in the consideration of whether the stone is appropriate for use in a particular church.

19) To the extent that it is appropriate for there to be protection for local quarries in the faculty system then that protection comes from a rigorous insistence on quality and by adoption of the starting point that stone from a quarry close to the church in question will normally be the appropriate stone to use in repairs. The use of stone which would otherwise be appropriate will not be permitted merely because such stone is cheaper than the appropriate stone. If, however, stone which is appropriate in terms of appearance and quality is cheaper than other stone because it comes from a large operation then a contractor or Parochial



Church Council is not to be compelled to use more expensive stone from a smaller outfit.

20) The position here is that the Diocesan Advisory Committee and English Heritage have considered the matter with care. Both those bodies inform me that Mr. Newall is an experienced and highly regarded conservation architect and I accept that assessment. At one level it is unfortunate that Mr. Newall has shifted his arguments over time but I am able to see this as an indication of the care which he has taken. In particular he has clearly taken steps to investigate Myddle Sandstone and has accepted its suitability. This is certainly not a case where he has taken up a position and declined to reconsider it. The advice which I have been given is that Mr. Newall's view that Cove Sandstone is an appropriate stone for use at Great Ness is a legitimate professional assessment from which neither the Diocesan Advisory Committee nor English Heritage are prepared to dissent. In those circumstances I accept that Cove Sandstone is an appropriate stone for use at Great Ness.

21) This means that there are two types of stone both of which are regarded by the architect, the Diocesan Advisory Committee, and English Heritage as being appropriate. In those circumstances the Parochial Church Council wish to use the cheaper stone. It is right that they be permitted to do so and I will not forbid the use of Cove Sandstone nor will I compel the use of Myddle Sandstone.

22) However, in the course of the consideration of this application a number of matters have come to light which do not appear to have been known when the Parochial Church Council first chose to use Cove Sandstone. Those are the Diocesan Advisory Committee's assessment that there may be some difference in weathering if Cove Sandstone is used; the acknowledgement by Mr. Newall that Myddle Sandstone would be suitable for use; and Mr. Shute's offer to match the price of Cove Sandstone.

23) In those circumstances I authorise amendment of the faculty to provide that the replacement stone may be either Cove Sandstone or Myddle Sandstone at the election of the Parochial Church Council. I impose a new condition on the faculty which is that before an order for stone is placed the Parochial Church Council

having received advice from Mr. Newall shall consider (a) the advice from the Diocesan Advisory Committee that Cove Sandstone might weather differently from the other stone on the building (b) Mr. Shute's offer to match the price of Cove Sandstone and (c) Mr. Newall's assessment that Myddle Sandstone would be acceptable for use at Great Ness.

- 24) The effect of the amendment and the new condition is that if having considered those matters the Parochial Church Council still wish to use Cove Sandstone then they are entitled to do so but if, on reflection, they choose to use the Myddle Sandstone then that course will be equally permissible.
- 25) I am conscious that the time taken in dealing with this matter has created a risk that it will not be possible to perform the works this year. I realise that this will be very frustrating for the Parochial Church Council working to preserve this historic church as a place both of beauty and of active worship. I regret that frustration but fear that it is an inevitable consequence of the need to ensure that the materials used are appropriate.

STEPHEN EYRE  
CHANCELLOR  
6<sup>th</sup> August 2014