

Neutral Citation Number: [2020] ECC Bla 2

In the Consistory Court of the Diocese of Blackburn

In the Matter of Penwortham, St Mary (Grade II*), and

In the Matter of a Petition dated 15th March 2020 presented by Rev'd Christopher Nelson (Vicar) and David Thornton and John Kay, Churchwardens

JUDGMENT

Summary

1) Penwortham is a town in the South Ribble area of Lancashire, facing across the river Ribble to the city of Preston, which stands on the north bank. The petitioners seek permission to carry out works of repair to the parapet of the tower, by re-bedding masonry and laying new lead, and also making repairs to the west window. The main items there are replacing stone in the tracery and mullions on the exterior and interior of the building, at a cost in excess of £54000. (The petition quotes £65000, but there are further figures in other documents.) The only body that has offered objections or criticisms, is SPAB, but they have indicated that they do not wish to become formal objectors, and ask that I take their views into account when I make my decision. That is the way that Rule 10.5(2) of the Faculty Jurisdiction Rules 2015 directs the Chancellor to deal with these circumstances, and this I will do. In indicating they did not wish to become formal objectors, SPAB also specifically invited my attention to two emails sent by Mr Nelson on 21st August, one to the Registry, and one to the church architect, to which they took objection.

Background

2) This is a Grade II* building. The chancel is 14th century, and the battlemented tower at the west end is 15th century, which I assume covers the window, at least as far as the stonework is concerned. The nave was rebuilt in 1855-56 with low aisles by E G Paley, and this involved raising the roof (the architects suggest this may have been earlier, in 1822) and removing the north and west galleries. Much more recently, between 2009 and 2011, the nave was re-ordered, with the introduction of under-floor heating, and the pews being removed and replaced by chairs. On the west side of the tower is a doorway, above which at first-floor level is the three-light window with perpendicular tracery and hood mould. The window contains stained glass, which I assume to be Victorian, but I have found no definite information about it.

3) I visited the church with the then Archdeacon of Blackburn during the extensive re-ordering in 2009-11, when it was discovered that, in the C19th, many burials had taken place beneath the area subsequently covered by the enlarged nave. Many of these graves had collapsed in the intervening years and were threatening to undermine the new base needed for the underfloor heating. In the result what had been a large and comprehensive re-ordering project, became even more prolonged and involved extensive archaeological investigation, and the insertion of piling and concrete frames to support the new floor. The skeletal remains were re-interred after examination in newly discovered crypts under the church. Overall the effect of levelling the floor and installing chairs is said to have resulted in '*a light and airy interior, which allows more flexibility of use*'. However this prolonged re-

ordering, and long period when it was not possible to use the building at all, and doubtless the increased financial demands, must have caused considerable stress for Mr Nelson and the lay members of the church.

4) Since that time, I have had reason to visit St Mary's on at least one occasion, probably in the last 2-3 years, and have viewed the interior. There is also an extensive and demanding churchyard, (within the conservation area), which is still in use. The remains of a motte and bailey castle can be found within the church grounds, which is designated as an ancient monument. Although I retain an impression of both the interior and exterior, regrettably, I do not recall the west window.

5) I first saw the papers relating to this application in the latter part of April 2020, which was very shortly after the first period of lockdown imposed by Government in its response to the Covid-19 epidemic, had started. Churches were shut, and travel strongly discouraged. The DAC were having to find alternative ways of working from their usual monthly gatherings. Any personal view of the window by me was not possible at that time, even if it had otherwise appeared desirable. For reasons I will come to, I am not sure that such a view would have assisted in what has emerged as the central point in SPAB's objections, namely the extent of remedial work that is required. I have been provided with a number of photographs, and plans of the projected areas of work.

6) It was apparent, back in April, that the work to the parapet was indeed in the nature of repairs, and that when completed, there would be little if any sign of what had been done. I indicated I was ready to approve this part of the proposals at that stage, if the petitioners so wished, but as far as I know, they have not wanted to proceed in that way. As it is, I have plans of the work, and the DAC's **Recommendation**, and I see no need to give any further description or to spend time describing the work.

7) However in relation to the large-scale replacement of areas of the mullions and tracery of the west window, the DAC on 3rd April had not only **Recommended** this work for approval by the Court, but indicated it did not consider it as something that could or would harm the significance of the listed building. They certainly did not advise consultation with any of the amenity bodies. Having had recent experience of a similar building project on a major window in a listed building within the diocese, it seemed to me possible, if not even likely, that the amenity bodies or some of them, might take a different view, and I made clear consultation needed to take place.

8) It was plainly pointless for Public Notices to be displayed *inside* the church when no-one could go in and see them, so I gave directions for alternative steps to be taken to bring the works to the notice of parishioners and others.

9) The petitioners have not completed a **Statement of Significance** or a **Statement of Needs** as part of their application, as set out in Rule 4.3 of the Faculty Jurisdiction Rules 2015, which provides that '*Where proposals involve making changes to a listed church...intending applicants must provide the DAC with (such statements)*'. I assume this was probably on the basis they were not making '**changes**' to the listed building. They would probably contend that what they wished to do was fully set out in the drawings and the 44 page Schedule of Works, Preliminaries and Specifications prepared by their church architects, Messrs Fish Associates of Bolton in February 2019, and that the

reasons for the work were obvious. I assume they took the view this, as well as the work to the parapets, was essentially a repair project and not one making alterations or changes. The architects' firm acts for a large number of historic churches in the diocese and is well known for its skill and experience. I believe I have had sufficient information available to me to cover everything those documents are likely to have dealt with. The contentious issue - the window - is a very restricted part of the whole church.

10) In April, I asked if any previous Quinquennial Inspection Report relating to the window could be provided to me, and the latest one has now been provided. The inspection of the church for the QI Report took place in September 2017, and the Report is dated 10th January 2018.

QI Report

11) The Executive Summary notes that since the major re-ordering of 2009 -11 had been carried out, a number of other projects had been undertaken, but *'there had been little or no maintenance of the fabric and we would suggest that this should be prioritised. Evidence of water ingress is now damaging the fabric...'* Section 3.7 deals with the tower and west window, and there are relevant photos. *'All mouldings on the west face of the tower are in an advanced stage of erosion and should be monitored. The aedicule over the west door is missing. All mouldings to all windows on the tower are fragmenting and should be monitored against further erosion, and these are now deteriorating to a point where replacement stone tracery to the west window is required'*. The photo at figure 34 indicates the erosion to the upper part of the exterior tracery, particularly well. The report described itself as *'summary'*, and made clear it was not a specification.

12) There is a drawing (designated 894/GA10) by the architects at a scale of 1:20, showing the nature of the intended extensive work to the window on the inside and exterior. These clearly demonstrate the nature and shape of the tracery of the window and the nature of the restoration proposed. The nature of the defects that have arisen, that is, the damaged or eroded areas, are shown by shading or 'visual clues', and by description. In particular, areas of defective stone suffering with erosion and loss of surface definition, areas with *heavy* erosion and loss of surface definition and core fabric, and areas of replacement stone (to be introduced), are all shown. The latter covers the two central mullions and all the tracery on the interior and exterior. One has to go to the QI report, or to the larger photos submitted as part of the application together with other documents and reports (referred to below), to obtain a fuller understanding of the defects.

13) The work proposed on the window is far more complex than just the replacement of weathered stone with new cut pieces, as is evident from the narrative provided on the main drawing designated 894/GA10. It is I think worth setting this out in summary form. It demonstrates that work has to be undertaken to the elements of the window by different trades working in conjunction, and that the final re-construction of the parts will again require combined working.

Generally

- Record windows in situ; label components
- Make accurate templates of the apertures for all leaded lights
- Install temporary propping to support arch and tracery

Ferramenta

Make accurate templates and carefully remove in connection with removal of stone

Leaded lights

Remove all from masonry in conjunction with masons

Transport to studio

Record and examine panels, initial cleaning and inspection, remove loose/failed cement

Replace failed lead perimeter cams and 5 quarries

Renew all copper ties in original locations

Clean leaded lights before installation

Reinstate all panels into masonry using lime mortar, liaising with masons

Opening Casement

Remove, clean off corrosion and paint

Renovate and re-decorate with (designated) paint

Reinstall into leaded lights

Stonework

Install temporary propping

Remove sections of defective stone mullions and tracery

Fabricate and install new replacement stone sections** secured with resin bonded stainless steel dowels in asymmetric dowel pockets (my emphasis)

(the dowels are shown on the diagram of the window, as providing connections between the parts of the new stone tracery, and also between the new tracery and the existing stone arch)

Repoint all joints, supply and install new polycarbonate guard.

** 'All stone work stone (is) to match the existing layout and details in terms of block sizes, joint positions and splays'.

Amenity bodies

14) **Historic England** responded to the consultation notice given to them on 15th May, on 21st May indicating their '*specialist staff (had) considered the information received and (did) not wish to offer any comments on the proposal*'. The **Victorian Society** on 26th May opined: '*Not one we wish to offer any comments on*'.

15) **SPAB** responded on 10th June. The application had been reviewed by their casework and technical teams. They accepted that repairs to the window were '*necessary*' but the proposals in respect of the stone replacement were '*excessive and without justification*'. '*It is possible to retain more of the historic fabric through conservative repair and avoid the extensive replacements proposed*'. The drawing illustrating the condition of the stonework was '*incredibly helpful*', but they did not consider the treatment proposed '*followed the findings/illustration of the condition assessment*'. They advised that an independent stone conservator be commissioned to undertake an assessment of the fabric and advise on the type and extent of repairs and replacement needed.

They questioned the renewing of the polycarbonate sheeting and recommended a fine wire grille be considered by the parish and their architect.

16) In response, the parish submitted a report dated 30 June from Mike Bullen of Bullen Conservation Ltd obtained through the architect. He had visited the site in connection with a tender submission. (To that extent, I can see that SPAB would not consider him *'independent'*.) The west window in this Grade II* listed building showed that this was a repair requiring like for like replacement in natural stone. He agreed with the extent of repair shown on the drawing. He had considered *'reducing the extent of repairs from a conservation viewpoint however the majority of areas under question are beyond repair and now need replacement. More importantly the work is necessary because if not undertaken when the leaded lights are re-instated we will not be able to guarantee the surroundings of the stained glass and not make them watertight or weatherproof.'* *'From a financial point of view if we reduce the extent of the masonry work I'm concerned this will cost you more money in the long run with scaffolding etc as we could find ourselves having to revisit the same area again within a very short period of time'*.

17) A further, more comprehensive, document dated 22nd July provided to the architects by Lloyd and Smith Ltd was also forwarded to SPAB. This firm is the contractor named in the petition. This included a photograph where the individual window stones are numbered, and a spreadsheet describing each area inspected. Garry Lloyd, the company secretary, signed their report, and he stated the following: *'the stonework externally is in a very poor condition and in my opinion need(s) to be replaced in most parts due to the extreme erosion of the main sections of the tracery'*. He then identified the 13 stones by description and number. It is obvious and to be expected, that his inspection shows erosion to be far worse on the exterior than on the interior, and the possible light remedial work on the interior that he suggests as being needed (on the spreadsheet) is not matched by what he says about the exterior of the identical stone.

18) The two mullions (no's 1 and 2) were described as requiring *'50:50 replacement'* but as far as I can see the plan view of each of these stones shows it to be a single piece of masonry, so if 50% were to be replaced and 50% retained, then there would need to be some cutting and bonding together of the two pieces (one new and one historic), one being on the interior and one on the exterior. I can see this could be done in theory, but one does not thereby really end up in conserving the historic stone. Half is removed and replaced by new stone which is bonded to the remaining part of the historic stone in some way.

19) He describes each mullion as being *'lightly eroded'* internally and the internal surface as *'soft and friable'*, with *'heavy erosion'* externally, with *'loss of edge profiles'* and the seating on the cill externally as *'completely missing'*. Of the next 9 stones, he gives a detailed description of each of them, and concludes that each *'needs to be replaced'*, and as to no's 12 and 13, (part of the cill and hood mould) he states *'traditional masonry indent repair needed'*.

20) He indicates that this amount of work necessitates all the glazing has to be removed, (as the architects propose), and *'it would make sense to replace both mullions while the window is dismantled. The work should ensure the window (is) good for many years to come, but if the existing*

mullions are not replaced...they will need to be inspected annually and may only have a life expectancy of 5 to 10 years looking at their present condition'.

21) The architects supplied SPAB with further photos of the interior and exterior, receipt of which was acknowledged on 27th July.

22) On 17th August SPAB responded, having viewed all the information supplied. They concluded that *'the proposed replacement of masonry components is greatly disproportionate to the defect damage and decay observed in the photographs supplied. Consequently we maintain our view that the proposals are excessive and that the application lacks the clear and convincing justification required'.*

23) They detected the following shortcomings in the Bullen and Lloyd and Smith reports:

- I) *They failed to identify the host stone in terms of geological description*
- II) *The reports fail to provide any historical/contextual information about the tracery window masonry*
- III) *They offer subjective condition values rather than professionally recognised values*
- IV) *The reports only offer a limited remains of action under 'Works Needed', There are a great number of treatments of individual items of defect damage and decay affecting historic 'caved' (sic) stonework available in addition to 'descale' and 'replace' as stated within the spreadsheet. Such treatments/alternative conservative repair methods do not appear to have been explored or if they have, no justification has been provided to explain why they have been discounted.*

24) They urged that *'the proposed scheme be reviewed and that the full range of conservative repair treatments available fully explored. We advise that it would also be prudent to seek additional specialist advice from an **Icon** accredited stone conservator who could help identify the causes of the damage and decay and advise on the range of suitable repair options'.*

25) **Icon** apparently maintain lists of those skilled in various areas of conservation, apparently, and are recognised and approved by CBC. The petitioners and their architect responded by seeking names of relevant conservation experts from SPAB, but of the four names supplied, two were unable or unwilling to assist, and all four were located a very long way from the Preston area of Lancashire, namely in Devon, Lincoln, Somerset and Maidenhead. Of the two who expressed willingness to assist, they wanted plans and photos to be supplied by the parish, and were unable to begin work for several weeks.

It seems to me likely that any further investigation of the kind envisaged by SPAB (as set out in paragraph 24), would have involved two days or more for any of these firms, and also more than a single person to undertake the work. Any estimate of cost was not easy to obtain, but seems to have been put by one firm at not less than £700 plus VAT, which seems to me somewhat on the conservative side. Having considered the matter, Mr Nelson was unwilling to commit St Mary's to funding such further expense. As he pointed out, there was something very odd, ('obscene' was his word), about the petitioning church, (having put forward detailed plans for restoration, and then provided two reports from stone conservation firms which followed on-site inspections of the window, which supported the architects' approach, then being asked to underwrite the cost of another expert

'to potentially argue against (his) architect and stonemason.' It is plain to me SPAB believed this further expert would, or might well, undermine the position the church believed it had established. *'If SPAB wish to object to the proposal, they should pay for their own report, and not expect me to do so!'*

26) He went on to make various comments on how he viewed SPAB's approach to this case, to which the latter took strong exception, regarding them as defamatory. These comments were sent to the Registry and to the architects, but the DAC secretary was copied in. Unfortunately they were also uploaded onto the on-line faculty system, but were removed following representations from the Society. For obvious reasons, I will not set them out in this judgment.

Discussion

27) Plainly this petition raises a number of contentious issues. The main one revolves around the question: what amount of restorative work should be undertaken on the window?

28) We have all seen the effects of replacing stone work on an old building. In terms of appearance and colour, and general 'crispness' of any cut or shaped pieces, the new work stands out. In a structure like this window, the juxtaposition of new and old stone is bound to cause a considerable degree of contrast. It does not seem to me, as a layman, that decisions about the amount of damaged or eroded stone that should be removed, to be replaced by new, is something on which I can or should take a personal view. It is for architects, stonemasons and conservationists to offer their expert view. It will not be surprising if different 'experts' take different views on these issues.

29) Further, it has to be remembered that the stonework of the window is there to provide a degree of support not only to the glass within it, but also the stonework above and around it. Judgments about what ought to be removed and replaced, are therefore also judgments about strength and safety, not only on appearance, and demands an assessment of what is good building practice. I do also see that where it is determined by the custodians of the building, and their advisers, that repair work is required, there will be a strong desire to carry out the work comprehensively, and not do a 'patch and mend' repair, that will need to be re-visited in a few short years at further expense.

30) From the outset, SPAB have made clear that in their view only a minimum of historic fabric should be removed. In practice, that will conflict with what I think is the stance adopted by the parish, summarised above. The so-called Duffield Questions, set out in **Re St Alkmund Duffield** [2013] Fam 158, which suggest, (or even *mandate* these days), the correct approach for the ecclesiastical courts to take, to evaluate proposed alterations to listed buildings, which may harm their significance as such, and involve weighing the extent of the harm against the potential benefits both for the church and for the public, do not seem to me to be of great help in a case such as this. It is plain that this is in essence a repair project, but one which will be readily visible if completed as the petitioners wish. A large amount of new stone will be visible, perhaps indefinitely, and certainly for many years to come. I do not think SPAB contemplate a situation arising where no new stone would be needed if only their approach were to be adopted, so some signs of the repair work undertaken, would be visible. **Duffield** is helpful in stressing the presumption in faculty proceedings against anything which adversely affects the character of the listed building, as does the growing body of case law that the

court should only allow the minimum degree of change to achieve the desired object. These principles do both point in the direction of adopting a conservative, minimalist approach, but do not necessarily indicate what that is, certainly in a case like this.

31) Some of SPAB's criticisms of the petitioners' reports, set out in paragraph 23 following, seem less than important. A failure to identify the type of stone in the existing window, is in my judgement irrelevant. No one suggests the ancient stonework should be preserved because of its rarity value as stone. A failure to identify the history of the window and its tracery is not going to inform, let alone determine, what needs to be done to it at this point in time for its future preservation. Offering '*subjective condition values*' seems to me adequate to lay a foundation for deciding on future action, if done responsibly and carefully. What professional evaluations or descriptions are like, I do not know. If it is determined that the radical action is required, that is, replacement, lesser degrees of repair become irrelevant.

32) At the end of the day, there is a judgment call about this. Given that the tracery is one-off, and not like the door on a classic car suffering from rust or other deterioration, where 1000's of that model were originally manufactured, a decision has to be made, at what point does patching up become pointless, and a replacement become necessary. A decision has to be made not only about appearance, but strength and integrity, well into the future. In theory old pieces of stone can be patched in one way or another, and be joined to new, but every alteration, patch and so on, is a step away from the original.

Conclusion

33) In my view the petitioners have established that far-reaching repairs are required at this time to this window. Further reports by others may have produced alternative views, but I am not minded to adjourn my consideration and a final decision until the church undertakes to provide a further report. They have in my judgment provided sufficient support for the position taken by their architect. I also agree that asking them to pay for another report which it is expected by SPAB to undermine their existing reports, is indeed somewhat strange, and I think unnecessary. If SPAB's implicit belief, that further report would have come up with less radical solutions, how could the differences be resolved? In my view it could not have been done without a hearing of those espousing the varying viewpoints, which inevitably would have been at the parish's expense. A Chancellor is there to weigh evidence, and not act as an expert in what is a specialised field.

The letters

34) I only venture to say anything about these, because SPAB specifically invited me to consider them. What, if any, legal steps they think are warranted, is a matter for them. It does seem to me that the two letters, which each cover much of the same ground, were intended to go to named recipients who were in the sender's mind likely to understand and sympathise with his position. They were not intended for general distribution, and it is unfortunate they were posted on the on-line system. Second, it is obvious to me that Mr Nelson felt under considerable pressure in relation to this project, and a number of other matters concerning St Mary's. In particular a window had suffered

from vandalism, but more seriously, there was continuing disagreement with the local authority about the resources the latter were willing to put into the maintenance of this large churchyard. (I do not know on what basis South Ribble have responsibility for maintenance, as the churchyard is still in use). Third, the delay in getting a decision on the current project, which had seemed straightforward as it swept through the DAC, and which had been held up by my intervention as described above, and the response of SPAB, alone of the amenity bodies, and the increasing costs which seemed to be following, was also weighing on him.

35) One expects all those involved in faculty proceedings, to act with civility towards others, their own advisers, and those who may be viewed as objectors. That does not take away the fact, faculty proceedings can give rise to considerable stress and worry, and consequent strong feelings, which may sometimes be expressed in strong terms, at least privately. If some of those sentiments escape into the wider world, that is unfortunate, but there is no escaping the fact legal proceedings are a 'contact sport' and some bruises and abrasions are likely.

36) In the result, I **grant the petition** both as regards the parapet and the west window.

John W Bullimore

Chancellor

16th November 2020