

**Neutral Citation Number: [2024] ECC StA 1**

**In the Consistory Court of the Diocese of St Albans**

**In the matter of St Mary the Virgin, Stevington**

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**JUDGMENT**

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*Introduction*

1. By a petition dated 24 July 2023 a confirmatory faculty is sought<sup>1</sup> in respect of the replacement of an extremely rare and important tower window head (the “Window Head”). It is a considerable understatement to observe that it is a matter of great regret and disappointment to this Court that the works have already been carried out<sup>2</sup> without appropriate prior authorisation.

*Background*

2. The works proceeded on the basis of the Archdeacon’s approval under List B dated 22 February 2021 and were part of a wide-ranging scheme of repair work contained in a specification of works dated January 2021, which was itself based on the quinquennial inspection report (the “QIR”) undertaken in 2019. The QIR had identified much minor repair and maintenance work to the fabric of the church (some of which is Anglo-Saxon in origin) on the basis of a detailed survey of condition. The scheme of work proposed was drawn from its contents. The majority of the works carried out were correctly identified as minor and were authorised and carried out on this basis. However, in amongst the otherwise minor works of repair were proposed works to replace the ancient stone south-facing Window Head situated in the tower. The details and significance of this historic feature of the church’s fabric are described below.

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<sup>1</sup> The petitioners are the team rector and team vicar of the team ministry which covers St Mary’s church and the PCC Secretary.

<sup>2</sup> In or around late spring 2022.

3. Permitting these works under List B was not the correct approach. The general provisos at the top of Schedule 1 of the Faculty Jurisdiction Rules 2015 (as amended) (the “FJR”) state explicitly that:

*“...a matter may not be undertaken without a faculty despite being included in List A or List B if it comprises*

- *works which involve alteration to...a listed building to such an extent as would be likely to affect its character as a building of special architectural or historic interest*
- *works which are likely to affect the archaeological importance of a building or any archaeological remains within a building...*”

and the specified conditions to item B1 of Schedule 1 include:

*“The repair does not involve the substantial replacement of a major part of the fabric or of historic material...”*

Given the information in the public domain regarding the window it should have been apparent that the replacement of significant elements of the Window Head would go beyond what could properly be permitted under List B.

4. The alarm was sounded on 30 August 2022 by a Stevington parishioner, Peter Hart (“Mr Hart”) who visited the church on that day to look at the recently concluded renovations (i.e. those based on the QIR) and immediately saw the replacement of the Window Head, realising with shock both the loss of historic fabric and the fact that the shape of the replacement stone work did not share the unusual and characteristic shape of the lost original. I note that Mr Hart brought to bear considerable historic knowledge and detailed familiarity with the fabric of St Mary’s as he is a trustee and Secretary of the Stevington Historical Trust and also the author of the guidebook to St Mary’s church and its significant features. However, he has been clear that throughout his correspondence with the PCC and Registry in this matter that he writes in his personal capacity.
5. This petition is formally unopposed but has, understandably, elicited strong feeling and divided opinions upon the proper approach to the situation as it currently stands. The DAC’s notification of advice is that the petition for confirmatory faculty is not opposed, although it is notable that the DAC is not *ad idem* over several issues. In particular, the

Diocesan Archaeological Advisor (the “DAA”) has provided separate advice indicating strong views that an attempt to more closely reflect the original shape of the Window Head should be ordered. Mr Hart, the original complainant, and the Society for the Protection of Ancient Buildings (“SPAB”) express views that the confirmatory faculty should be refused and agree with the DAA as to an attempt at remedial works. These views are accompanied by trenchant criticism of the failings that have led to the original being lost.

6. In March 2023 the DAC commissioned a specialist stone conservator, Sally Strachey Historic Conservation, to inspect and report upon the work to the Window Head and to consider the feasibility of removing the new stone (the “SSHC Report”). Other consultees have subsequently been contacted for written advice pursuant to directions given by this Court: the DAC; the DAA; the Chartered Building Surveyor who prepared the specification for repair works arising from the QIR (“Mr Barker” / the “Surveyor”); the Church Buildings Council (the “CBC”) and SPAB. Historic England (“HE”) was also contacted but did not wish to offer any comment. Mr Hart, the original complainant, has been consulted throughout the process of discerning information relevant to the determination of this matter, including (as has been the case with the other consultees, the PCC and the DAC) being given sight of the comments and materials supplied by others in order to comment upon them.
7. All of those who have expressed objections to the petition have been offered, but have declined, the opportunity to become a formal party opponent. I have nonetheless paid close attention to all of the advice and correspondence provided in this matter and taken it into account in reaching my decision.
8. On 14 March the Registrar wrote to the PCC informing it that I was, of my own motion, giving consideration to the possibility of making a restoration order under section 72 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 and rule 16.7 the FJR. The Registrar put the PCC on notice that, as a “*person against whom a restoration order may be made*” (per rule 16.7(6) FJR) it must be given an opportunity to be heard. The PCC was invited to express its views as to proceeding in person or on paper in the determination of this matter, and on 8 April 2024 emailed to express a preference for the matter to be determined without a hearing. On 9 April 2024 the other consultees were also placed on notice of the Court’s consideration of a restoration order, and all concerned were provided

with a bundle of papers accumulated to date and given a final opportunity to address any additional points which may assist me in the determination of the petition and/or the assessment of whether or not a restoration order should be made. I also made an unaccompanied site visit to the church on 27 June 2024 and was able to see the completed works in situ.

### The Window Head and its setting

9. St Mary's is a grade I listed church. The DAA describes it as "*outstandingly significant*". The official listing entry appears at Annex A.

10. The earliest fabric in the church is Anglo-Saxon and there is no dispute that such fabric is to be found in the lower three-eighths of the tower where there are characteristic stonework features. The belfry of the tower is perpendicular, dating from the 15<sup>th</sup> century. Much of the rest of the church also dates from the 14<sup>th</sup> and 15<sup>th</sup> centuries, including the two porches and the ruined north and south chapels. There are interesting features throughout the interior of the church including Anglo Saxon apertures in the open interior base of the tower, a rood stair, a squint window in the chancel, a perpendicular wooden roof featuring eight roof angels and fascinating 16<sup>th</sup> century carved bench ends.

11. As part of this cornucopia of interesting historical features, two windows in the upper part of the tower were of particular interest. The guidebook to the church describes them as follows:

*"If you retreat from the south face of the Tower, up the slope, after about 30 yards you will be able to see a double-splayed, south facing window containing its original midwall wooden window board, pierced with a round headed opening wider at the sill than at the head. This is a rare Anglo-Saxon detail. It is formed of two stones creating a triangle. It is replicated on the north side but that window is less perfect and lacks its board."*

12. It is the stone-work Window Head of the south facing, intact window - described here as Anglo Saxon – made striking by its triangular shape and intact wooden window board, that has been replaced by new stone and a new, more rounded, less distinctive and historically ambiguous shape. In his initial email to the PCC raising what he had found at the church when he visited, Mr Hart wrote of the window in its original state "*Even the Victorians*

*dared not touch it. It was one of five in the country... ” and its rarity was emphasised in his subsequent, cogently articulated “Response” document<sup>3</sup> where he explained that “In February 2017 Iain Soden, an authority on ecclesiastical architecture, hosted a three hour long seminar at St Mary’s on the architecture of the church, including all Anglo-Saxon features...Soden told us that the window, in its original state, was probably one of only five surviving examples in English churches...”*

13. The great loss that has been occasioned by the improperly authorised replacement of a rare, seemingly Anglo-Saxon Window Head will be immediately apparent. It is only a small consolation that the wooden window board (in some documents described as a “door”) has survived intact and been replaced in situ, and that upon enquiry I have been assured that there has been no replacement of the interior parts of the window.
14. However, it is important to acknowledge that there is some uncertainty as to whether or not what has been lost is in fact Anglo Saxon, or wholly so:
  - i. Mr Hart and the SPAB regard it as clear that the Window Head was Anglo Saxon. In the case of Mr Hart his views are based not only on his own experience but also the expert views of Iain Soden (described above) who had viewed the full window in situ in its intact state. Mr Hart’s views are supported by various other assessments of the window which have been documented from time to time. For example, the revised Pevsner<sup>4</sup> refers to “...two double-splayed windows N&S (the S one above the door with the wooden window frame”, which contributed to making “...a late Anglo-Saxon tower...recognisable outside.” Mr Hart also quotes the National Churches Trust referring to the window as “...a rare Anglo-Saxon detail...” and cites the same conclusions reached in a Bedfordshire Archive Office online reference and in the writings of TP Smith (cited as an authority on Anglo-Saxon architecture in Bedfordshire) and Bernard West (also cited as a respected archaeologist) in further support. As to the views of the SPAB, the Society’s casework committee carefully considered the matter and a member of the committee visited the church to view the replacement work in situ, reaching this conclusion as to the fabric that has been replaced: “...the Committee was in no doubt that the fabric in question is Saxon...” .

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<sup>3</sup> Dated 12 September 2022

<sup>4</sup> 2014

Finally, the DAA also supports Mr Hart and the SPAB, noting that the window was of “*well-documented significance*”<sup>5</sup>, agreeing that the two stones creating a triangle at the top of the Window Head (before its replacement) was “*diagnostic of late Saxon work*” and pointing out that the original Window Head was an “*outstandingly significant characterising detail on a relatively plain limestone tower...* ”;

- ii. On the other hand, publications such as the *Victoria County History*<sup>6</sup> and *Bedfordshire Churches In the Nineteenth Century*<sup>7</sup> do not clearly identify the window as being Anglo-Saxon - the earliest work in the tower is said to remain as to around one third of its height (i.e. below the height of the window, which appears just above the aisle roof). The view of Mr Barker, the Surveyor, is that “*...there is no over-riding proof that the aperture in question is entirely of the Saxon period. The lower apertures within the ground floor area of the tower<sup>8</sup> are clearly Saxon and are properly recorded by several authorities, notably Dr H.M. Taylor, a pre-eminent expert in the study of Anglo-Saxon architecture. When studying Saxon churches I have been unable to find any illustrations of triangular (gable) headed windows or doors with relieving arches above...Jamb characteristically also on Saxon openings have square edged detail and not the splayed profile seen in the Stevington aperture. Internally also the surround does not give the impression of Saxon work and the masonry is distinctly different in character to that in the lower windows of the tower. It seems reasonable to take the view that the aperture in question has been the subject of alteration and re-building and the detail of the external head could well be debased and not original.*”<sup>9</sup> The DAC and the CBC have also expressed the view that it is unclear whether the window was an unaltered Anglo-Saxon feature (although latterly the CBC has bowed to the strong views expressed by the SPAB on this point).

15. The historic stonework that was replaced during the works has been disposed of. I am not in a position to adjudicate with confidence on the age of the lost Window Head. There is, however, no dispute as to the fact that there was an Anglo-Saxon appearance to elements

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<sup>5</sup> DAA’s “Note to Diocesan Chancellor” 2 May 2024

<sup>6</sup> <https://www.british-history.ac.uk/vch/beds/vol3/pp100-104>

<sup>7</sup> 1979 ed. Chris Pickford

<sup>8</sup> The Surveyor here differentiates the external tower window head from these acknowledged Anglo Saxon apertures, which are visible from the interior of the church where the interior of the tower is open.

<sup>9</sup> Surveyor’s letter to Registrar dated 25 April 2024

of the exterior views of the Window Head, in particular its triangular shape, which the replacement work has failed to reproduce. It is also, in my judgment, indisputable that “*Uncertainty about what has been destroyed could have been minimised by a proper conservation approach...*”, a point well made by the DAA.

#### Events leading to the loss of the Window Head

16. The starting point is the QIR, prepared by the Surveyor and dated December 2019, and the subsequent specification of works that was based upon it. The relevant section of the QIR (at paragraph 5.01) stated as follows:

*“Cement-rich mortar pointing has been employed in the area above the level of the south aisle roof in the past. In a small number of areas softer stones are affected by deep surface crumbling and the situation is exacerbated by the hard mortar used. In the surround to the small door which occurs just above flashing line to the aisle roof, the two simple voussoir stones are affected by deep seated splitting and further close inspection is required...It is likely that at least one of these will now need to be replaced. Similarly, the lowest stone in the left hand jamb is also quite badly damaged and likely to need replacement. The oak door is heavily weathered and would benefit from re-oiling. Iron studded decoration could also be usefully painted...”*

17. The relevant parts of the specification of works, prepared by the Surveyor in January 2021, stated as follows (along with detailed instructions as to the treatment of the oak door/board):

*“12.02 Door (see photo nos. 17 and 18)*

*(a) Renew single voussoir stone complete to right hand haunch or arch including radiused detail at springing.*

*(b) Ditto to left hand haunch (prov).*

*(c) Renew defective stone at base of left hand jamb...”*

18. The QIR is detailed but it is strikingly lacking in historical and archaeological content (a criticism also levelled by the DAA<sup>10</sup>), as is the specification of works. There has been some unattractive cavilling about whether or not there is any formal requirement for a Statement

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<sup>10</sup> DAA’s note 15 May 2023, revised 15 September 2023

of Significance and/or a copy of the listing description to have been included in the QIR, with the DAA taking the view that the best quality QIRs would include these elements and the Surveyor stating<sup>11</sup> that he does not consider that a statement of significance comes within the scope or brief for carrying out a QIR. In my view this argument misses the point that although the main purpose of the QIR is to record the condition of the fabric and identify the need for repairs, where the church contains ancient and significant fabric - as this church plainly does - then both the question of the “need” for repairs and the question of what type of repair is appropriate and achievable must inextricably be linked to a careful assessment of the age and importance of the fabric in question. This is even more pressingly the case where the recommendation is for “replacement” of such fabric. Whether this careful assessment comes in the form of a Statement of Significance or by adopting a more discursive approach to the record itself is immaterial, the point is that such an assessment should have been done and was not.

19. In this case the specification, whilst carefully detailing the processes for the works it proposed, failed to recognise the possibility that the window formed part of the lower Saxon stage of the west tower and therefore ought to have been the subject of specialist advice. Indeed, there appears to have been a concerning lack of curiosity at every stage of this process as to the impact of the works, particularly replacement works, envisaged by the QIR upon the significance of the church, in particular to the Window Head.

20. The Archdeacon’s delegated approval was granted under List B on 22 February 2021 (the “Licence”). At this distance in time it is not possible to reconstruct with any nuance the staged thinking leading to the Licence. It is apparent that the PCC considered and gave their unanimous approval to the works without raising any issue over the proposed replacement of elements of the Window Head. Mr Hart cogently makes the point that successive churchwardens were specifically aware of the significance of the window and its likely Anglo-Saxon origin, having been involved with Mr Hart’s own work and research into the fabric of the church. He also observes that the current PCC membership had, in 2019 (i.e. around the time of the QIR), recently read and approved the twenty-page guide prepared for them by the Stevington Historical Trust in which the significance of the window features prominently. It is also apparent that subsequently the DAC considered this by

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<sup>11</sup> Addendum email to Registrar dated 25 April 2024



means of a standing committee and also did not ask further questions of these works to lead to further scrutiny, but rather approved the works as suitable to proceed under List B approval.

21. I consider that at all stages of consideration the need for care and specialist advice should have been apparent, given the listing description and the multiplicity of publications in the public domain emphasising the interest in the window, together with what was well known to be Anglo Saxon content in the lower stages of the tower. Although List B does allow repairs affecting historic material, this is only in cases where the repair does not introduce material of a type not already present or the substantial replacement of a major part of the fabric or of historic material. What was envisaged for the Window Head by the QIR and specification of works was plainly more radical than, and extended beyond, what could be permitted under List B.

22. I am, however, satisfied on the basis of the materials before me and the absence of any evidence to the contrary, that the serious failure to identify and act upon this was a result of inadvertence rather than any deliberate desire to contravene the law or short circuit due process. While the adoption of incorrect process - and the consequent failure to initiate any appropriate specialist review and appraisal steps that would inevitably have followed had the matter been pursued via a petition for faculty - is deeply regrettable and cannot be excused, I also note that much of the relevant decision making took place against the backdrop of the exceptional pandemic challenges of recent years, which no doubt contributed in part to the uncharacteristic errors which have been made here.

#### SSHC Report

23. When the full DAC met to consider the position, it commissioned a specialist conservator to investigate the feasibility of removing the new stone and re-doing the work to match the triangular form with flat splays that had been lost, without further damaging the likely-Saxon stonework remaining in place around the new stone.

24. The SSHC Report was produced in March 2023 and its key findings included the following:

- i. The new stone has been worked to a high standard (including following original joints, tight parallel joints, sharp arrises and no sign of any mechanised tooling, plus an appropriate choice of stone and mortar);
- ii. The SSHC Report concludes that the masonry has been carried out with “*due consideration of the surrounding historic fabric*”;
- iii. There has been “*little to no damage to the surrounding historic fabric of the building*”;
- iv. The only stone that was replaced was stone which was “*past the point of consolidation or repairs. That is to say the structural integrity of the original stonework was beginning to fail and was in need of replacement*”;
- v. Two drawings are presented containing designs (options A and B) for replacement stonework containing mouldings which it is believed may more closely reproduce the lost original shape;
- vi. “*The removal of the replacement stone should be a relatively simple process with the surrounding supporting arch taking the weight of the masonry above*”;
- vii. Options for the replacement of the recent work were estimated to cost around £11,000 to £12,000.

25. Having reviewed this matter in depth, the conclusion that the masonry has been carried out with “*due consideration of the surrounding historic fabric*” is unsupportable to the extent that that is intended to mean that the new masonry is historically accurate in appearance<sup>12</sup>. However, there is no reason to doubt many of the other key conclusions, including the assessment of the quality of the workmanship, which is unanimously endorsed by other consultees who have seen it, and the likelihood that it would be possible to further replace the current stonework without causing further damage.

26. It should also be noted that as part of this Court’s preliminary review of this matter, the question was asked whether it would be possible to remould/grind/otherwise reshape the stone *in situ* in order to achieve a better approximation of the distinctive shape that has been lost in this case. It is apparently not possible and I understand that replacement of the stonework is the only feasible way to achieve the introduction of a new shape to the Window Head.

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<sup>12</sup> If, on the other hand, this phrase is intended to mean “with care and without harming the surrounding stonework” then it is accurate.

### Views of consultees

27. A number of consultees have now been asked for their views on what has happened and the appropriate way forward. The responses have made for painful reading as they highlight what has been lost and the missed opportunity for careful expert advice in this case. The consultees have been invited to join the proceedings as parties in those cases where objections have been raised in the context of this petition, although in the end there were no elections to become party opponents.

28. The key views of those who have commented substantively are as follows:

#### *Mr Hart – the original objector*

29. Mr Hart was the first person to raise a complaint about the replacement of the Window Head and has maintained a firm but respectful stance of opposition to the petition throughout the period of consultation in this matter. Whilst plainly deeply affected by the lamentable loss of the Window Head, Mr Hart has supplied two particularly useful substantive documents (response to PCC dated 12 September 2022 and a letter dated 10 May 2024<sup>13</sup>), in which he has adopted an appropriately challenging, but never ill-tempered or unrealistic, position in relation to what has happened.

30. Mr Hart is clear as to the Anglo-Saxon provenance of the window, drawing, as previously stated, on his recollection of the appraisal undertaken by Iain Soden Heritage Services in 2017 at the request of Mr Hart and a former churchwarden of St Mary's, as well as by reference to the texts referred to elsewhere in this judgment, and he makes the point that these were matters known to the PCC before it approved the schedule of remedial works based on the QIR. Mr Hart also has a deep personal knowledge of the architecture and archaeology of St Mary's and is strongly of the view that the condition of the Window Head did not make destruction of the original window necessary. He considers that any "structural issues" within the (non-load-bearing) original stonework were capable of being treated with other methods of conservation instead of removal, but that such methods appear never to have been considered.

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<sup>13</sup> Replacing an earlier letter dated 3 May 2024, except for photocopies accompanying the original letter (which, for the avoidance of doubt, have been read in conjunction with the replacement letter).

31. As with the DAA and the SPAB (whose views are set out in more detail below), Mr Hart strongly opposes any confirmatory faculty, in particular because of the message he believes that will send of seeming to condone the damage. Whilst he does not take issue with the CBC and SSHC's assessment of the stonemasonry that has been undertaken in the replacement Window Head, he condemns the incorrect execution of the shape and deplors its ambiguity which renders what was a contextually important feature of the tower out of keeping and historically uninformative.
32. Mr Hart is of the view that an attempt at replacing in a more accurate way should be ordered, that any such work would pose no more risk to surrounding stonework than the most recent works had done. He does not consider that cost to the parish is a decisive consideration, in particular as the fault in this case is, in Mr Hart's view, shared between the Diocese and the PCC and so he regards it as appropriate that any cost of restitution should similarly be shared.
33. As to the replacement stonework design that he suggests should be ordered, Mr Hart says (whilst noting the SPAB's observation that there was "*no scholarly justification*" for SSHC's proposed remedial designs) "*As to the possible remedies which SSHC illustrate, Options A and B, I have no preference, though Option A would seem to fit the bill perfectly*".

#### *The CBC*

34. The CBC wrote on 17 October 2023, recognising the potentially "*great loss*" that has occurred on the assumption that the Window Head was indeed Anglo Saxon, but noting that there is uncertainty over its true age.
35. It described the replacement works as follows:

*"The replacement window head is of a curved arch design, reminiscent of Early English or Victorian Gothicising shapes rather than the triangular shape of a Saxon arch.*

*The replacement has been carried out meticulously, the replacement stone is beautifully worked and has been carefully inserted, doing little to no damage to the historic work around it and matching the existing stone and mortar extremely well. However the shape*

*of the replacement stones does not replicate what was there previously. The indication of a possible curved chamfer may have influenced the final design but, though very finely carved, the result is an invention which disregards the archaeological evidence which was available.”*

36. The CBC observed that had the significance of the Window Head been understood and the correct process followed it is unlikely that it would have supported the route which has been taken in this case and instead would have expected to see options for consolidating the stone, if possible, or its careful removal to be stored or put on display to aid learning and understanding of the building.
37. Recognising that the replacement of the new window head with a new design, closer to the original, is possible, the CBC then offered its opinion on whether it is the right solution. Evaluating factors including the risk to surrounding historic stonework, the negative environmental impact of the wastage of good, well carved stone and the position and visibility of the Window Head, it came to the conclusion that “...*the Council does not consider that replacing the new window head is a good use of time, materials or parish funds and that it raises the risk of damage to the surrounding stonework.*”

#### *The SPAB*

38. The SPAB supplied its substantive response on 17 November 2023. Whilst strongly decrying the destruction of the Window Head arch and the loss of its ancient fabric, it is nonetheless a balanced and helpfully expressed communication. Its key points are that the SPAB’s Committee’s considered view (taking account of the various sources of historical and archaeological commentary and one delegate having visited the church to inspect the works in situ) is that the lost fabric is undoubtedly Anglo-Saxon in origin. The Committee also considered that the fact that there was no weight bearing role for the stones replaced (NB this point is not in issue), meant that repair rather than replacement “...*may have been a feasible option...*”. It agreed with the DAA’s observations to date at that point and considered that the replacement stonework, whilst having been found in the SSHC Report to be of high-quality workmanship, was of a “*confused design*” that cannot sufficiently replicate the significance of the lost original Window Head.

39. The SPAB observed that although it does not support the reinstatement of lost historic fabric in every case, it felt that this was an exceptional case where re-instatement was highly desirable and appropriate given the national historic and architectural significance of the window and the “*inappropriate*” nature of the replacement “*the design of which was conjectural and fundamentally at odds with the existing content.*”
40. The SPAB does not endorse either of SSHC’s proposed remedial designs and instead considers that any attempt at replacement with a more accurate copy of what had been lost (i.e. more accurate than what is currently in situ and also than the two designs offered in the SSHC report) should be based on “*extremely precise*” information, detailed research to be commissioned from an experienced archaeological historian and archaeological recording that it would have hoped had been carried out before the works.

#### *The DAC*

41. The DAC is not unanimous in its approach to the situation. Although at its full Committee meeting on 11 May 2023 it was able to agree to express the view “Does Not Object” in the Notification of Advice (the “NoA”) in respect of this petition, the DAA in particular has expressed strong views in favour of an attempt at restoration of the original shape of the Window Head rather than a confirmatory faculty being granted. As he explained in his revised statement<sup>14</sup> “*My initial view of this case was that the need to replace the late Anglo-Saxon stonework had not been demonstrated and the replacement was an unsuitable design. At the recent DAC meeting I felt that the resolution to ‘not oppose’ would bring the case to the attention of the Registry and Chancellor, enabling issues to be scrutinised.*” He also provided a separate note in May 2024 pursuant to this Court’s directions under which the DAC’s final views on the matter in light of the further consultations and evidence had been expressed. The DAA’s views are set out in more detail below.
42. The majority of the Committee is aligned with the CBC’s assessment of the position. In particular it is of the view (based on the SSHC Report) that while it would be possible to replace the new Window Head without causing significant damage to the surrounding fabric there would still be uncertainty (i) as to whether the outcome would be closer to the original form of the decayed stonework that was removed and (ii) as to whether or not the

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<sup>14</sup> 15 September 2023

stonework was in fact Anglo-Saxon (although the CBC has more recently appeared to adopt the SPAB's conclusions as to provenance). The DAC has expressed its view that it is a matter of regret that a rare feature has been lost and the majority view is that "*It was regrettable that the specification, whilst carefully detailing the process for stonework replacement, had not recognised the possibility that this particular window...ought...to have been the subject of specialist advice*" and that "*The use of List B in this case can be regarded as a shortcoming in the process...*"<sup>15</sup>

43. The majority of the DAC has also expressed the view that the QIR and SSHC Report support the conclusion that there were structural problems with the stonework elements that have been replaced in the Window Head. That is not to say 'structural' in the sense of relating to the wall above the Window Head (which, it is not in issue, is supported by the relieving masonry arch above the Window Head), but rather relating to the integrity of the individual stones identified in the QIR for replacement. It was recognised that specialist assessment at an earlier stage might have recommended consolidation or repair with less intervention but the Committee also considered that "...stone could deteriorate to the extent it no longer had the integrity to support the surrounding masonry." I note the Committee did not commit itself as to whether it considered that that stage had been reached in this case, but in any event, given its comments regarding the lack of structural and supporting role played by the stones that have been replaced, their capacity for support was not the touchstone for assessment of the appropriate route for caring for them in this case.

44. The DAC's overall conclusions are that whilst it considers it possible to remove and replace the new stonework, there would still be uncertainty as to whether the outcome would be any closer to the original form of the decayed stonework that was removed and also as to whether that original stonework was in fact Anglo-Saxon. It also points to a relatively greater public benefit in properly recording the issues that have arisen in this dispute rather than in the replacement of the stonework and refers to pastoral implications associated with the costs of any attempt at restitution given the efforts this small parish went to in order to raise sufficient funding to carry out the QIR works in the first place.

45. I note that in the NoA the DAC records its consideration of the SSHC Report and its discussion over the possibility of replacement of the new Window Head. In doing so the

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<sup>15</sup> NoA dated 11/05/23

DAC observed that “*Option B in the Sally Strachey Historic Conservation Report appeared closer to the original, but neither of the suggested options looked quite right, particularly in dealing with the junction between the two main stones and the apex...*”

#### *The DAA*

46. The DAA’s difference of opinion from the majority of the DAC has been noted above. He has greatly assisted this Court through his expertise and his thorough approach to explaining his views at each stage of the Court’s consideration of this matter.

47. He has supplied very full and detailed notes to this Court, in particular his revised note of 15 September 2023 and a further note dated May 2024, supplied at my request when the round of consultations I had directed had been completed and each had been given sight of the other consultees’ views.

48. In essence, whilst the DAA accepts that there is no means of restoration in the true sense given the loss of the original fabric in this case, he agrees with the points made by the SPAB and objects to a confirmatory faculty being granted. He considers that the expense of requiring an attempt at restitution has yet to be finalised through a process of competitive tenders and is not yet proven to be problematic for the parish. He states that although neither of the SSHC attempts at rectifying designs appear to be correct it ought nonetheless to be possible to replicate the original design successfully by drawing from other acknowledged Anglo-Saxon apertures in the lower areas of the tower and from other examples from different churches from the same era, and in these circumstances an appropriate form of restoration should be ordered. He makes the points that:

*“To the casual eye the changes may seem small and open to a charge of excessive archaeological correctness, but properly understood they amount to the harmful removal of an outstandingly significant characterising detail on a relatively plain limestone tower, originally evident to students of church architecture and capable of explanation to lay observers. Whether the lost original could have been repaired cannot now properly be ascertained but its misunderstood replacement cannot be accepted as the classic ‘positive contribution of this century’ ...”*<sup>16</sup>

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<sup>16</sup> Revised note 15 September 2023



and

*“Serious irreversible harm is still capable of worthwhile expert mitigation; this is not a de minimis matter to be swept under the carpet by readjusting the balance between benefits and harm, arguing that none of the parties were at fault...in the final analysis the example and precedent set by a Confirmatory Faculty for the unauthorised works must be unacceptable.”<sup>17</sup>*

### *The PCC*

49. The PCC discussed the issues in its meeting of 17 July 2023 and voted unanimously to seek a confirmatory faculty for the works. Its position is that it put its trust in the QIR surveyor, Mr Barker, and that faults also occurred in the DAC’s review of the matter leading to its approval for works proceeding under List B, rather than requiring further consultation and information relating to the possible impact of the proposals on Anglo-Saxon fabric<sup>18</sup>.

50. In addition to emphasising the efforts the parish put in to obtaining grants and raising funds in order to undertake the QIR-recommended works of repair and conservation, the PCC also offers the well-made and important observation that the dispute has almost exclusively applied a purely archaeological lens to St Mary’s church, seeing it as an *“architectural curiosity rather than as the centre of Christian worship in a small North Bedfordshire village...”*, whereas it rightly points out that the church is also home to a worshipping community who have been affected by the dispute in this case and who put in considerable efforts to raise the necessary funds for the restoration and repair works in the first place.

### *The law*

51. The petition before me is for a confirmatory faculty which would have the effect of regularising the position (although a confirmatory faculty does not retroactively legalise what was done (per Hill, *Ecclesiastical Law* (fourth ed. 2018)). In the event that a confirmatory faculty is refused there would be a need to consider making a form of

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<sup>17</sup> Note to Chancellor May 2024.

<sup>18</sup> PCC’s letter to the Registry 5 June 2024

restoration order which I have the power to do of my own motion under rule 17 FJR. I have, as explained above, given this very full consideration and the Registry has provided the requisite notice to those potentially affected.

52. The test to be applied when the Court is considering whether or not to grant a confirmatory faculty starts with the assessment of whether a faculty would have been granted had it been sought prospectively<sup>19</sup>. In the case of a listed church, as St Mary's is, this requires an assessment via the *Duffield*<sup>20</sup> questions.

53. The *Duffield* questions are:

- 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 (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 and 4 do not arise.
- iii. If the answer to question 1 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 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 is to a building which is listed grade I or II\*, where serious harm should only exceptionally be allowed.

54. But in a case such as this I consider that a purely *Duffield*-based approach is modified by circumstances because the Court is also obliged to look at the reality of the situation (per Ch. Briden *St Michael, Bath, Twerton-on-Avon*<sup>21</sup>). This is especially so where the original fabric has been disposed of and restoration in its truest sense, to be considered as a corollary to a refusal of confirmatory faculty, is impossible.

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<sup>19</sup> See e.g. *All Saints, Buncton* [2018] ECC Chi 1.

<sup>20</sup> *St Alkmund, Duffield* [2013] Fam 158

<sup>21</sup> [2024] CC B&W1

### Evaluation

55. There is no meaningful challenge to the obvious conclusion that the replacement of the tower Window Head has resulted in harm to the significance of the church.
56. There is also unanimity as to the “outstanding” significance of the church. Some of the key historical features that contribute to its significance have been referred to earlier in this judgment.
57. What it is difficult to assess in retrospect is what contribution the original Window Head, in particular, made to the church’s significance in order to evaluate the seriousness of the harm in this case. Although there is much which tends to support the conclusion that the Window Head was Anglo Saxon, the various opinions which support that conclusion have not been tested nor is it now possible to determine definitively the age of the fabric that has been disposed of, nor assess whether it had been altered before or was in its original state, and so on. Assessments based on partial photographic evidence and individual recollections are speculative and produce, as has been apparent throughout this case, differences of opinion.
58. What is clear is:
- i. That the Window Head was a rare feature that, by its characteristic shape, was in keeping with the Anglo-Saxon elements of the tower and aided interpretation;
  - ii. There is significant, albeit not unanimous, support for the conclusion that it was itself Anglo-Saxon;
  - iii. It is not clear whether or not the fabric of the Window Head had ever been altered or worked upon in the past;
  - iv. It was not the only feature which makes this church historically and architecturally significant. The window is not singled out in the listing description, although it is picked out in other important commentaries. The other rare and historical features of the church, some of which have been mentioned in this judgment although there are many others, remain intact and many have been carefully repaired and restored as a result of the QIR and subsequent works;
  - v. There is no serious dispute that the stonework of the Window Head was in a friable and eroded state. Whilst the majority view of the consultees appears to be that there may

have been other more minor, consolidation-based interventions that may have been appropriate, there has been nothing to gainsay the QIR conclusions that the stonework was split and structurally unsound (not as to the wider structure of the fabric of the tower but as to the structure of the individual stones themselves), such that replacement may have been one of the options to be considered;

- vi. There is also unanimity that the shape of the new Window Head is an inaccurate reproduction of the original and that the resulting shape is historically neither here nor there. It does not make a helpful contribution to the tower.

59. Taking these factors into account I consider that the removal and replacement of the Window Head has caused substantial harm to significance.

60. As to questions 4 and 5, I note the uncontroverted conclusions in the QIR that aspects of the original stonework were “*affected by deep seated splitting*” or were “*quite badly damaged*”; the SSHC Report’s conclusion based on photographic evidence and site inspection of the residual stones that the stonework was in a condition that required replacement; and the DAA’s observations that the photographic evidence of the original Window Head stones show “*badly decayed stones*”. Despite these conclusions, however, it remains the case that no specialist assessment of the scope for repair and retention was ever carried out and no options were prepared for consolidating the stone or, if not possible, for its careful removal and replacement with carefully considered, accurate and detailed like-for-like design. I cannot reach any other conclusion than that there appears to have been only minimal justification for the removal of the stones and no justification for their disposal or for the replacement design which has been used.

61. On the basis of the imagined prospective *Duffield* assessment, question 5 must be answered “no” in that there is no evidence of public benefit deriving from these works and the preponderance of evidence before me rather points to a public disservice in the loss of the original fabric and the loss of architectural and historical contribution resulting from the non-descript shape of the replacement Window Head.

62. It follows that had this matter come before the Court prospectively and a future-looking *Duffield* analysis applied, it is unlikely that the replacement of the Window Head with the new version which has been inserted would ever have been granted permission. There

would inevitably have been consultations, including with the CBC under rule 9 of the FJR, and it can safely be assumed that viable alternatives to replacement would have been carefully explored with a view, if possible, to identifying a route of prudent long-term management to safeguard the stonework, or, if replacement were the only option, to have ensured the preservation and display of the original stone and its replacement with a most carefully designed substitution.

63. Regrettably the Court was denied the opportunity of considering the proposal and steering the matter down those routes. This emphasises the need for care to be taken to ensure that caution is always exercised when considering interventions to ancient buildings and that the appropriate faculty jurisdiction routes for such works are carefully identified so that proper permissions, with associated expert scrutiny, are sought in advance.
64. One option the Court has at this point is to dismiss the current petition. In the words of Hill Ch in *All Saints, Buncton*, that would have the effect of “...neither legitimising the unlawful works nor compelling their reversal.” The learned Chancellor went on in that case, and I agree: “*That is rarely a sensible solution...*”
65. As I observed above, careful account must be taken of the reality of the situation as it currently stands, and so the imagined “prospective *Duffield*” assessment is only part of the consideration I must bring to bear in deciding how to proceed in this case.
66. A number of very important real-time factors inform the position and bear upon the further question of whether, if a confirmatory faculty were to be refused, a restoration should be made, ordering an attempt to be made to reproduce more closely the distinctive shape and features of the original Window Head. These factors include:
  - i. There is no dispute that the masonry works have been executed with a very high degree of skill (the CBC referred to them as “...*beautifully worked and...carefully inserted...*”) using appropriate materials and effecting a high standard of finish to the replacement Window Head;
  - ii. A point is made by the DAC and CBC that there is a risk of damage to the surrounding historic stonework by effecting further replacement works. Whilst any further intervention must inevitably carry *some* risk of damage (and indeed may cause

disturbances which are not immediately detectable), I do not find this point particularly persuasive in this case given the results which have been achieved on the most recent replacement and the findings of the SSHC that further replacement works could be effected without damaging the surrounding stones;

- iii. However, I do consider the CBC's environmental impact point - that the discarding of perfectly good, well-carved stone is wasteful and would contribute negatively towards net zero - to be well made;
- iv. I also acknowledge that whilst there is a powerful body of opinion that the original Window Head was Anglo-Saxon, there remain some differences of opinion about its provenance, including the views of the Surveyor who is the person with the most recent and intimate contact with the stonework itself. His view is that in addition to some uncharacteristic design features in the exterior appearance of the original Window Head, the interior surround "*does not give the impression of Saxon work and the masonry is distinctly different in character to that in the lower windows [which are universally acknowledged to be Saxon in origin] of the tower. It seems reasonable to take the view that the aperture has been the subject of alteration and re-building and the detail of the external head could well be debased and not original.*" His is not, of course, a truly expert archaeological eye, but the absence of specific reference to the window from some texts, the lack of inclusion of the window in assessments which authoritatively verified the Saxon status of the internal lower tower windows and the differences in style he refers to mean that the overall position admits a small but appreciable degree of doubt as to the provenance of the window;
- v. Arguably the most concerning point informing the possibility of removing the new Window Head and attempting a further replacement is the lack of unanimity about the design that should replace it:
  - a. To lay eyes, the reproduction of the external shape that has been lost appears as though it ought to be relatively easy, either by using photographs or in following the design of the original when that was still in situ. But this is self-evidently not the case in execution as there has been obvious confusion in reproducing the shape of what was lost, despite the detailed photographic evidence that exists and the

unquestioned skill of the masons who worked on the replacement Window Head. The DAC has observed that the degraded condition of the original stones may have made that particularly difficult to do and the CBC has expressed the view that the appearance of a “*possible curved chamfer*” detectable in photographs of the original stonework may have misled the stonemasons in their work.

- b. The position is exacerbated by the fact that in offering their thoughts on how a like-for-like replacement should be achieved in the event that an attempt at restitution were to be ordered, the consultees have expressed a divergent range of views. By its email dated 17 November 2023, the SPAB emphasised the characteristic triangular shape of the original and dismissed the designs proposed in the SSHC report, instead considering that a new design with careful archaeological input would be needed in order to achieve proper replication, emphasising the technicality and expertise that would be involved in achieving this. The DAA, by contrast, suggests that the design of the original was “*relatively simple*”. The DAC expressed the view (11 May 2023) that option B of the SSHC report designs is the closest to the original, although still “*not quite right*”. Whereas Mr Hart, in his letter of 10 May 2024, whilst acknowledging the SPAB position that both options in the SSHC report “*lack scholarly justification*”, nonetheless says that option A “*...would fit the bill perfectly*”.

This, in my judgment, reveals concerning and important uncertainties which inform my decision as to whether to remove the current work and replace it.

- vi. There is then the broader question of proportionality. This is the point which the CBC’s comments are principally directed to. In its email of 11 April 2024 the CBC points out that despite what it refers to as a “*reprehensible*” loss of heritage, the reality of this case is that “*...it is not possible to reinstate the original window and...any replacement would only introduce additional modern fabric. Its replacement cannot bring the Anglo-Saxon window-head back.*” Facing this reality, and given the uncertainty about the accuracy of the outcome of any modern attempt at recreation of the original, there would be, in my view, a lack of proportionality in ordering an outcome that would involve wastage of resources and craft, impactful further expense, an ongoing negative impact upon the parish (who have forcefully raised the point that this has been a

damaging episode for the church as a community and place of worship, not only a building of historical interest, as well as pointing out the financial impacts and efforts involved in fundraising) – all for the production of something which is not the reinstatement of the original historic fabric and as to which there is considerable uncertainty about the accuracy of the outcome of any modern attempt at recreation of the original shape. A key issue to be addressed is the role the shape, appearance and character of the original window played in the contextualisation and interpretation of the tower and the church as an historic whole. However, this can be addressed with greater proportionality through high quality interpretation of the Window Head and an account of the history of this matter in the church than it can through an uncertain attempt at reimagining the Window Head physically in the tower.

- vii. Finally, I note the argument that has been raised about ‘signalling’ and the message that it is thought might be sent to the wider world if a confirmatory faculty is granted, namely that it might be said that the Court condones what has happened here. This Court in no way condones the missteps and mistakes in this case. The loss of what seems likely to have been a rare and distinctive Anglo-Saxon feature without anyone stopping to assess the proposals with greater expertise and rigour is cause for deep concern and regret. The outcome of this case does not set any precedent in the Diocese as it turns on its own unique facts and the exceptional and unusual features of this case alone.

### Decision

67. As already stated the Court is obliged, in circumstances of this kind, to look to the reality of the case. Whilst strongly deprecating the shortcomings in the processes that have been involved leading to the unlawful works I will – by the barest of margins – allow the petition, but do so upon conditions. In reaching this conclusion I have considered the matters set out above and given particular weight to the opinion of the CBC which deplores the loss of the Window Head, but pragmatically recognises the lack of proportionality in requiring the existing works to be removed and attempted again in the face of an inability to truly reinstate what has been lost and in particular given the uncertainty of the accuracy of the



outcome, especially where issues of interpretation and context may be addressed through information and education.

68. Accordingly, a confirmatory faculty shall issue, subject to the following conditions:

- i. Careful records of the original Window Head shall be made and maintained, containing as much detail as can be found;
- ii. In the event that the current Window Head requires replacement in the future, precise, archaeological-level drawings based upon research by an experienced architectural historian shall be used as the basis for designing a replacement which reproduces, as closely as possible, the historical original Window Head that has been lost;
- iii. Permanent, high-quality interpretation materials (including an explanation of the loss of the original Window Head) shall be created and displayed in the church within 24 months of the date of this judgment. The interpretation materials shall be approved by the DAC before their display and an electronic copy of the materials shall be filed with the Registry.

#### Costs

69. According to the usual principles (that those seeking a faculty are responsible for paying the Court fees incurred in dealing with the application), the Petitioners shall pay the Court fees, to be assessed if not agreed.

#### The future

70. In conjunction with the outcome ordered above, I would also add the following:

- i. The operation of Lists A and B relies upon the architect or surveyor providing an accurate view of the impact of proposals upon the fabric of the church. I intend to raise this case with other Chancellors nationally, both as a precaution and in order to allow for consideration of whether any additional safeguards for list A and B provisions may be appropriate.

- ii. Having regard to the mistakes and omissions in this case and the need to ensure consistency, I conclude that it would be inappropriate for proposals concerning St Mary's, Stevington to be considered under List B for a period of the next 12 months. Any such matters should instead be sent to this Court for consideration (and I will waive my fees for determining any matters which would ordinarily have been the subject of List B during that period). I will consider formally making an excluded matters order under rule 3.6 FJR in the event of any deviation from this approach.
71. Finally, it is to be hoped that the parish can move forwards from this unhappy incident and that with the aid of appropriate interpretation, the beauty and history of the tower may continue to be appreciated and understood despite the events described here. The whole matter, whilst deeply regrettable, provides an opportunity for reflection and learning that I am confident will be grasped by all concerned.

**Lyndsey de Mestre K.C.**

**8 July 2024**

## **Annex A – Listing**

STEVINGTON CHURCH STREET SP 9953 (North Side)

26/519 Parish Church of St Mary 13.7.64 GV I

Church. Saxon W. tower below belfry level. Top of tower is Perpendicular. Nave and both aisles are C14, the S aisle being probably earlier than the N. North and South chancel chapels also belong to the C14, although they have since been unroofed and now stand in a ruinous condition. The clerestory was added in the C15 with a fine nave roof bearing figures holding shields with the emblems of the Passion, and also woolpacks with the initials of two merchants. A high Perpendicular screen of one-light divisions is now situated under the tower. The front benches have good C16 poppyheads. Brass of Thomas Salle +1422 is 32" long. His head rests on a large helmet. Victorian restoration work was carried out in 1871 under the guidance of Henry Clutton.

Listing NGR: SP9904053647