

Neutral Citation Number: [2022] ECC StA 2

In the Consistory Court of the Diocese of St Albans

Petition 1195

re St Mary the Virgin, Ashwell

Introduction

1. In 2020 the petitioners were excited when, during significant re-ordering works to this fine, grade I-listed church, a brick-built barrel vault (dating to the 18th or 19th century) was uncovered under the floor of the north aisle, where kitchen and toilet facilities were being installed.
2. The petitioners wish to mark this discovery in two ways, both of which require a faculty. First, they wish to incise a cross on a floor slab above the vault, or inset into the floor a similarly-inscribed slab of green slate or Portland stone. Secondly, they wish to install a stone memorial nearby, inscribed to the unknown parishioners interred in the vault and referencing its discovery during the re-ordering works.
3. The reasons for this wish are two-fold. First, there is the understandable interest in a feature of the church previously unknown and unsuspected. Secondly, the PCC wished to draw attention to the feature as part of its extensive plans to develop heritage engagement to meet the requirements of an application for Heritage Lottery funding for repairs to the tower and, potentially, the north aisle.

Consultation

4. The Diocesan Advisory Committee does not object to the proposals.

5. It is fair to note, however, that this is not a neutral position. Several members of the Committee considered that it was fundamentally inappropriate to draw attention by means of permanent memorials and fixed information boards to the presence of a vault, as vaults are commonplace in many parish churches. They supported the inclusion of reference to the vault in a parish guide or on a freestanding display about the history of the church. There was also continuing concern about the proposal to commemorate the unknown people who were buried in the vault when, the Committee noted, there were countless unknown people buried elsewhere beneath the church for whom there were no memorials (although this is the only vault in the church of which the petitioners are aware). After discussion, the Committee agreed not to oppose the proposal to mark the presence of the vault, but suggested this should be done by: 1. incising the proposed cross in a floor slab; 2. explanatory text on a freestanding display board, on a brass plaque or display board fixed to new woodwork (i.e. not to the historic fabric of the tower/aisle wall) or in explanatory literature to be provided for visitors.
6. In the opinion of the Committee, the work was not likely to affect the character of the church as a building of special architectural or historic interest.

Consideration

7. I consider each of the two proposals separately.

Incised cross

8. I am not troubled by the wish to mark the location of the vault. While they may be common in parish churches, the discovery of this one is a point of interest in the contemporary history of this church; and while its presence is now known and documented, to mark its location discreetly in the manner

proposed is consistent with the petitioners' wish to develop heritage engagement. Given the advice of the Committee, that the work is not likely to affect the character of the church as a building of special architectural or historic interest, I do not need to go further through the *Duffield* questions than to note that it is for the petitioners to displace the presumption against change, and I am satisfied that in this respect, they have done so.

9. However, the documents accompanying the petition only refer to "a deeply-incised cross". I have no further information about the size and depth of what is proposed. This is a matter of some importance, given that the petitioners are proposing to introduce deliberately what might otherwise be seen as a potentially-hazardous defect into the floor. Its location generally is one where people of impaired sight and/or mobility can be expected to encounter it. More specifically, the cross will be right outside the toilet facilities and the kitchen area, where people's attention cannot be expected to be focussed on the ground.
10. I will, therefore, direct that a faculty pass the seal permitting the presence of the vault to be marked with a cross incised in an existing floor slab. However, before any works are undertaken, the consent of the Diocesan Advisory Committee is to be obtained to the precise location, design and size of the cross; and any application to the Committee for that consent is to be accompanied by correspondence from the church's insurers indicating that they are content with the proposed location, design and size of the cross.

Memorial

11. The petitioners propose an inscribed stone tablet, bearing the words:

INTERRED BELOW [THE NEARBY CROSS] ARE THE MORTAL
REMAINS OF LOCAL PARISHIONERS WHOSE NAMES ARE KNOWN
ONLY TO GOD

THE VAULT IN WHICH THEY REST WAS UNCOVERED DURING THE RE-ORDERING OF THE NORTH AISLE OF THIS CHURCH IN AUGUST 2020

MAY THEY REST IN PEACE AND RISE IN GLORY

12. Following consultation with the Diocesan Advisory Committee, the originally-proposed location for the tablet – on the side of one of the fine mediaeval columns – was changed to a section of wall nearer the proposed location of the cross, between a service cupboard and the newly-constructed toilets.
13. This is not a decision that I am free to make, untrammelled by any authority. In *re St Margaret's, Eartham* [1981] 1 WLR 1129, the Court of Arches considered the decision of Quentin Edwards Ch. to refuse to grant a confirmatory faculty for a memorial. In doing so, the Court set out the following statements of principle, which are binding on me.
 - (i) *Faculties for memorials cannot be freely or extensively granted for, if they were, the walls of a Church might soon become so crowded as seriously to detract from the Church's appearance.*
 - (ii) *A Faculty for a memorial should be regarded as a special privilege reserved for very exceptional cases – see re St Nicholas, Brockenhurst [1977] 3 All ER 1027, a decision of Chancellor Phillips, with which I fully agree. The reasoning of that case requires the Chancellor to ask himself the questions (a) is this case so exceptional that the special privilege of a Faculty could properly be granted? and (b) if so, are the circumstances such that a faculty should be granted?*
 - (iii) *Factors which may show exceptionality are for example the character of, or outstanding service to Church, country or mankind by, the person to be commemorated by the memorial, a desire to record by the*

memorial some important or significant aspect of local or national history and some family history or tradition of such memorials especially, but not necessarily, if any future application based on the family connection would be impossible.

- (iv) The burden of showing that the case is exceptional and that a Faculty should be granted is on the Petitioner. The Chancellor will need clear evidence and, of necessity, will need to rely greatly on the submissions of the Incumbent, the PCC and the Diocesan Advisory Committee. Whatever the grounds of exceptionality claimed, in future they should be stated in the Petition for the benefit of the Chancellor, and those supporting the Petition should also explain why the case is considered exceptional and why it is claimed that the special privilege of a faculty should be granted.*
- (v) Even when exceptionality to an extent which could justify a Faculty is shown, such a Faculty will not be granted as a matter of course as Petitioners should be warned by Incumbents and Registrars. Factors which may persuade a Chancellor not to grant a Faculty despite the exceptional nature of the case would include for example the character of the Church, the number of memorials already in the Church, the inappropriate design of the proposed memorial tablet and any lack of support or, a fortiori, opposition in the Parish, the PCC, the Diocesan Advisory Committee or other interested parties.*

14. The proposed memorial in this case is seeking to fulfil two purposes. The first is the commemoration of the parishioners interred in the vault whose identities are now unknown (although it seems to me to be likely that there was once a ledger stone above the vault or a wall tablet nearby; incurring the expense and trouble of creating a vault within the church would normally be accompanied by a visible commemoration). The second is to explain the

presence of the incised cross and the discovery of the vault below – what is described elsewhere as heritage engagement.

15. The threshold question for me is: have the petitioners persuaded me that either of these proposed functions, or the two of them in conjunction, make this case so exceptional that the special privilege of a Faculty could properly be granted?
16. Plainly, the petitioners are not trying to suggest that the lives or contributions of those interred in the vault were in any way exceptional. They may take the view that the *Eartham* principles do not apply in a case such as this where it is the very unnamed-ness of the interred parishioners which is thought to be exceptional and worthy of commemoration. But this is not a case with any parallels to the Tomb of the Unknown Soldier, where the individual's tomb is marked precisely because his unknown identity allows him and his sacrifice to stand representative of an entire lost generation. In this case, the identities of those interred would once have been known, but through the passage of time are now lost. This is no different from the remains of the countless faithful interred in and around our churches whose gravestones, if they ever existed, have been moved, destroyed or simply become illegible.
17. I come to the conclusion that the subjects of the proposed memorial in this case fail to clear the first hurdle of exceptionality.
18. What of the second purpose of the memorial – to explain the presence of the incised cross and of the vault below? It seems to me that it is not the role of permanent stone memorials in our churches to provide heritage engagement in this way. I agree with the DAC that this is more appropriately done in more overtly interpretational material such as displays and literature; and I note that whatever the outcome of this petition, the petitioners already intend to create interpretational material, including photographs of the vault, to be displayed nearby.

19. Having considered each proposed purpose of the memorial separately, I need to consider whether, cumulatively, they amount to sufficiently exceptional grounds for granting a faculty. Given the reasons why, in each case, I am not persuaded to grant a faculty, it must and does follow that the cumulative purpose of the proposed memorial does not persuade me to answer the threshold question in the petitioners' favour.
20. I therefore grant a faculty for the marking of the vault with an incised cross, subject to the conditions set out in paragraph 10 above, but dismiss the remainder of the petition.

David Willink Dep. Ch.

22 April 2021