

**IN THE CONSISTORY COURT OF THE DIOCESE OF  
COVENTRY**

**BENEFICE OF WHICHFORD AND ASCOTT  
CHURCH OF ST MICHAEL WHICHFORD**

**In the matter of a Petition Ref C123/2012 lodged the 25<sup>th</sup> day of  
March 2013 seeking a Faculty for:**

**Following the 2008 QI Report, repairs as per the specification and  
addendum (March 2013) by John Melvin, comprising:**

- 1. Stone repairs and replacement**
- 2. Removal of cement mortar and re-pointing**
- 3. Removal of loose stone**
- 4. Replacement of window guards**
- 5. Removal of rust stains on stonework**
- 6. Replacement of window ferramenta**

**Heard in the aforesaid parish church on Friday 13<sup>th</sup> September 2013  
before the Chancellor of the Diocese, the Worshipful Stephen Eyre**

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**JUDGMENT**

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The church of St Michael's Whichford is a Grade I listed medieval church. Its earliest portion dates from the first half of the twelfth century. Indeed as one enters the church the point is made of a Norman Knight coming to the village with his men and building a church as one of the first institutions. There have been additions and alterations at later dates and there was a significant re-ordering in the nineteenth century but the exterior appearance and structure remains predominantly medieval. The stone work, certainly of the exterior, is ironstone. The Petitioners

contend that this came from the Duns Tew Quarry a few miles from here. That certainly seems a likely hypothesis. The Petitioners are the Reverend Stuart Allen, Rector of this parish, Colin Corlett, until recently the Vice-Chairman of the PCC, and Mrs Julia Melvin who bears the responsibility of being the sole churchwarden. By the petition dated 2<sup>nd</sup> January 2013 they seek a faculty for various works of replacement and repair to the exterior stone work of the church. To the extent that replacement is necessary the petitioners wish to replace the existing stone work with stone from the same Duns Tew Quarry as the original stone. The Petitioners provided a specification and one of the questions in the case had been about the degree of detail in the specification with the Petitioners saying that it is as detailed as is practicable given that there will be certain items of work where one will need to be actually working on the stone work before knowing how much needs to be done. Amongst the concerns which have been raised, one is as to the details of the specification, but in practice, as will become apparent, that this no longer the main area of contention.

On 31<sup>st</sup> December 2010 I gave a Judgment in respect of a previous faculty application for repairs and replacement of stone work to two windows on the south elevation of the de Mohun Chapel. I authorised the grant of a faculty there but as I said when I opened this hearing that Judgment was dealing with particular evidence and particular

circumstances at that time. In brief, the background there was that the Diocesan Advisory Committee had not recommended approval of the faculty. English Heritage had chosen not to comment. All were agreed that work was needed on those windows but the controversy then was the DAC suggestion that what was proposed went beyond what was needed and amounted to restoration and not conservation work. In respect of that application I was assisted by the input of the Church Buildings Council who expressed a general preference for works of conservation but said the extent of the erosion in that instance was such that the proposed works were appropriate. The key fact in my Judgment on that occasion was that it was common ground that the proposed conservation works would preserve the situation for no more than fifteen years or thereabouts. In those circumstances I took the view that a breathing space of merely fifteen years was not worth the potential benefits of simply having conservation works. The situation here is potentially different. While my Judgment of 2010 helpfully enables me to remember some of the issues about the church I do not find it drives me to any conclusion one way or another on this application.

In terms of representations the position is as follows. The local Planning Authority has chosen not to comment on this application. There has been no response to the Public Notice. The Diocesan Advisory Committee issued a Certificate stating it did not object to the petition but that

certificate was accompanied by a detailed letter of rider in which the DAC helpfully set out their reasons for moving to a position of no objection. One of the concerns spelt out in that letter was as to the quality and level of detail in the specification but the more important concern was the view of the DAC that some of the works particularly the extent of the stone replacement were unnecessary or would be detrimental to the significance of the historic fabric. Those concerns focused on three elements of the proposed works and indeed those three elements have been the core of the issues of debate and the evidence and submissions before me. They are: whether it is necessary to replace the hood mould around the south porch; whether the reveals around the south porch doorway need to be replaced; and whether the reveal to the south doorway of the de Mohun Chapel needs to be replaced. There is also an issue potentially about the hood mould to that doorway. Those were the Diocesan Advisory Committee's comments as set out in their letter of March 2013. The DAC's views are also set out in the Report of the Site Visit that was conducted on 21<sup>st</sup> February 2013. These again focused in particular on the reveals to the south porch doorway and the doorway to the De Mohun Chapel and on the hood moulds setting out in some detail there the DAC's concerns as to the need for those works

The Church Buildings Council on this occasion has chosen not to comment saying it is content to leave the matter in the expert hands of the Diocesan Advisory Committee.

English Heritage has set out its views in two documents. There is a letter of 4<sup>th</sup> March 2013 from Mr Molyneux explaining that English Heritage would wish to see a more conservative specification for the works to preserve more of the significant medieval fabric. The letter expressed a concern that the works proposed are restoration rather conservation or repair. It expressed concern that the proposal was for total renewal or almost total renewal of some of the medieval fabric. In that letter support for the views of Mr Evans as set out in the Site Visit Report and accompanying email is expressed. The conclusion of English Heritage's view was to say that it wished to see a new specification based on a more conservative approach, preserving more of the medieval fabric and making the point that conservative repairs need not necessarily have only a short life.

Part of the background to this matter is that there was a degree of negotiation leading up to the Diocesan Advisory Committee's decision to issue a certificate of no objection. That negotiation came from there having been an earlier rather more rigorous stance of objection potentially being taken by the DAC by which I mean potentially an indication of a certificate of no recommendation. I say that now because the further

correspondence from English Heritage is to be seen in the context of that negotiation. On 22<sup>nd</sup> March 2013 Mr Molyneux sent an email to the Secretary of the DAC saying this: “In the perfect world I would like to demand a further specification but I don’t think that advances the case any further so reluctantly I would agree to proceed as suggested.” That was a reference to the No Objection Certificate and the accompanying letter.

The Society for the Protection of Ancient Buildings has written two relevant letters, the first of which was on 8<sup>th</sup> April 2013 where the thrust of the letter was to put in quite strong terms an expression of objection to the petition; to set out the view of the Society that all of the stone works of the windows in question is repairable; to say that the proposed stone replacements are unnecessary and inappropriate; to say that all that was needed to the north aisle north-east window was some modest “making good”; and taking a rather harder line than the DAC on the repair of the ferramenta. The letter concluded by saying that the proposed works are largely unnecessary and not based on sound conservation principle or philosophy or best practice. The letter said that the works would detract seriously from the harmonious appearance of the church affecting its character and significance and would result in almost a complete loss of medieval fabric. That correspondence was followed up with an email on 11<sup>th</sup> September of 2013 where the Society sets out in a bit more detail its

reasoning and said this amongst other things: “That we believe the ancient stone work carvings and sculpture of a cathedral or church provide a true record of its past and the craftsmanship of previous centuries. For us the weathering of these stones speaks of the course of time and the process of ageing. As Ruskin says “Sweetness in the gentle lines wrought by rain and sun .....” . We do not feel” the Society says “ that weathering erodes significance ; instead it brings a sense of ancientness that is to be celebrated.” “We are confident” the Society says “ that a practical, pragmatic conservation approach is possible and appropriate for the church.”

The Society also said why it had chosen not to object formally to the faculty application. The first point it makes in that context is to say this: “Everyone will be aware that there is a potential for costs to be awarded against an Amenity Society if it makes formal objection to a petition which is a very serious consideration for the Society.”

Neither English Heritage nor the Society have chosen to attend this hearing. I must comment specifically on the Society’s view on costs. The Ecclesiastical Judges Association has repeatedly, as has the Court of Arches, emphasised that there will only be in the rarest of occasions a costs order against an Amenity Society fulfilling its function in making representation to the Court. It is regrettable the Society for that reason chose not to become a party. The Society in its initial correspondence has

sought to contrast the Consistory Court process with that of the secular planning system. The argument as to costs is not a valid argument in that context.

In the face of that correspondence and that situation I concluded that it would not be appropriate to determine this matter simply on the basis of written representations. I concluded that fairness to all concerned and the need for me to make the right decision required me to have a hearing. Hence this hearing at which I have been helped by representations by Mrs Melvin on behalf of the Petitioners and by representations by the Archdeacon Pastor (the Archdeacon of Coventry) and from Dr Strachan on behalf of the DAC, together with evidence from Mr Melvin and from Mr Evans.

As I said at the start of the hearing I have to be guided by the principles laid down by the Court of Arches in the case of *Re Duffield: St Alkmund* [2013] 3 WLR 854. Those principles are so important that I will repeat them now. These are the questions to be asked. Would the proposals if implemented result in harm to the significance of the church as a building of special architectural or historic interest. If not, has a sufficiently good reason for change been shown to overcome the ordinary presumption that in the absence of a good reason change won't be permitted? If there is harm to the significance to the church as a building of special historic or architectural interest how serious would that harm be? How clear and



convincing is the justification for carrying out the proposals and will any benefit outweigh the harm if that harm affects the special character of the church? And I must bear in mind the heightened presumption that comes from the level of listing of this church.

In respect of many of the works proposed here it is accepted that some work needs to be done and the issue is the extent to which what is proposed goes beyond what is necessary.

The evidence I have received took the form of written witness statements and oral evidence.

Mrs Melvin in her evidence rightly emphasised the responsibilities on those who are stewards of this church, their need to act responsibly, and the need to ensure that the church is in a good condition for future generations. Those are all very powerful points though they as a whole do not address the key questions I have to deal with.

The evidence for the Petitioners addressing those aspects came more in the evidence of Mr Melvin, happening to be the husband of Mrs Melvin and being the Church Architect. The points that are emphasised in his evidence are firstly that the contractors proposed are reputable contractors. There is no doubt about that. The contractors in question have extensive experience in this field and they have set out their approach which is one of an emphasis on conservation and with the removal of medieval fabric coming as a last resort. The DAC agree that

the abilities and approach of the Wells Cathedral Stonemasons, who are the proposed contractors, are appropriate and suitable. Mr Melvin in his evidence takes issue with the ideology or philosophy of SPAB. In short, he says that the philosophy, based on the views of William Morris and John Ruskin and others, of preserving medieval fabric met a need that was present in the nineteenth century of guarding against over enthusiastic restoration and needless removal of medieval fabric. However, he says that this problem no longer exists and, therefore, the philosophy and approach intended to deal with that problem are no longer necessary. However, the crux of Mr. Melvin's evidence for present purposes is his approach to the key questions of what has to be done to the hood moulds and the reveals on the south porch and to the south doorway to the de Mohun Chapel. The essence of what Mr Melvin says is this; it is that the decay of the original stone work on those features has gone beyond a stage where mere conservation can be achieved. In his words, and those of the stonemasons, "the time of last resort has been reached". The hood moulds are, in Mr Melvin's submission, no longer performing their function, that being a function not merely of decoration but a function of protecting the stone work of the church by throwing water away from that stone work. The reveal on the south doorway of the de Mohun Chapel is so far perished, Mr Melvin says, as to longer be present and therefore no longer be performing any structural function. Its

absence leads to a risk of erosion of the stone work of the body of the church. The Petitioners pray in aid of that contention the particular feature of the site of the church. The Cotswolds and South Warwickshire are lovely countryside but the Petitioners say that the elevated site of Whichford and the hard weather that can be encountered here in winter means that there is an increased risk of erosion particularly given the nature of the ironstone which the Petitioners say is particularly prone to erosion. There is clearly some force in that contention though I add in parenthesis that the original stonework has been there for some six hundred years and though it is now showing the signs of that age it has been there for some little while. The crux of the Petitioners' position is that we have now reached the point of no return and there will be further damage to the structure of the building if these works are not done.

The contrasting position was set out by Dr Strachan on behalf of the Diocesan Advisory Committee in her written statement. It is right that I should summarise what the Committee described as being the effect of the proposals. They initially, at paragraph 6.1.1 of Dr Strachan's statement, said that the proposals were not deemed to affect the character of the church as a building of special architectural or historic interest; its archaeological importance or the archaeological remains existing within the church. That of course is the position which was echoed in the DAC certificate. However, the DAC then went on to say that the particular

three elements of the works which I have said were aspects of controversy were unnecessary and premature and detrimental to the significance of the historic fabric. It seems to me that the thrust of the DAC evidence is that there would be an impact on the significance of the church as a building of special interest such as to bring into play the *Re Duffield: St Alkmund* principles. In her evidence Dr Strachan said that other conservative methods of repair could be employed significantly to lengthen the lifespan of the existing fabric.

Dr Strachan is not an architect and she very frankly said while giving her evidence that she was able merely to report her understanding of the views of the Diocesan Advisory Committee. Accordingly, it was of great benefit to the Court that Mr Mark Evans an architect member of the DAC and a former Chairman of that Committee, who had been very much involved in the site visit, attended at this hearing. Mr. Evans had not provided a statement but he was willing to give evidence amplifying the Diocesan Advisory Committee's views. In order for the matter to be properly determined I chose to admit that material in evidence and what Mr Evans said was this: he accepted that the hood moulds were no longer, at least in part, fulfilling their original function. What he proposed and the DAC's approach as explained to him was that it would be possible to have a metallic weathering strip inserted to provide protection for the head moulds and indeed to carry out their function of diverting water

away from the building. That would be preferable, Mr Evans said, to a replacement of the original stone. In terms of the reveals, Mr. Evans's view was that no work was needed. It was his view that there had been no structural failure and that what he described as the concept of "pleasing decay" formed part of the historic character of the building. Mr. Evans also took the view that it would be many decades before the failure of the stones would have any structural impact. He accepted that the introduction of metallic weathering to perform the function of the hood moulds would be an addition to the building but his point was that underneath that metallic strip, which would not be significant in terms of visibility, would be the medieval stone. The contrast between the approach adopted by Mr Melvin and that adopted by Mr Evans was substantially one of philosophy. Mr Melvin was making the point that there had been a marked change in the original appearance of the church because of the erosion and saw that as in part for justification of the proposed works. The opposing view of Mr Evans was to see a degree of decay as being part and parcel of the nature and the character and significance of the building.

I was also assisted by the evidence of Archdeacon Green both in a written submission and in oral evidence. The Archdeacon rightly emphasised that there is a contrast between two bodies, the PCC, represented by the Warden and Incumbent, and the Diocesan Advisory Committee both of

whom were concerned in good faith to do what they can to preserve the mission of the church and the buildings for which they are responsible. That was a difference of emphasis and approach arrived at in good faith. The Archdeacon expressed an understanding of the points of view of each of those competing bodies. The Archdeacon is clearly right to emphasise that this is a dispute and difference of opinion reached as a result of those who are deeply concerned for the future and preservation of this church coming to different conclusions. Sadly that assessment does not help me in solving that conflict.

When I initially looked at the papers preparatory to this hearing I had hoped that one way forward might be to authorise works but with a proviso as to care being taken and a pulling back if it was found that replacement was not necessary in respect of particular works. However, I think we are beyond that stage. There have been some aspects of the works where the Petitioners have accepted the DAC's comments that the works went further than was needed and have pulled back from the works that were originally proposed. Thus some of the work described as defrassing has now been pulled back from. Nonetheless, there are the three aspects of controversy where there is now a stark contrast. There the Petitioners say the point of no return has been reached in respect of the hood moulds and the reveals to the doorway. Conversely the Amenity Society, English Heritage, and the Diocesan Advisory Committee say that

point of no return has not yet been reached. I must grasp the nettle, I was going to say of deciding which view is correct, but that is not quite the nettle I must grasp. Rather I must see who has established the correct position in terms of the *Duffield: St Alkmund* approach involving as that does a strong presumption against change.

Mr Evans talked about pleasing decay. I do not think that was his considered choice of phrase because the matter is in fact put rather better by the SPAB. That Society talked not about pleasing decay being part of the character of the church but of weathering and change being an inevitable feature of an old building. While pleasing decay is a very odd concept having the concept of decay in it, weathering and showing the age and endurance of a building is a different feature. This is particularly so here as this church quite rightly, as I said, points out the Norman heritage that it has as its history: It is important to bear in mind that the effects of weathering do not just have an aesthetic impact. In addition the effects of weathering are part and parcel of the witness of a church building to a Christian presence in a location. They are part and parcel of indicating that this building has stood bearing witness to Our Lord and to the Church's Mission over a number of years. That historic heritage and witness is an important part of the current mission of the Church. It follows that work merely to address the effects of weathering and age

without more would not be justifiable. I bear that in mind together with the *Re Duffield: St Alkmund* principles.

I should by way of a side comment just to cover all the material before me point out that I have received from Professor Derek Atkins a survey and a letter based on it about the views of the local people about St Michaels with a view to setting up a Friends of St Michaels. That document shows the value in which the church is held in the local community but I do not think it assists me on the key question of whether the time of last resort has come in particular to the features I have to address.

As I said a moment or two ago work merely to address the effect of weathering and age is not justifiable in terms of a Grade I listed church but there comes a time when action is needed to preserve the fabric of the church. There will come a time when change and decay has gone beyond mere weathering. There must come such a time because otherwise eventually in the course of time any church building would gradually become a pile of material on the ground. The difficult issue here is whether that time has come here. Whether what has happened here and whether the structure of the church is such that the incumbent and wardens and PCC have to deal with something going beyond mere weathering, something which affects the structure of the church. I must exercise considerable caution in reaching a decision on that point because



the historic fabric of the church as I said a moment or two ago is part of its significance, character and mission. It must only be in an extreme case that that can be altered. I must also exercise caution bearing in mind that I am not an architect. It is not my job to impose my own aesthetic judgement or my own gut instinct as to what is or is not decay and there are competing views here. What I have to do is to decide whether the views put forward by the Petitioners are sufficiently forceful and legitimate in the light of the presumption that I have to deal with and of the competing views from competent experts to overcome that presumption. I have concluded that they are so sufficiently forceful and that a faculty should be granted in the terms sought and my conclusions and reasons for doing so are in short as follows.

Firstly in terms of the hood moulds, it is I think highly significant that Mr Evans and the Diocesan Advisory Committee accept that some action is needed. The action proposed would involve change to the historic fabric of this church. It would involve the insertion of new material. That is in my view a significant point. Yes, it is right that underneath that new metal the historic fabric would remain, gradually wearing away, but being there as historic fabric. But the hood moulds, and this is a point that Mr Melvin makes in my conclusion and judgement with considerable force and effect, are not merely decorative. They have a structural function. They are no longer performing that structural function. Should that

structural function for the future of this church be performed by new material inserted in the form of new metal above the hood moulds or should it be performed by material from the same quarry as the original stone work in the same form as the original hood moulds? I have concluded that the replacement of the hood moulds so that they perform their function is justified and a need has been shown sufficient to overcome the presumption against change. I give permission for those works.

The position as to the reveals is more debateable. I repeat I am not an architect but it is striking to anyone looking at the doorways that certainly in terms of the doorway to the de Mohun Chapel the reveal simply is not there in large elements of the stonework. Mr Evans makes a powerful point when he says the fabric of the church will be not affected for many years but I have concluded that the concerns of the Warden and Incumbent and PCC of there being an effect, progressive and continuing, on the underlying fabric of the church through the absence of the reveals is one that is legitimate. I have concluded that the impact on the character of the church is such that the restoration, because I have grasped the nettle that what is proposed here is restoration, of those reveals, is justifiable in the light of the impact of the current position on the structure of the church. The conclusion therefore is that I will grant the faculty.

It is no comfort to anyone for me to say that it is a very finely balanced decision. It is right that I should say that the concerns expressed by the Diocesan Advisory Committee and by the Amenity Society are legitimate and appropriate concerns. It will only be in an extreme case that the restoration taking the form of the removal of medieval fabric will be justified but I have been persuaded for the reasons I have just set out that this is such an extreme case.

Therefore, I direct that a faculty issue for the works as proposed as set out in the amended Specification which is contained in the papers before me received by the DAC on the 19<sup>th</sup> March 2013 and dated 18<sup>th</sup> March 2013 combined with the original specification to the extent that is unamended. I also impose the standard condition that the works be performed within twelve months of the grant of the faculty unless extended. I am going to impose the standard Coventry Diocesan condition that a record of the works be kept in the parish Log Book, though given the nature of the works I suspect everyone will be fully aware that they are being done. I will make a separate written ruling as to the costs of this matter.

STEPHEN EYRE  
13<sup>TH</sup> SEPTEMBER 2013