

Neutral Citation No. [2017] ECC SEI 4

IN THE CONSISTORY COURT

DIOCESE OF ST. EDMUNDSBURY & IPSWICH

**In the matter of
KETTLEBURGH, ST. ANDREW**

-and-

**In the matter of
A PROPOSED RE-ORDERING OF THE NAVE AND THE SOUTH
PORCH**

Judgment of the Chancellor

May 5, 2017

JUDGMENT

1. OVERVIEW. In this petition, I am requested to grant a faculty for re-ordering works at Kettleburgh, St. Andrew. The works are as follows: to undertake the re-ordering of the internal west nave and south porch: providing a raised floor in the nave level with the tower ground stage vestry floor, the cill of the blocked-up nave north door and the existing level of the south porch to create a level floor at the west end of the nave for an extended area for benefice, group church and village activity meetings suitable for the whole community. The proposal includes repositioning of the last three rows of pews in the west nave, removal of the 20th century base to the 15th century font, the conservation and opening-up of the north nave door, the conservation and repair of the south porch ledger stones and decaying areas of the pavior floor across them and the provision of new oak doors to enclose the south porch. There are proposals for maintenance works including some replastering and redecoration and upgrading of the electrical supply system to the west nave and south porch. It would be intended to carry out the work in three distinct phases.
2. I have concluded that all of the proposals to re-order at Kettleburgh, St. Andrew should be allowed. In the case of each proposal, excluding the maintenance works, I have concluded that the enhanced test set out in *St Alkmund, Duffield* applies and that the proposals, if implemented, would result in some harm to the significance of the church as a building of special architectural or historical interest and that

the harm would be low to moderate, but I have found a clear and convincing justification for the proposals and have borne in mind throughout that the church is Grade 1 listed and I have taken fully into account the views expressed by the Church Buildings Council and Historic England both of whom have objection to some of the proposals though not, in fact, the same ones. The Society for the Protection of Ancient Buildings was given special notice of this petition but has not responded. The faculty is granted subject to certain conditions.

3. THE PETITION. The west end “welcome” area. This requires the creation of a level area and the removal of six pews. The existing floor contains a mixture of brick paviers and pammets (floor tiles), Purbeck marble pammets (floor tiles, partly covered by the nave carpet) and timber pew platforms over rammed earth. The additional flexible space would be created by removing three rows of pews. These would be retained at the west end on moveable castors. There would be additional electricity power points.
4. The opening-up of the north door. This door does survive and *in situ* but it has been rendered over externally. The proposal is to both conserve it and open it up again.
5. The south porch. This includes the repair and re-laying of parts of the floor and the shortening of what appear to be simple benches. The outer porch has a timber and wire mesh bird scheme set within the outer arch. It is now proposed to enclose the south arch with a new paved floor and oak doors. There would be additional electricity power points.
6. There are no individual objectors but there are objections or reservations from some consultees. It is most convenient to set these out here.
7. Church Building Council (“CBC”): The west end “welcome” area. It had been previously consulted on a similar proposal in 2012. Its designated officer was not convinced then that it was appropriate to raise the floor at the west end of the church to deal with the “level” changes. The officer thought it would look temporary in nature and create additional problems of “level” changes between the ramp and the pew platforms. The officer hoped it would prove possible to look carefully at other alternatives. Christine Emerson, an officer at the CBC, agreed with this earlier reservation. In particular, she believes that “need” has not been sufficiently articulated, that there was no sufficient indication that alternative options had been considered and that the use of ramped access by the south door into the nave had not been addressed properly as one of those alternative options. There was support for the proposal to provide appropriate facilities (including access) for its worship and “missional” activities. She was “uncomfortable” with a solution that required those in wheelchairs to use a different door to other users or be ‘helped’ (the officer’s single quotation marks) to negotiate the change in levels via mobile ramps. In summary, she says the parish should give further thought to how it might achieve its objectives in a way that is both less visually intrusive and more genuinely inclusive.
8. Historic England (“HE”): has no objection to the proposals in respect of the west end “welcome” area. It concludes that such character as the traditional brick paviers and pammets have already been undermined to an extent by the *ad hoc* arrangement of materials. The formation of a raised timber floor would have, in HE’s opinion, a “minimal impact”. However, HE does not object on the understanding that a record is made of the existing floor and receives and follows any archaeological advice. Jumping ahead a little, it is convenient to note, that in recommending the proposals as a whole, the Diocesan Advisory Committee

(“DAC”) added two provisos to its recommendation which are in substance the same conditions represented by EH’s understanding. HE had reservations about the removal of the three rows of pews, described as making a significant contribution to the character of the interior, but does not object in view of their retention, albeit on castors. There is no objection to the removal of the 20c base to the font provided it is done sensitively by an appropriate conservator. Put, shortly, HE finds the proposals would have a modest impact on the character of the interior and significance of the church and has the public benefit of providing a flexible space for the church and wider community using the building. It is “broadly supportive” of this proposal.

9. HE had no objections to the proposals regarding the north door, which means there *are* no objections to that aspect. Again, its position is said to be “broadly supportive.”
10. HE does, however, have objections to the proposals concerning the enclosure of the south porch. There is some enclosure already (the timber and mesh structure) but HE describes this as “ephemeral” in character giving “lightness and transparency” and maintaining the south porch as, at the least, a semi-external space. HE’s policy is that where the outer entrance of a porch has been open, this arrangement should be retained, reflecting the traditional pattern of use. This is certainly its position in its printed guidance contained in *New Work in Historic Places of Worship*. HE comments on the Statement of Need describing the purpose of the door to be the creation of a draught lobby, which it feels is not dealt with in sufficient detail or robustly and HE comments further that, even if the need was established, new porch doors are most successful when designed as a partially open screen either in metal or in timber, possibly incorporating some glazing. In short, the impact of this aspect of the proposals is said to be such that a robust case would need to be made to justify it.
11. The petitioners have put the need for what they propose in the following terms. The first Statements of Significance and Need were in connection with a 2012 proposal similar, but not identical, to the one I am considering. First to improve equality of access. Parking is 150m to the south west of the church and the nearest place to allow passengers to alight from vehicles is 25m from the existing entrance to the church, being the south porch and steps over a raised concrete lintel into the porch, and having moved the sliding bolt to open the heavy door steps down into the nave. To sit in the nave pews involves a further step up. This access is said to be impossible for wheelchair users without assistance, and is challenging for anyone with limited mobility. There is no alternative entrance and the only other point of departure, the Priest’s Door in the chancel, is inappropriate as an emergency exit. It is said that these difficulties challenge and even deter a number of potential visitors. There was originally a proposal to construct lavatories, but this is not pursued.
12. Second, the need for flexibility of space, particularly as the west end of the nave is said to be spoilt presently by the unavoidable storage of metal chairs for “overflow” seating, a domestic wardrobe cupboard used for cleaning materials, furniture and flower arranging equipment which cannot be housed in the already full vestry. The sense of clutter is said to be increased by the floor having no less than three levels: lowest is the nave floor level; higher, by about 6 inches is the concrete plinth around the font and an area of wooden floor approaching the north door; and the third level, some 9 inches higher, is a sort of rostrum on which the

harmonium once stood, but which now serves no purpose, combined with stacked and stored furniture.

13. In considering the need, the petitioners state they have considered these options to improve access. The first would be lowering the approach to the south porch and the floor-level within it to that of the nave, creating a largely level floor throughout the church (fixed pew timber floors and vestry excluded). However, two Purbeck slabs would be lost in all likelihood and not inconsiderable excavation of the south porch would be required. Additionally, the ancient door of the south porch would have needed extension which had implications for its weight-bearing capacity and the same issue would arise in respect of the stone walls, requiring additional stone work that would itself require underpinning. There were, therefore, both financial and technical risks which the petitioners regarded as rendering this option impractical.
14. The second option, looking at it the other way round, was to remove the concrete threshold to the south porch and create a wooden deck floor at the same level as the plinth to the font *and* the wooden flooring of the fixed pews. This would be supplemented by hatches that could be raised to display the floor beneath. This option was believed to have the attraction of creating a single level floor space through the north to the south doors, creating a useful and usable space around the font. If the back three rows of pews were placed on lockable casters then both a significant part of the west end of the church would become available as an open area and this seating would not be permanently lost.
15. The negative feature of this solution, in the view of the petitioners, would be that the eastern and western parts of the nave would have different floor levels requiring a ramp or step halfway along the aisle from a higher to a lower level. This, additionally, might require a handrail. Visibility of the existing floor would be retained by hatches (as before) or a glass area around the font. Potentially unwelcome sounds from a hollow wooden floor would need consideration and might require floor covering.
16. A third option considered was to create a separate equal access entrance through the north door, approached by a new graded external pathway from the south porch to the west of the tower leading to the north door but the petitioners disliked this option because they believed it would not produce equality of access to the church; it would lengthen the approach by about 35m and it did not address the varying floor levels within the church.
17. Accordingly, the petitioners considered that the second option addressed its need in the most cost-effective and least intrusive way consistent with their aim of providing equal access to the church and not irreversibly altering the current fabric. I agree that, of the three options, the second is the most attractive. The first option is impractical and the third option does not achieve the petitioners' laudable aims. The second option, whilst not without some negative features, does achieve the petitioners' aims.
18. The significance of the church in this ancient parish as set out by the petitioners, is first, its historical significance and, second, its significance to the parish. Its general location, on high ground, overlooks the village and it is a "conspicuous landmark" in the upper Deben valley. South of the churchyard are two cottages, once owned by the church, and, to the west, a moated farmhouse and farm buildings situated on the site of Kettleburgh Old Hall which was demolished in Tudor times. Other than the south porch to north path, the churchyard is grass

with a somewhat random scattering of headstones and contains some interesting memorials.

19. The church dates from the 14th century but bears signs of earlier periods back to Saxon times. The tower is from around 1350. The windows are mostly 15th century, but this aspect is not affected by the petition.
20. The south porch is now the principal entrance and the petitioners say that it probably lost its 15th century parapet during the 18th Century when the pitch of its roof was lowered to make way for the two-light window over it. The west end of the nave is said to benefit from the extra light provided by these windows, in that they give a sense of spaciousness in what is a relatively small church. This is said to be further enhanced by the simplicity of the oak work of the vestry and ringing chamber under the tower arch, which were part of the re-ordering of the Church in the 1990s. The arms of Queen Anne hangs above it and is much admired. The south door is ancient, but bears signs of alteration at threshold levels. The step down to the nave floor is formed by a Purbeck marble slab. The north door was closed off some years ago.
21. The octagonal font, which features in this petition, has carved figures showing four lions and angels holding coats of arms associated with the Charles family. It stands centrally beneath the tower arch on a raised concrete pediment. This font, which was given by Lady Alice Charles in memory of her husband who died in 1419, may have been moved to its present position circa 1950. The black Purbeck Marble squares of the floor are notable. The base has a twentieth century surround. The nave's plain hammer-beam roof of typical East Anglian style was decorated with heraldic shields as part of the millennium project.
22. The pulpit on the north side of the nave is a late Victorian construct from a Jacobean original. The reading desk and chancel screen also incorporate panels from this original Jacobean pulpit.
23. I have borne in mind the significance of the chancel, a particularly fine peal of bells and other striking features.
24. Although, and correctly, placed in the Statement of Need the petitioners make an observation which is important to an understanding of the aesthetic "whole" when considering the significance of this church, highlighting, in useful summary form the "positive features of the west end of the nave, with its sense of spaciousness and light provided by the clerestory windows, the simplicity of the tower arch and the beautiful octagonal stone font".
25. The church's significance to the parish is described by the petitioners in these general terms: "St Andrew's Church is the much loved, much used parish church of the ancient parish of Kettleburgh. It has been used as a place of regular worship and prayer by members of the community of Kettleburgh, as well as being the natural place where Kettleburgh babies are baptised, marriages celebrated and funerals and burials undertaken. The building has been modified and adapted at various moments in its history to meet the needs of this use, and its fabric now bears witness to some of these modifications." I am told, in fact, that it is the oldest building in Kettleburgh. Its capacity, absent additional seating, is 70 souls.
26. The petitioners explain that there are weekly services throughout the year with a monthly choral evensong, traditional services such as "Nine Lessons and Carols" in December, Harvest Festival, Remembrance Sunday and a scouts' service bi-annually and the appropriate indoor and outdoor service for Rogation Sunday. Numbers vary from around 30 for Choral Evensong to over 70 for some of the other services. This is together with funerals and burials which can also involve a

very full church. Although these figures are from around 2012, there is no reason to suppose that they are any different today.

27. In 2016, the petitioners have submitted additional observations about need, primarily in respect of a proposal first in respect of the south door and, second, electrical upgrading. The latter is uncontroversial and not opposed. The former is the proposal opposed by HE. It is said that the need being addressed is the exclusion of draughts, and that it is totally reversible. This is said to be a beginning of a wider use of the church for the community, and visitors – both national and international and of all ages.
28. The petitioners have also sought to address the concerns of the officer of the CBC, and HE. They comment as follows in respect of the CBC: first, they remind the court that their original proposals were in 2009 and express frustration at how long this has taken. They remind me that the DAC made the same observation at the beginning as is now made by Christine Emmerson but that that they have now the support of the DAC. They stress how difficult it is for those in wheelchairs to attend the church and give examples and stress the aesthetically unattractive features present now at the west end of the nave. They make the point that the proposal of the steps in the aisle were to accommodate a former churchwarden but that they would be prepared to have a fixed slope providing smooth transition from the new single level surface at the west end to the eastern end of the nave.
29. In respect of the HE objections to the south porch, the petitioners would be prepared to have opening windows to the south porch doors.
30. I have decided that I can decide this matter on the papers, given that nobody wishes to become a Party Opponent. However, because this is a proposal that has a number of features and there is opposition from both CBC and HE, albeit on totally different aspects of it, even though neither wishes to become a Party Opponent. CBC and HE are both content I should decide the petition, taking their views into account.
31. It is clear in this petition that enhanced consideration contemplated by the particular considerations of *In Re St Alkmund, Duffield* [2013] Fam 158 apply. The Court of Arches in *In re St John the Baptist, Penshurst* [2015] WLR (D) 115, reaffirmed the approach it set out in *In Re St. Alkmund, Duffield* [2013] Fam 158 in performing the necessary balancing exercise when determining petitions affecting listed buildings attracting the ecclesiastical exemption. The enhanced consideration is formulated upon the following test:
 - (1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historical interest?
 - (2) If the answer to (1) is “no”, then the presumption is to be in favour of the *status quo* but it can be rebutted more or less easily depending upon the nature of the proposals.
 - (3) If the answer to the first question is in the affirmative, it is necessary to ask is how serious the harm would be;
 - (4) Then, it is necessary to assess how clear and convincing is the justification for the proposals;
 - (5) Generally, the greater the harm, the greater the demonstration of benefit that will be needed to justify the proposals and, importantly, in the case of a building that is listed grade 1 or II*, if serious harm would result then the justification will need to be exceptional.
32. I judge that the proposals (save for the electrical upgrading) would, if implemented, result in harm to the significance of this church as a building of

special architectural and historical interest. It is difficult to see how this could be seriously contested. The DAC has so advised and it is implicit in the Statement of Need. Indeed, the petitioners say that they are striving, in the preferred option, to keep the alterations as unintrusive as possible and to allow them to be reversible. Harm does not mean simply causing general deleterious effects, as in its general meaning. The changes proposed may be to make the church better and, indeed, may be likely to achieve that aim in many particulars: the harm is caused by the alteration to, and the effect upon, the architectural and historical significance of the church.

33. The remaining questions, and the 'live' ones in this petition are how serious the harm would be, and the clarity and rationale of its justification judged against the criterion that the justification would need to be exceptional in this case if the harm would be serious, as the church is grade 1 listed.
34. The west end "welcome" area. The creation of a level area would cause some harm to the significance of the church as defined, but I would place it as low. HE describes it as "minimal" although the CBC was concerned about a "temporary" appearance. The removal of the pews would cause moderate harm in my judgment but that harm is significantly reduced by their retention at the west end on moveable castors. The existing floor contains a mixture of brick paviors and pampments (floor tiles), Purbeck marble pampments (floor tiles, partly covered by the nave carpet) and timber pew platforms over rammed earth but HE comments, correctly in my view, that their significance has already been much reduced by previous changes. The controversial proposal to put steps in the aisle to move from one level to another was suggested with the best of intentions to accommodate the needs of a churchwarden, but the petitioners have indicated that they would be prepared to substitute a slope in its place. The additional electricity power points would cause no harm.
35. The opening-up of the north door. This will cause no harm.
36. The south porch. This includes the repair and re-laying of parts of the floor and the shortening of what appear to be simple benches. This will cause no harm. The proposal to enclose the south arch with a new paved floor and oak doors has caused concern to HE which would prefer, where an open porch is present, to retain that arrangement as it shows the traditional usage and preserves natural light and a sense of space. The proposal to enclose the porch with wooden doors would clearly cause some low to moderate harm to the significance of the church although the petitioners acceptance of HE's suggestion that it would help to place windows in the doors would reduce that harm somewhat. There would be additional electricity power points. They would cause no harm.
37. The base of the font. The proposed works, if carried out by an appropriate conservator, would cause no harm.
38. The principal need, which is a long-term issue, is to improve access to the church and to provide a "welcome" area, to improve the appearance of the church and to upgrade the electrics. The need for the doors in respect of the south porch is primarily to avoid draught. The proposed doors could be removed. There is general acceptance that there is a need to improve access. HE believes these proposals achieve that end. The CBC was more doubtful, but Christine Emmerson says that the CBC does not wish to become a Party Opponent and is pleased that the petitioners have been prepared to reconsider the arrangements in the nave to make these more genuinely inclusive. As far as the proposed doors are concerned,

the CBC did not object to the proposal to have doors enclosing the south porch. HE has given its observations and the petitioners are content to make provision for natural light to enter the south porch by incorporating windows.

39. Accordingly, I order that this faculty should pass the seal subject to the following conditions:
 - a. A record of the porch floor must be made before the work commences;
 - b. An archaeological watching brief must occur when the work to the porch floor commences;
 - c. A conservator must examine the walls once the pews are removed and before re-plastering occurs;
 - d. A conservator must supervise the works to remove the existing base of the font;
 - e. The alterations to the nave will involve a sloping floor and not stairs and the works will not proceed unless and until this revised proposal has been submitted to and agreed by the DAC;
 - f. The revised proposal to provide windows in the doors proposed for the south porch must not proceed unless and until it has been agreed by the DAC.
40. May I emphasise that any other variations to the specification arising out of conditions discovered during the works may only be carried out, if the court agrees, by way of variation to the existing faculty *prior* to any works occasioned by such a variation being carried out.
41. The court is very grateful to everyone concerned for setting out this somewhat complex proposal carefully and for the positive spirit in which the consultations have been carried out. As always, the court is also very grateful to the CBC and HE for its helpful and constructive approach to these proposals. I have taken into account very carefully everything that has been written.