

IN THE CONSISTORY COURT OF THE DIOCESE OF NEWCASTLE

His Honour Simon Wood, Chancellor

In the Matter of an Application for the replacement of the chancel floor of the church of St Bartholomew, Kirkwhelpington with York stone slabs; repairs to the organ, fitting of castors to the organ and relocation to the front of the nave; removal of two pews from the front of the nave; laying up Women's Royal British Legion Flag and in the Matter of a Petition by Canon Dr Geoffrey Purves and Audrey Harrison, Church Wardens, and the Reverend Janet Parker, Priest in Charge

JUDGMENT

1. This is a petition dated 14 December 2024 by the Church Wardens and Priest in Charge following resolutions of the PCC on 11 July and 14 September 2024 to uplift and replace the sandstone paving forming the floor of the chancel area at the east end of the church of St Bartholomew, Kirkwhelpington. Separately, the petitioners seek to carry out work to repair the organ currently situated on the south side of the chancel, to put the instrument on castors and re-site it a short distance away at the front of the nave. This, in turn, will necessitate the removal of the two front pews to accommodate the instrument. Still further, the petitioners wish to lay up a Women's Royal British Legion (WRBL) flag.
2. It should be said at the outset that the issue in contention is a narrow but important one, namely the necessity of replacing the entire chancel floor, the issue of the material to be used having been resolved by the finding of a local quarry which can supply sandstone likely to be of the same or very similar chemical composition to that in situ. There is no dispute about the repairs to the organ, moving it or removing the pews to accommodate it. Likewise the laying up of the flag is uncontroversial.
3. Having duly notified the Church Buildings Council (CBC), Historic England (HE), the Society for the Protection of Ancient Buildings (SPAB) and the Georgian Group (GC) ahead of the petition, notice having been given on Form 4A in accordance with rule 6.2, and received a variety of responses, the petition was duly referred to me for determination in the face of SPAB's objection.

The facts

4. St Bartholomew's is a C13th Grade II* listed church in the picturesque and relatively remote Northumbrian village of Kirkwhelpington. It has a "low, broad Perpendicular tower and long nave and chancel, was altered in the C15th and then in 1896" (*Churches of Newcastle and Northumberland – A Sense of Place*, Purves, 2006). Very plain and unadorned, when I visited it on 24 February 2025 I found it to have a serene, calm and unspoilt ambience.

5. The chancel is accessed via a screen and step up from the nave. There is very little furniture save for single freestanding stalls one each on the north and south sides as one steps into the chancel. A pair of Victorian grills are set in parallel into the floor immediately in front of the stalls concealing under floor heating pipes. They serve almost as a guide, pointing west/east in the direction of the altar. The small organ stands just beyond the stall on the south side. At the eastern end of the chancel there is a gated altar rail and single step up to the altar which is positioned in front of the east wall. Immediately in front of the altar rail there is another heating grill, running north/south, parallel to the rail across the width of the chancel. These grills are not unattractive and are to be retained.
6. The floor comprises predominantly sandstone flags of unknown date although likely late C18th according to the Statement of Significance. There are also five large memorial ledger stones set flush in the surrounding sandstone effectively in two seemingly random locations (symmetry does not appear to have been a consideration when these were positioned) within the chancel as a whole. There is no question of interfering with them. This petition is concerned solely with the sandstone flags which are, variously, worn, broken, crumbling and, in places, loose. There is this description in a document prepared by Christopher Blackburn, the specialist conservation architect engaged by the PCC, in response to the amenity societies' responses:

"The surface of the paving is uneven and poses a tripping hazard for the elderly congregation who make their way to the communion rail."

The text goes on to raise the risk of litigation by anyone injured, to emphasise the safety of church users and asserts that: "...the flooring should be subservient to the needs of the users."

"The current paving has been repaired with hard cement and looks like a patchwork in places. To remove the hard cement, prior to any repair is likely to do further damage to the stones. To leave it is unsightly.....

"A number of the stones are delaminating and crumbling. In other areas the stones are broken. It will be difficult to get a close match for replacing delaminating, broken and uneven stones and may contribute to it looking like a patchwork. Full replacement will not only give and [sic] even surface but the stone will also be more uniform in colour, grain and texture. To replace the old paving gives the opportunity to have a unified laying pattern from north to south, rather than the current dual laying pattern which looks rather odd."

It is noted that many cathedrals, of arguably higher architectural merit, including recently that in Newcastle, have had their floors replaced for the benefit of the safety of users. Elsewhere, the replacement of the baptistry floor of St Aidan's church Bamburgh (a decision of this court to be found at [2018] ECC New 2) is also cited as support for the proposal.

7. The only amenity society to have raised objection is SPAB albeit, having been formally asked, it has declined to become a party opponent. Its objection to the use of York sandstone, a form of sandstone from a different region with its own characteristic chemical composition, is now accepted on the finding of a suitable local quarry at West Woodburn, less than 10 miles from Kirkwhelpington, which can, apparently, supply appropriate stone more economically. The sole objection is the proposal to replace the sandstone floor throughout the entire chancel. Having considered the PCC's response and the architect's opinion already summarised, SPAB said:

"While we appreciate.....the PCC for seeking to ensure the building is safe and welcoming for all to use, we still remain to be convinced that it is necessary or desirable to replace the existing stone flag floor in the Chancel. In our experience, if cared/looked after properly, the floor should not present a dangerous surface for users. While the additional information has helpfully clarified some matters (such as the age of the floor), the precise condition of the floor and its repair capabilities, are still not known and clearly detailed in the application. Further, the statements regarding the proposed replacement, and justification for it, are still rather vague and general.

It would be helpful if the PCC, together with their architect, could justify in detail what their specific concerns are and precisely why traditional methods of repair cannot be used to overcome these. [Seeking a slab by slab condition survey with photographs of each] would help to illustrate the poor condition of individual slabs and their symptoms (e.g. cracking, delamination, salts and any wider problems such as damp); and will also help show to what extent the floor can be repaired."

The response urges seeking advice from conservation specialists but maintains its position "strongly encouraging retention and repair of the existing floor....on grounds of retention of historic fabric but also that retention and repair would, we believe, provide a better environmental solution/positive contribution to next zero."

8. The DAC notified its advice on 11 December. In recommending the works for approval it added this proviso:

"To avoid wholesale replacement of stones in the Chancel floor if possible and to replace only what is necessary. To use 'aesthetic common sense' to make the Chancel look pleasing whilst achieving the required safe environment"

9. The PCC responds that the proposals of SPAB are beyond their resources and unrealistic, cites the solution in the Cathedral and at Bamburgh, noting that St Bartholomew's is not a World Heritage site and they are "attempting to survive in the harsh reality of a struggling congregation, making efforts to engage with the local community to foster an open dialogue and hoping to provide functional requirements for a variety of uses."

10. Having considered the position of SPAB which, it would appear, is echoed by the DAC in spirit if not to the lengths to which SPAB would advocate, and considered six close

up photographs of obviously damaged stone supplied with the petition, I concluded that the site view I have already mentioned was here mandated. It was a glorious, clear February day and the chancel was flooded with sunlight. I was alone and no one else entered the church during the time I was there and thus I had a good, uninterrupted opportunity to view the disputed area.

The law

11. The law is well established and definitively set out in St Alkmund Duffield [2013] Fam 158. I am obliged to consider the five questions there posed:

- (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 (i) 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 nature of the proposals;
- (iii) If the answer to (i) 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 the strong presumption against proposals which will adversely affect the special 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 consistent with its role as a place of worship and mission) outweigh the harm?

In answering (v), 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 listed Grade I or II*, where serious harm should only exceptionally be allowed.

Discussion

12. SPAB having indicated that it did not seek to become a party opponent, I concluded that an informal site review would suffice to inform the decision making process. As I observed in paragraph 10, the position of the DAC was, in principle, analogous to that of SPAB and so I was particularly interested to see the whole floor in context. This was particularly informative in the Bamburgh case and I hoped it would be no less illuminating in this case.

13. I accept for present purposes that the floor is likely late C18th and no older. It is, in the main, very much a hotchpotch of stones. Whilst there are parts that are more regular, such as what I call the passage between the two parallel grills which form the first part of the walkway to the altar, and that in front of the altar (albeit that travels at 90 degrees to the former) there are other less regular areas. The passage is largely in east/west configuration. The area in front of the altar rail, by contrast, appears predominantly north/south. As already observed, the ledger stones are not laid in any way that could obviously be seen to be planned although they do appear all to be laid east/west, three side by side to the north ("the trio"), two imprecisely lined up on the

south underneath the organ and south stall. It could be said that one's reaction to the manner in which they are laid would depend on the eye of the particular beholder: some might be charmed, others might wish for greater regularity. Whichever it is, it would appear that this situation has prevailed for a couple of centuries and, whilst I accept that the opportunity for a more unified laying pattern now presents itself, it is nevertheless qualified by the location of the ledger stones in particular.

14. Whilst the stones in the initial photographs are plainly in a very poor state of repair and in need of attention or replacement, I was surprised to find that they were not in the court's view representative of the floor as a whole. So, most strikingly, on initial approach, the passage between the parallel grills, whilst in need of securing and pointing/grouting, is level and in good order. There is one stone where the corner has worn, has probably suffered some historic damage and would appear to represent a potential tripping hazard that will likely warrant replacement. The line of seemingly identical sandstone that runs on the outside of each grill is, in the main, in good order although one piece on the south side has suffered damage that appears to have been badly "made good" by the insertion of concrete.
15. The floor looks in less than good condition in the area around, and I assume underneath, the south stall although the extent to which it presents a hazard is perhaps questionable. The stones between the west end of the trio of ledger stones and the northern stall appear to be in good enough serviceable order. The line of stones immediately parallel to, and to the south of, the trio of ledger stones appear in good order. At least two in the next line of stones to the south, behind the organ stool, (and perhaps those under the stool itself) have suffered quite serious delamination, probably caused or contributed to by repeated movement of the stool.
16. The single lines of stones laid north/south on either side of the grill in front of the altar are regular and, subject to pointing/grouting, appear level and safe. Those between the trio of ledger stones and west of the single line in front of the grill, particularly at the northern side, are in less good condition. There appears to be delamination, affecting half a dozen or more.
17. Behind the altar rail, particularly in the north west and south east corners, stones are in poor repair, the former having been patched with concrete, the latter with sections missing and possibly long standing water damage.
18. Overall, I found the site visit particularly helpful. Having seen close up pictures of badly damaged stones, I was surprised to find those parts of the chancel floor that will be walked on by clergy and parishioners alike to be in surprisingly good condition and, in many cases where, for example, the grouting has failed and there is movement, no obvious reason why they could not be secured. The sand stone is warm in colour and much of it remains very attractive in marked contrast to the picture I found, for example, at Bamburgh.

Decision

19. The court is in no doubt that repair and replacement of the areas identified is mandated as necessary for reasons of safety, repair and good management. The floor cannot be left in its present state for the reasons identified. However, the court is equally satisfied that this can be achieved without the wholesale replacement of the existing floor. The affected areas are capable of repair. Damage aside, the irregular layout of the floor that the architect fairly says “contribute[s] to it looking like a patchwork” would not by itself rebut the presumption of leaving this floor substantially as it appears. Whether charmed or offended by its layout, both viewpoints are equally valid but, after more than 200 years in a small medieval rural church, there is nothing about that layout that mandates its complete replacement. That could only be justified by damage to such an extent that the floor was beyond saving. The court is not so satisfied and finds that focussed, sensitive repair and replacement can achieve the objectives of safety and good management as well as the church’s mission to engage with the local community and groups who can use the building for a variety of purposes. In any event, whilst the need for the chancel to be safe is not in issue, chancels are rarely spaces used for community purposes. I have already distinguished this case with that of Bamburgh. The comparison with cathedrals is less helpful: the foot fall is of a wholly different order, in Newcastle’s case the floor was almost certainly beyond repair and it was renewed in conjunction with major re-ordering which, amongst other things, included the removal of all pews and I do not think it necessary or appropriate to draw comparisons with other unspecified cathedrals further afield. They may be of greater architectural merit but the uses to which they are put cannot fairly be compared with a modest relatively remote rural parish church.
20. The views of SPAB are, in the court’s opinion, very deserving of respect albeit the lengths to which it is suggested this church should go, notwithstanding its listed status, are, the court agrees, disproportionate to the measures required to make the chancel safe and usable. The suggested measure of the DAC, inviting the PCC to have regard to “aesthetic common sense”, is entirely understood but also depends very much on the eye of the beholder.
21. Accordingly, the application to replace the entire floor is refused. Repair is mandated and permission is granted for that to take place. I therefore direct the PCC to devise a new plan of work:
- (i) to make the chancel safe;
 - (ii) to include the renewal of dangerous flags using locally source sandstone that is likely to be of a chemical composition similar to those stone it replaces;
 - (iii) to consider the possibility of moving flags in sound order from less prominent places to replace those in more prominent places to be discarded;
 - (iv) to secure those that are loose and make good the grouting/pointing;

Without in any sense seeking to discourage ongoing dialogue with the DAC during this process, the court directs that the revised plan be presented to the DAC in order to

secure its agreement that the proposed work is both necessary and maintains aesthetic common sense whilst, at the same time, maintaining the characteristic irregular appearance that has been a feature of St Bartholomew's for over two centuries. It is already agreed that local sandstone be used and there be archaeological oversight but those will be conditions of the grant of the faculty for repair.

22. Permission is granted for the laying up of the WRBL flag. The repairs to the organ are to be postponed but permission is granted to remove the front two pews (which are made of pine and have no particular aesthetic merit) and the organ placed on castors and placed in the intended location on the south side of the nave.

Simon Wood, C
20 March 2025