

IN THE CONSISTORY COURT OF THE DIOCESE OF PORTSMOUTH

In re St Peter Titchfield: The Wriothesley/Southampton Monument and Vault

JUDGMENT

Introduction

1. St Peter's Church, Titchfield is a Grade 1 listed building with Saxon origins, believed to have been constructed shortly after Hampshire was converted to Christianity in the late 7th century. The present church retains Anglo-Saxon features and a mixture of later building styles ranging through 13th and 14th century additions to post reformation changes and Victorian restoration. The church was gifted to the nearby St Mary's Abbey in the 13th century and at the Dissolution the Abbey, with the patronage of St Peter's, was given by Henry VIII to Thomas Wriothesley, who later became Earl of Southampton.
2. One of the principal features of the church is the outstanding monument to the Earls of Southampton dating from the 1590s, which stands in, and dominates, the 14th century Abbot's, or South, Chapel (also referred to as the Southampton Chapel), beneath which lies a vault in which the bodily remains of members of the Wriothesley/Southampton family were laid to rest in former times (the last believed to have been in 1737). The chapel also houses other significant monuments and memorials of the family and an important medieval memorial stone of William de Pageham, made of Purbeck marble, which lies to the east of the principal monument, above the area understood to be occupied by the vault.
3. The Southampton Monument has been described as an extraordinary example of Tudor funerary architecture and the Wriothesley/Southampton vault as a rare example of an important class of archaeological site in Britain.
4. The vault was formerly accessible from the Chapel and there was an external entrance from the churchyard. However, the internal access was sealed up in or about 1951 and the external entrance was bricked-up at the end of the 19th century.

The petition and proposed works

5. By their petition, the PCC and Lord Montagu of Beaulieu seek permission to re-establish robustly secure and permanent access to the Wriothesley/Southampton vault for the purposes of substantiating the condition of the sub-structures, monitoring them over time, and carrying out any subsequent repair work and conservation measures.
6. The petition is supported by extensive historical, architectural, legal and conservation research material from leading consultants setting out the need for investigation of the vault in the manner proposed. The project has been driven by the commitment of Lord Montagu to continuing his family's tradition of care for the church and of the monument and vault. It has been undertaken under the auspices of the Southampton Monument and Vault Initiative ('SMVI'), now incorporated in the Shakespeare Southampton Legacy Trust, which has developed a phased programme with the following objects:

- to ensure the long-term stability of the Southampton Chapel floor and monuments;
 - to investigate the condition of the Wriothesley/Southampton Vault and contents;
 - to ensure respectful treatment and care of the Wriothesley family remains;
 - to record the vault and contents as they are of particular academic, historical, and archaeological interest and importance;
 - once condition is known, sensitive conservation interventions and monitoring may be proposed to the fabric and vault contents;
 - to provide sensitive and considered information on the above for educational purposes and to a wider public audience.
7. The present petition represents an essential step in the process of ascertaining and recording the condition of the vault and the supporting structures of the monument to inform their future conservation and care. It is the result of several years of study of and reflection on the appropriate means of investigation. A previous petition for a faculty to permit a proposed borescope inspection was withdrawn in favour of floor and subsurface structural assessments, monument conservation and Chapel decoration as outlined in the 2017 Quinquennial Inspection Report. The present petition reflects the first part of that programme and offers, the petitioners contend, a rare opportunity to ensure the long-term preservation of these outstanding historical and architectural features and to extend the knowledge and understanding of the vault and its contents.
 8. There are three principal elements to the project:
 - (1) Establishing permanent access to the Wriothesley vault through the original access point on the chapel floor. This will involve lifting the current stone slabs and replacing with a reinforced and securable access panel.
 - (2) Lifting a different stone slab in the area of the Wriothesley monument to investigate the chapel sub-structure and top of the Wriothesley vault, and re-instating this stone slab.
 - (3) Investigating the blocked exterior entrance to the vault to determine the structural integrity of the immediate area.
 9. It is proposed that the work be undertaken by Dr David Carrington and his team from Skillington Workshop Ltd ('Skillingtons'), a leading building conservation and restoration firm, with extensive experience of conservation of monuments in an ecclesiastical setting. Details of each aspect of the work are set out in method statements prepared by Dr Carrington.
 10. The petitioners have made it clear that the proposal for access to the vault itself does not at this stage envisage or involve any risk of disturbance to human remains.
 11. The Diocesan Advisory Committee has recommended the proposed works for approval and Historic England, the SPAB and the Victorian Society have each confirmed that they have no objection.
 12. The Church Buildings Council is opposed to any steps which might disturb human remains and does not support the need for access to the vault to check the condition of the contents. The Council accepts the need to investigate the sub-floor of the chapel in which the vault is housed and to investigate the original external entrance (items 2 & 3 above), but does not consider that sufficient justification has been shown for establishing permanent access to the vault or for internal structural investigation.

13. Having considered the evidence and representations I concluded that the proposed investigations should be permitted and I directed that a faculty be issued for that purpose, subject to a number of conditions. The direction, with a summary of my reasons, was given before the handing down of this judgment, to enable work to commence if appropriate, but the investigations have been interrupted by the restrictions arising from the Covid-19 pandemic. This judgment is now provided as a matter of record, to set out the background to the petition and the reasons for my decision more fully.

The history of the vault

14. The recorded use of the vault as a place of interment for the members Wriothesley/Southampton family dates from c1574 and it appears that it was in use for some 163 years, until 1737. An historical perspective of this tradition is found in a treatise by the antiquary John Weever from 1631:

'It was usual in ancient times, and so it is in these our days, for persons of especial rank and quality to make their own tombs and monuments in their lifetime; partly, for that they might have a certain house - as the old saying is - whensoever they should be taken away by death out of their tenement, the world; and partly to please themselves, in beholding their dead countenance in marble. But most especially because they thought to preserve their memories from oblivion.'

15. This understanding is reflected by Dr Julian Litten in his paper A Tomb Fit for Kings (1999):

'The construction of dynastic burial vaults, especially those associated with estate churches, were subterranean sepulchres expressive of wealth. Indeed, most trusted that these vaults would safeguard their remains until the day of resurrection itself, and they believed that their sepulchral monument would justly reflect the grandeur associated with their status in the world, however small that might have been.'

16. A description of the vault and contents was recorded by William Pavey, following a visit to the church in 1719, when he noted that the bodies lying there were either in lead coffins or wrapped in lead, with inscribed plates indicating their identities and dates of death.
17. It seems that following the last interment, in 1737, the vault fell into disuse and a lack of custodianship led to a deterioration in the condition of the monument and vault. An inspection of the vault took place in or about 1899 under the authority of the then Home Secretary, during which the coffins were reported to have been opened revealing the embalmed bodies of the deceased. The coffins were resealed and shortly after that the external entrance was bricked-up. The internal access, however, remained.
18. Lord Montagu's great-grandfather initiated a programme of repair of the monument in 1903, but it appears that the condition of the vault itself deteriorated during the first half of the 20th century.
19. The last recorded description of the vault was given by the Rev'd Norman Miller (Vicar of St Peters, 1947-73) in two local radio interviews in 1972, in which he noted that there were some 15 to 20 *'great lead coffins piled one on top of the other'*, with the lower ones being in a poor state of preservation.

20. In 1950 a visiting preacher fell through the flooring of the chapel and a faculty was obtained for the re-flooring of the chapel, which led to the sealing of the internal access point to the vault. No access to or investigation of the vault has been possible since then.
21. There has been some settlement of the monument itself and it leans to the south. In 1959, a proposal for stabilisation of the monument was submitted by the then inspecting architect, with a detailed plan to underpin the monument but the measures were not implemented. At the same time, flooding was noted under the buttress to the south-east angle of the chapel and the buttress was stabilised, but it was not possible to ascertain the impact of this on the vault.
22. As Dr Carrington has pointed out in his report, without access to the vault it is difficult to know if, and to what degree, the past and more recent flooding have compromised the “made ground” supporting the south side of the Southampton Monument.
23. The petitioners contend that, in the light of the history, there is now a pressing need for the vault and its structures to be investigated to understand fully the condition of the vault and inform any conservation measures which may be required.

Ownership of and rights in the monument and vault

24. The SMVI has commissioned advice on the legal title to and interests in the vault from David McClean QC (‘the opinion’), an eminent and respected ecclesiastical lawyer. In his detailed opinion dated 17 June 2016, he sets out the law relating to the ownership of monuments and the rights flowing from it.
25. The issue is relevant in the present case, as the court must be satisfied that the petitioners are entitled to bring proceedings for a faculty under the terms of the Faculty Jurisdiction Rules 2015, r 5.2. As one of the petitioners is the PCC of the church, that condition is in part fulfilled. In relation to the position of Lord Montagu, he may bring or join in a faculty proceedings if the court is satisfied that he is a person with sufficient interest in the matter: FJR, r 5.2(2)(d).
26. The question of whether a petitioner has a sufficient interest is matter for the court’s determination, in the light of all the circumstances. In the present case, the issue of ownership of the monument or vault is relevant, but is not determinative of Lord Montagu’s interest in the subject matter of the petition. The purpose of seeking the opinion has been to clarify the right or interest of Lord Montagu, as a senior descendant of the Earls of Southampton, in the monument and vault.
27. Matters of law more generally are, of course, for the court to determine, but the opinion provided by David McClean QC, an acknowledged expert in the field, must, in my judgment, carry significant weight.
28. In summary, his conclusions are that:
 - (i) It is clear law that the ownership of monuments whether in the church itself or the churchyard is vested first in the person causing it to be erected and thereafter in the heirs at law of the person(s) commemorated, if they can be traced: see *In re St Lawrence, Wootton* [2015] Fam 27;
 - (ii) On the basis of the family history, it seems very unlikely that a single heir at

- law can now be identified;
- (iii) It follows that only the parochial church council has a responsibility to repair the monument as part of its general duty to maintain the church and its contents;
 - (iv) Where there is an identified family associated with that commemorated in the memorial, a representative of the family may be regarded by the court as a person properly interested in any faculty proceedings; the effect would be to place the family through its representative in the same situation in respect of faculty proceedings as an identified heir at law;
 - (v) In relation to the vault, the law on ownership and responsibility is more complex. The lay rector of a parish has certain rights and liabilities in relation to the chancel, including a duty to maintain the chancel, but that would not include the cost of the investigations proposed in the present case: see *Aston Cantlow and Wilmcote with Billesley Parochial Church Council* (2007) *The Times*, 21 February, (Ch D); in the present case, the liability of the lay rector probably passed to Thomas Wriothsley, with the lands of the Abbey, but the current position is not clear, and would not affect the vault in any event;
 - (vi) It is unlikely that the vault could have been created without a faculty, although there is no evidence now as to what if any faculty was granted here; any faculty would have been granted by the chancellor, in whom the final control of the church and churchyard was vested: see *Re St Botolph without Aldgate* [1892] P 161;
 - (vii) In determining whether a petitioner has a sufficient interest in the matter, the court may be expected to adopt the same approach to a representative of the family as with the monument.

29. Drawing these threads together and taking account of Lord Montagu's lineage and his commitment to continuing the family's tradition of care for the monument, I am entirely satisfied that he has a close and sufficient interest in the subject matter of the present petition and is entitled to join with the PCC in presenting it. It is unnecessary, in the context of the present proceedings, to determine the more complex issues of heirship or the identity of the lay rector, if any.

The evidence

30. The petitioners, through the industry of Lord Montagu and the SMVI, have provided extensive and wide-ranging evidence in support of the petition, conveniently set out in a series of Appendices to the statement of need. As noted, the evidence has been gathered from, and reflects, leading experts in the relevant fields. I have carefully considered all of this material, including a postscript by Lord Montagu setting out his perspective on and analysis of the proposed investigations. It is not necessary to set out here a full account of the evidence and information which has been gathered and it is sufficient to summarise the matters on which the petitioners rely as establishing the grounds for the proposed interventions. The key evidence is derived from the reports of the inspecting architect, Louise Bainbridge and of Dr David Carrington of Skillingtons.

The inspecting architect

31. In her Quinquennial Inspection report of June 2017 (Appendix B to the Statement of Need), the inspecting architect, Louise Bainbridge noted the condition of the monument and commented (at paragraph 12.3) that:

'The monument leans to the south and should be monitored for any ongoing movement. Joints in the floor to the south-west have cracked and the floor is damp nearby. It is important that the alabaster (which is water soluble) is

kept dry.'

32. In relation to the crypt, or vault, she noted (at paragraph 12.5) that:

'There is known to be a crypt under the chapel, recorded as last inspected in 1951, containing at least twelve lead coffins, some in poor condition. The passage to the crypt was bricked up and the floor over the way down paved with headstones from the churchyard. This will have reduced ventilation. Investigation to determine the extent and condition of the crypt would provide useful information on the structure supporting the floor and monuments, water ingress and the current condition of the coffins'

33. Following receipt of the representations from the CBC, Ms Bainbridge provided a detailed statement, dated 29 May 2019, in which she sets out a fuller assessment of the condition of the fabric of the South (or Southampton) Chapel and her recommendations for investigation of the vault. After a description of the fabric and main features of the chapel, she notes the need for the fabric to be maintained in a good structural condition and kept watertight and continues (in Section 2):

'Inside [the Chapel] the floor slopes down to the south and the monument leans to the south. In the mid C20 the south-east corner buttress is reported to have been underpinned. There was a proposal to underpin the Southampton Monument, but this was not carried out. There are some open joints in the floor near to the monument. The structure supporting the monument below ground, any foundation, built fabric to the side of the reported stair and ground conditions are unknown.

The external walls of the chapel are pointed in a hard cement mortar, now cracked and this has had the opposite effect of what was intended. Instead of keeping water out, rainwater penetrates the surface and is then trapped, a high proportion of evaporation occurring inwards rather than externally. This has been to the detriment of internal plaster, decoration and wall monuments.....

There is a concrete drainage channel at the base of the south wall of the chapel falling to the gullies below rainwater pipes – this required repair and cracks were filled in 2015-2016. Prior to this rainwater runoff was saturating the base of the walls to a greater extent. Ground moisture will affect the below ground vault fabric and contents. It is not known whether there could be or has been any standing water within the vault.

What is evident is dampness in the paving of the floor of the chapel, and environmental monitoring, carried out to record current conditions in the church and to inform future replacement of the heating system, records high levels of relative humidity.'

34. In considering the proposed investigations, Ms Bainbridge sets out her opinion (in Section 3):

'In my opinion investigation of the vault would provide very useful information to see if any intervention is advisable for the long term care, repair and maintenance of the Chapel, I should like to know:

- a. The extent of the void below the chapel*
- b. What was done to seal the vault in the 1950s*
- c. The structure supporting the monument*
- d. The condition of the structure and fabric of the vault*
- e. If the blocked opening on the east side was a vent, light source, or another entrance to the vault*

f. The level of liquid moisture in the vault

g. Environmental conditions within the vault, to determine whether remaining sealed, or restoring ventilation is advisable.

h. The extent and location of the vault contents (for which the vault was constructed) in so far as this would influence recommendations concerning fabric and environment subject to expert advice.'

35. In Section 4 Ms Bainbridge recommends a series of measures to ensure that the practical aspects of opening the vault are managed safely and by appropriately skilled conservators.

Skillingtons

36. Dr David Carrington has set out his assessment of the condition of the monument, chapel floor and vault in his letter of 6 July 2017 (Appendix C to the Statement of Need)
37. In relation to the monument Dr Carrington confirms that settlement has clearly occurred on the south side, causing it to lean, but the absence of any open joint lines suggests that there has not been any recent disruption. However, he adds that:
'It is not active deterioration of the monument that is driving this proposal but the gaining of a better understanding of the vault and facilitating future maintenance. I do foresee that full access will in due course be needed.
However, from the conservator's point of view this is not about curiosity regarding the vault contents but about ensuring a better understanding of the building context of the above-ground monument and to help manage its preservation for future generations.'
38. With regard to the dampness in the chancel floor he notes that the Purbeck marble ledger slab commemorating Pageham (which he describes as '*a hugely important survival*') is weathered and worn. It was found during the reflooring on the chapel in 1951, but appears to have deteriorated much further since then. Although foot traffic is likely to have been a significant contributory factor, he considers that the condition of the vault below and liquid moisture content of the material between the vault roof and the floor will also be an important factor.
39. In relation to the need for access to the vault, he says this:
'From a monument conservator's point of view I think it would be extremely valuable to better understand the exact location and condition of the vault.
Being able to maintain some kind of occasional access in the future so as to monitor its condition - especially after possible flooding (an ever greater threat with climate change) - strikes me as not just being sensible but actually as essential.'
40. Overall he considers that the intervention proposed in the current petition is a logical and minimally invasive next step, and one which he supports.
41. As to the manner in which the proposed investigations would be carried out, Dr Carrington has provided three method statements:
(a) 7 September 2018 (internal access to vault);
(b) 29 July 2018 (liquid moisture level to floor investigation); and
(c) 29 July 2018 (external access to vault).

42. These documents demonstrate in detail how Skillingtons would approach each aspect of the investigation and show close attention to the conservation needs of the project and the care needed to avoid damage to the fabric. They are entirely in keeping with the recommendations made by Ms Bainbridge in section 4 of her statement.

Other material

43. The SMVI has sought advice from Dr Simon Mays, a member of the Advisory Panel on the Archaeology of Burials in England and a contributor to the Science of the Dead (APABE, 2013) and from Dr Julian Litten, the noted historian and archaeologist and a leading authority on funerary history and customs, both of whom support the aims of the project and the recognise the importance of understanding the condition of the vault and its contents.
44. In his letter of 13 April 2018 Dr Litten confirms his support for the proposed investigations, noting that periodic vault examination is to be recommended and may be included in the Quinquennial Survey. He refers to a number of examples of re-organisation of the contents of vaults, through to the 20th century, and notes the importance of dynastic burial vaults as cultural and archaeological repositories. In a subsequent e-mail he reiterated the need for the inspection architect to be able to complete future survey and noted that, at least in theory, further interments could occur if the vault is not already full (though this does not form part of Lord Montagu's reasons for securing access).
45. The SMVI has also commissioned a feasibility study from the University of Southampton which drew attention to the potential impact of flooding on the vault and contents and the need for an inspection of the vault to be undertaken as a matter of priority and before further deterioration occurs.

Statement of need

46. The petitioners have drawn this evidence together in a comprehensive Statement of Need and have identified the following aspects.

The Southampton Chapel

47. There is a need to investigate further the moisture levels in the floor and sub-floor of the chapel and under the monument to determine to what degree the vault is an underlying cause of recorded moisture. This includes the need to investigate the moisture levels in the area of the Pageham marble slab and the need to investigate the supporting floor structures of the chapel in advance of repairs prescribed in the last Quinquennial Inspection Report.

The Southampton Monument Superstructure

48. In the light of concerns that the chapel subsurface may be impacting the resilience of the memorials and the chapel as a whole, re-establishing access to the subsurface, alongside the conservation in advance of subsequent conservation measures, is considered an appropriate phasing of works. The monument needs to be monitored for movement.

The Southampton Monument Support Structures

49. There is a need to maintain some form of access to the vault to monitor the monument's support structures and to better understand the Southampton Monument, Vault, and Chapel nexus.

Needs of the Wriothesley/Southampton Vault

50. There is a need to determine the extent and location of the Southampton Vault and to maintain some form of access to the vault for inspection purposes.

Needs of the Vault Contents

51. There is a need to investigate reports of water ingress into the vault and its impact on the burial containers and other vault contents. Concerns of this nature have been registered historically by the Inspecting Architects and by Dr Carrington and Lord Montagu.
52. The Statement of Need sets out a series of questions which it considers the proposed investigation needs to address and the means by which they are to be resolved. In my judgment this is an extremely helpful way of identifying the issues to which the petition is directed and provides a valuable point of reference in ensuring that, as far as possible, the purpose of the investigations is fulfilled.
For ease of reference the list of questions, objectives and desired outcomes is annexed as Appendix 1 to this judgment, so that in due course, the outcome of any investigations can be measured and consideration given to the conservation needs of the chapel, monument and vault.
53. In my judgment the aims and objectives of the project are fully supported by the expert evidence and I consider that the Statement of Need provides a strong basis for the proposed investigations.

CBC advice

54. The petitioners have sought the advice of the Church Buildings Council throughout the development of this project. As noted already, the Council accepts that there is a clear need for:
- (i) investigation of the relationship of the sub-floor of the chapel to inform conservation decisions on the Pageham purbeck floor slab, which (it notes) appears to be actively deteriorating; and
 - (ii) for investigation and conservation of the grave slab over the external entrance to the vault.
55. The Council does not, however, accept the need to establish permanent access to the vault or the need for access to the vault to check the state of its contents.
56. The Council's initial advice was given in December 2017 and reiterated in its letters of 30 October 2018 and 1 March 2019. Its concerns about access to the vault and contents are expressed in the following terms:
*"....any justification for disturbing human remains must outweigh the Church's presumption against disturbance, and would have to satisfy the criteria set out in "Science and the Dead" (APABE, 2013); that Christian burial is intended to be final, and there is no theological or ethical justification for replacing damaged coffins and transferring remains once they have been buried. The Council therefore does not support the need for access to the vault to check the state of its contents....
.....the need for establishing permanent access to the vault is not clear. Clear evidence of the need for structural investigations, with a specification from the architect, is needed before the Council would support access to the vault."*
57. It is clear that the principal concern of the Council is, rightly, that the proposed investigations should not cause any disturbance to the human remains in the vault and that any

investigation of the contents of the vault is not justified. The Council's objections in that respect are founded on the Christian theological principle that burial is final. That principle is not in issue in the context of the present petition and, as noted, the petitioners have made it clear that the proposed investigation of the interior of the vault will not involve any disturbance with human remains.

58. On the other hand, the Council's advice in relation to access to the vault for structural investigations is founded on the sufficiency of the evidence, rather than on matters of principle. Its concern about the establishment of permanent means of access also appears to be whether the need for access has been shown. Since the Council's letter of 1 March 2019, the inspecting architect has provided a detailed statement setting out the reasons for seeking access to the vault itself and the manner in which the work should be undertaken. A specification for the work is provided in Skillington's method statement of 7 September 2018.
59. The advice of the CBC must carry significant weight, but ultimately it is for the court to consider and assess the sufficiency of the evidence supporting the proposals.

The relevant principles

60. The principal issue for determination on this petition is whether access to the vault itself should be permitted for the purpose of the proposed investigations. In order to gain access from the interior of the chapel it will be necessary to lift the existing ledger floor slabs believed to be covering the original entrance; as Dr Carrington has noted, other work may be required beneath floor level to clear the entrance passage and, if appropriate, remove any blockage. It is accepted that these works, and the other investigations proposed, affect the fabric of the church and I am satisfied that they come within the provisions of Canon F13, paragraph 3, requiring a faculty to be obtained. It is unnecessary for present purposes to determine what rights Lord Montagu (or other family members) may otherwise have to gain entry to the vault if access was readily available.
61. It is not suggested that any of the works proposed would cause harm to the significance of the church as a building of special architectural or historic interest and, to that extent, the process for balancing any potential harm from, and the justification for, the works, as described in *St Alkmund, Duffield* [2013] Fam 158 (Arches Ct), does not arise. There is, however, a presumption against change, which may be more or less readily rebutted, according to the circumstances. It is for the petitioners to satisfy the court, on the balance of probabilities, that the proposed works are justified and that a faculty should issue. The court must consider all the circumstances, including the evidence adduced by the petitioners, the advice of the CBC and the recommendations of the DAC.
62. The CBC has drawn attention to the presumption of permanence of Christian burial, which was considered in detail in *Re Blagdon Cemetery* [2002] Fam 299 where the Court of Arches concluded that a faculty for exhumation should only exceptionally be granted. Subsequent authorities have demonstrated a range of circumstances which might justify a departure from that presumption.
63. It is clear from the authorities that the same principle applies to the interment of human remains in a family vault as to burial in other consecrated ground. There are few reported decisions on exhumation in this context, but a recent example is found in *Re Sydney Clement Levy, deceased* [2018] Ecc New 1 (exhumation from a family vault where flooding had occurred). Other cases have considered the application of the presumption to exhumation for

the purposes of scientific testing: see, in the context of family vaults, *Re St Nicholas, Sevenoaks* [2015] 1 WLR 1011 and *Re St Leonard, Beoley* (2015)(unreported).

64. There are also recent examples of disputes about reservation of spaces in and about ownership of family vaults: see respectively *St Benedict Biscop, Wombourne* [2019] Ecc Lic 2 (petition for reservation of spaces in a family vault) and *Re Holy Trinity, Dalton; King & Anor v The Benefice of Newburn in the Diocese of Newcastle (Land Registration – Adverse possession)* [2019] UKUT 176 (LC).
65. None of these authorities touches on the issue of access to the vault itself, as it arises in the present case. If access to a vault is permitted, any exhumation or disturbance of human remains then proposed would have to satisfy the *Blagdon* test, but in my judgment there is no reason to impose a requirement of exceptionality in determining whether access to the vault should be permitted for other justified purposes.
66. In my judgment it is sufficient for the petitioners to demonstrate that there is a genuine need to establish access to the vault and to undertake investigation of the interior, which justifies any interference with the fabric of the church or the vault itself.

Discussion

67. I have considered carefully the supporting documents and the matters raised by the CBC.
68. The evidence of the inspecting architect, Ms Bainbridge, demonstrates real grounds for concern about the condition of the vault and the supporting structure of the monument. In Section 3 of her statement she sets out the particular information which could be gained from the investigation, to inform future care and conservation of the Southampton Chapel and monument. While she does not describe this information as essential, the tenor of her evidence and of her QI report is that a complete understanding of the structure and condition of the vault is necessary if she is to be able to advise on future maintenance and conservation.
69. Dr Carrington is clear that, from the conservation perspective, inspection of the vault is essential if its condition is to be understood and monitored.
70. Taking the evidence as a whole, I am satisfied that there is clear need for an investigation of the interior of the vault. I accept the evidence that the condition and structure of the vault may have been affected by the ingress or development of moisture and may have deteriorated over the past 60+ years since closure; I also accept the inspecting architect's opinion that there is a need to establish levels of moisture in the vault and to ensure that informed decisions can be taken about ventilation and preservation of the structure and contents.
71. In my judgment any proper investigation of the condition of the chapel sub-floor must include an internal examination of the vault. Otherwise repairs to the sub-floor and surrounding areas may be undermined by the condition of the vault itself. It is also essential, from the perspective of future care and conservation, to establish a base-line from which future deterioration, and conservation needs can be assessed. Against that, the court must consider any risks involved in permitting access to the vault.

72. The concerns of the CBC in relation to the risk of disturbance to human remains must carry significant weight. However, the proposal for access to the vault itself does not at this stage envisage or involve any risk of disturbance to human remains. Although the condition of the coffins or of any human remains is not known, there is no reason at present to believe that the proposed investigation will have any impact on them. The vault was open for access until 1951 and there is no suggestion that re-opening the vault will lead to any disturbance or deterioration of the burial contents.
73. The minutes of a meeting at the church on 30 November 2018 recorded that Dr Simon Mays recognised that any investigation of human remains in the vault would have to be the subject of a specific research project; as a contributor to Science and the Dead he is well-placed to advise on the structure and remit of any such project; Lord Montagu is noted as confirming that any future research project would depend on the outcome of the investigations currently proposed. This underscores the stated intention of the petitioners that the investigations now proposed should not disturb any human remains.
74. As to any other risks associated with establishing access to the vault, there is no reason to believe that the process of opening the vault and investigating the interior will cause any harm to the condition or structure of the vault. Dr Carrington is a leading expert in the conservation of historic monuments and the method statements provided by Skillingtons demonstrate the care and skill with which all the work associated with the investigations will be carried out.
75. The CBC has expressed concern about establishing permanent means of access to the vault, but the inspecting architect and Dr Carrington have both made clear that future access would be required only on an occasional basis for periodic inspection. It is not envisaged that access to the vault would be permitted more widely. In circumstances where the vault was accessible until 1951 and the entrance was sealed up for safety reasons, rather than for the conservation of the contents of the vault, the provision of a means of access may be seen as restoring the historic position.
76. I have considered the advice of the CBC, but have concluded that its concerns can be met adequately by appropriate conditions as to the manner in which the work is to be undertaken and on the future use of any permanent access point. In relation to the risk of disturbance to human remains, I consider it appropriate to direct that there should be no disturbance or movement of any human remains or of any coffin or other object containing or likely to contain human remains without the permission of the court. As the petitioners accept, any future project involving investigation of or disturbance of human remains would have to be the subject of a separate faculty petition. However, if it is necessary for any human remains or coffins to be moved in the course of the current investigation (for example because of obstruction caused by the collapse of a coffin), I would be willing to entertain a written request for permission.

Conclusion

77. The conclusion which I have reached is that the investigations proposed by the petitioners, including the internal investigation of the vault and re-establishing permanent means of access to the vault, should be permitted. The proposals are the result of a detailed and careful research process which has drawn on the expertise of leading consultants and has established a clear need for a complete understanding of the structure and condition of the

chapel flooring, the monument and the vault itself. I am satisfied that that can only be achieved if the range of investigations now proposed are able to proceed.

78. Accordingly I direct that a faculty shall issue as sought, subject to the following conditions, which are intended to clarify the ambit of the investigations and reflect the advice of the CBC:

- (i) There is to be no disturbance or movement of any human remains or of any coffin or other object containing or likely to contain human remains without the permission of the Chancellor. This does not prevent the recording of the location or details of any burial in the vault.
- (ii) Any permanent access point established is to be used only for the purpose of the investigations authorised by this faculty. Once the investigations have been completed, the access point may only be used to gain entry to the vault with the permission of the Chancellor or, in an emergency, the Archdeacon.
- (iii) The works shall be undertaken in accordance with the Method Statements dated 29 July 2018 and 7 September 2018 prepared by Dr David Carrington (Skillington Workshop).
- (iv) The works are to be carried out having regard to the advice of the inspecting architect Louise Bainbridge in paragraph 4 of her statement dated 29 May 2019 and be overseen by her in accordance with her advice.

79. Finally, I would like to pay tribute to Lord Montagu and the SMVI team for their commitment and energy in pursuing this remarkable and unique project and for presenting such a formidable body of research in support of the conservation programme. I look forward to learning the outcome of the current investigations in due course.

His Honour Philip Waller CBE

Chancellor

8 April 2021

Attachment:

Appendix 1 - The petitioner's schedule of questions for, and objectives and outcomes of, the proposed investigations

Appendix 1

[see judgment at paragraph 52]

The petitioner's schedule of questions for, and objectives and outcomes of, the proposed investigations

Research Questions (Q), Objectives (O), Desired Outcomes (DO) of the Co-applicants

1. Q: Is our understanding of the structural stability of the Southampton Chapel, and the Monument, compromised by the absence of information about the position and condition of the Vault?

O: To understand how the vault impacts the structural stability of the chapel and Monument by carrying out a site survey of the Vault and Tudor Passage.

DO: A measured survey of the Vault and Tudor Passage. Certainty that the structural relationships between the Southampton Chapel, Monument and Vault are understood. Any necessary measures are taken to ensure the future stability of the Southampton Chapel and Monument.

2. Q: Is the paving over the internal entrance to the vault properly safe, and able to support weights such as the scaffolding or organ?

O: To understand what is supporting the paving.

DO: To undertake any measures that may be considered necessary to ensure proper support of the paving, possibly combined with modifications to allow periodic access to the vault for inspection purposes.

3. Q: Might the damp which is effecting the Chapel, its floor memorials (including the rare Purbeck slabs), and some parts of the Southampton Monument, and cannot be accounted for elsewhere, be attributable to conditions in the vault?

O: To discover whether water is coming into the vault and how it might then be escaping.

DO: To ensure that any water ingress is controlled and managed.

4. Q: Are the coffins stored as the family intended (which Lord Montagu asserts is dry conditions without any damage by crushing or other external forces) and have they been vandalised in the past?

O: To establish the condition of the vault contents.

DO: Coffins properly identified, stored safely and in appropriate conditions, with damaged coffins replaced with contents transferred.

5. Q: What does the Southampton Vault and associated passage look like, and what can we learn from it?

O: To make a visual inspection and learn from the design of the vault nexus in support of a broader objective of understanding the history of the chapel and those interred there.

DO: An inventory and photographic survey of the vault, allowing for new information to be presented about the chapel for visitors.