

Neutral Citation Number: [2024] ECC Her 1

IN THE CONSISTORY COURT OF THE DIOCESE OF HEREFORD

Before: the Chancellor, the Worshipful Mark Ockelton

IN THE MATTER THE CHURCH OF ST MARY ALMELEY

## JUDGMENT

1. The church of St Mary, Almeley, stands towards the south end of the village, near the remains of Almeley castle. It is a fine building, well-kept and greatly valued by its users and the village generally.
2. The church is largely of mediaeval date. A visit by the local antiquarian association in 1863 reported it as 'a rare specimen of a large country church of the 14<sup>th</sup> century in excellent condition, not yet mutilated or disfigured by restorers', but its unrestored status was not to persist. There was a major restoration by the esteemed firm of Bodley and Garner in 1868-70, which involved removing many of the existing fittings, altering the floor levels, inserting much excellent new woodwork and a new font, and the introduction of some glass by Burlisson and Grylls. As it stands today, the church consists of the nave, divided from aisles to north and south by four-bay arcades; the two-bay chancel, now raised above the level of the nave, with attached vestry to the north; west tower and reconstructed south porch. The tower appears to show traces from the very beginning of the thirteenth century, but the rest of the structure dates from the late thirteenth and early fourteenth centuries. It is listed Grade 1.
3. Recent major work in the church, about 25 years ago, included the construction of an accessible WC immediately to the west of the door on the north side of the building, and, west of that, in the north-west corner, a kitchen. The latter has a step up to its floor level. Apparently at the same time, the north door was blocked with shelving.
4. On entering by the south door, the visitor looks straight across to this new work, past the font which stands west of the line between the doors, lined up on the centre of the nave and raised on a stepped base. There is little else in the part of the church west of the line of the doors. To the east of that line the nave and aisles are occupied by Bodley's pews. Looking diagonally to the right, one sees the rood screen, pulpit and lectern, again part of the fruits of the restoration: the chancel lies beyond. The church contains much interesting woodwork, perhaps still not

fully explored – for example, the rood loft. There is a subsidiary altar at the east end of the south aisle; the equivalent space at the end of the north aisle is used as a second-hand bookstall, library and children’s play area. Diagonally opposite, the south-west corner of the building (the west end of the south aisle, to the left of the door as one enters) is curtained off and used as a choir vestry.

5. The Petition before the Court seeks a Faculty for re-ordering. The principal proposals are as follows. The pews are to be removed from the aisles and disposed of; they will be replaced by chairs to be deployed as required. In the South aisle to the east of the entrance door an area is to be fitted as a community Library, and the area to the west is to be for children. Thus the current functions of the east end of the north aisle will be split between these two areas. A new choir vestry is to be constructed to the east of the existing WC, extending to the east of the second pier. Its entrance will be from the east. Inset into it will be a cupboard for the storage of chairs, directly in front of the north door, but set well in from it; the north door will be re-opened and will provide a secondary exit from the building, accessed through the new choir vestry. The panelling around the vestry, and the doors of the cupboard will be made to match that used for the kitchen and the WC. To the east, still in the north aisle, the font is to be placed (without its base) towards the corner of the building; there will be a space between it and the vestry, capable of holding about a dozen chairs if required. Subsidiary proposals include work to remove panelling in the nave, which appears not to be derived from the pre-1868 box pews. The purpose behind the project is to update the facilities, to adapt to current liturgical practices, and to make the building usable for a wide range of functions.
6. The DAC notification of advice recommends the proposals for approval by the Court. Historic England’s response to consultation was that they were pleased that the parish had responded constructively to their earlier advice, and that they had no objection to the proposals as now formulated, subject to one reservation to which I will return.
7. So far, so good – aesthetically at least. The problem is that the scheme is contrary to the law. Canon law has very few specific requirements about the placing of fittings in a church, but one of them relates to the font. Canon F1 is in the following terms:

F1 Of the font

1. In every church and chapel where baptism is to be administered, there shall be provided a decent font with a cover for the keeping clean thereof.
2. The font shall stand as near to the principal entrance as conveniently may be, except there be a custom to the contrary or the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible.

3. The font bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose whatsoever.
8. The font is at present quite close to the principal entrance to the church, and is immediately in prospect on entering. The proposal is to move it to what is practically the furthest possible point from the principal entrance.
9. I pointed out the legal difficulty when the Petition was first referred to the Court for a decision. It is clear that it took everyone by surprise. No constructive changes to the proposals were offered. I visited the church with the Registrar. It was very far from apparent to me that the three available spaces, one each side of the entrance door and one on the far corner, had to be assigned in the way proposed; but I also wondered whether it might be easier for the parish to justify the new position of the font if it were raised above floor level, because there is a sightline from the door to the east end of the north aisle. I deal with this point later in this judgment.
10. I have delayed as long as I could in making a decision on this Petition. I hoped that the parish would either reconsider or be able to strengthen what is in effect its claim that it does not need to be bound by the law, and I have encouraged it to do so. I indicated that the parish might be better able to put its case at a hearing. The Petitioners have made it clear that they do not want a hearing, and that my decision should be made as soon as now possible, on the material available to me. In the circumstances this is in my judgment a case suitable for determination on written representations, and I so determine the Petition.
11. It is disturbing that the law relating to the placing of a font in a parish church is not something that was taken into account in formulating the proposals. The Canon seems to have escaped the attention of the then parish priest (who, I understand, was formerly an Archdeacon), the architect, and the DAC. Historic England suggested in their response that the DAC would consider 'any particular impact of moving the font eastwards on its liturgical significance'. That was the reservation to which I referred earlier; but again there was no suggestion that this is a matter of law rather than liturgy. In advising on unlawful discrimination, presumably from a legal standpoint, the Revd Gary Ward wrote that 'With the 2010 Equality Act accessibility is more important than having the font prominently seen from the main door', but again did not consider or mention the Canon.
12. The Canon is quite clear. The font must be near the main door. There are two exceptions to that rule: if there be a custom to the contrary, or if 'the Ordinary otherwise direct'. The Petitioners identify no 'custom to the contrary' at Almeley. The Ordinary, for present purposes, is this Court, and on ordinary principles of law and of judicial practice the Court would not direct departure from the law save for good reason, based on precedent if available.

13. It is perhaps worth pointing out for the benefit of those who may not fully have understood the position, that the law of the Church of England, whether contained in the Canons or elsewhere, is a part of the law of England. It has a higher status than guidance, or liturgical practice, or good ideas. Exactly how much higher is a question that might allow for debate. The Canons, which were adopted and published (the official term is 'promulged') by the Convocations of Canterbury and York in 1964 and 1969 respectively, do not have general force except insofar as they reflect existing provisions of the law, whether written or unwritten; but they undoubtedly bind the clergy in ecclesiastical matters, and they probably also bind those who hold office in the church. In any event, liturgical preference or convenience does not override them or any other part of the law. The law is the starting-point for any decision-making, and will be dispensed with only if there is sufficiently good reason for doing so. It is not an optional add-on, or extra consideration, to be taken into account, if at all, at the end of the exercise.
14. The specific prescription that the font be 'as near to the principal entrance as conveniently may be' was introduced to the Canons in their latest full revision, apparently in an effort to secure precision. Before that, the law was as set out in Canon 81 of 1603, that there be a stone font 'to be set in the ancient and usual places'. The present Canon clarifies the position, in that in the absence of other customary placing in the church in question, the font is to be near the principal door. That position has nearly always been the usual position for a font in English churches. It was the usual position in the middle ages. Calvinists and Puritans preferred baptism to be at the front of the church, and for that reason many fonts were destroyed during the Commonwealth, as a result of the injunction in the Directory for Public Worship (1644) requiring that baptisms be 'not in the place where fonts in the time of Popery were unfitly and superstitiously placed'. At the Savoy Conference, following the restoration of Crown and Church in 1660, however, the bishops declared that 'the font usually stands as it did in primitive times, at or near the church door, to signify that baptism was the entrance into the church mystical ... and the people may hear well enough'. Thus there are good liturgical and symbolic reasons for a position near the door. Each individual becomes part of the church by baptism, so as baptism is spiritual entry to the Church, the font is in an appropriate relation to the physical entry to a church building. At a service of baptism, if it is a small service, gathered round the font, it is, again, physically in the right place in the church for these being spiritually admitted to the Church. If the baptism takes place in a larger gathering, those in the main body of the church have to look towards the font, and so towards the entrance of the church, which reminds them of the nature of the event and that each of them entered the Church through baptism. It should be remembered in this context that the Prayer Book of 1662 envisages baptism normally taking place during Morning or Evening Prayer (immediately after the Second Lesson in either

case): the present preference (and prescription by Canon B21) for baptism within public worship is not new and cannot of itself justify a change in the position of the font.

15. The parish's approach to the question now it has been raised has been (if I may summarise) that it is not prepared to consider using either of the spaces close to the door for the font, but only for the purposes proposed in the Petition. The font needs, it is said, to be removed from its present position, because the space at the west end of the nave is required for other non-liturgical purposes: a table-tennis table and a football table are mentioned. In its present position it is not convenient when there are social occasions in church. These factors are in addition to the need to lower it from its present base, which is said itself to constitute a hazard.
16. The most recent submissions from the PCC through the churchwarden reassert a need to have the font at the centre of the worshipping congregation, and a distaste for members of the congregation to face the font where it currently is. It is stated that the proposed placing of the font would provide a pleasing symmetry at the eastern end of the nave. It is suggested that the Canon's requirement for spacious and well-ordered surroundings applies only if the font is not near the entrance, and that this requirement would be met in its proposed position. The Revd Marcus Small, the incumbent, who has assumed the role of parish priest since the lodging of the Petition, says that there are 'no explicit liturgical reasons' for moving the font, but that nothing liturgically would be lost, and the 'idea of a pilgrimage through the church' on the way to the font would be given greater emphasis. (It is fair to say that I have not fully understood the concept of a pilgrimage through the church before baptism.)
17. I was referred by the parish to two relatively recent decisions: Re Holy Trinity Wandsworth (2012) 15 EccLJ 125, and Re St Margaret Stoke Golding [2021] ECC Lei 3. Each was said to support the proposal here. I take those decisions into account, as well as others of which I am aware. I have also read and considered the Guidance on Baptism and Fonts issued by the House of Bishops in 1992.
18. The House of Bishops' Guidance arose out of questions relating to the mode of baptism, whether by affusion (pouring water over the head), immersion (pouring water over the whole body, only parts of which are submerged), or submersion of as much of the body as possible. As the Guidance points out, the Canon regulates position but says nothing about size. Particularly where adults are concerned, immersion and submersion demand large fonts. The guidance given was that save in exceptional circumstances there should be only one font in any church, because of the risk of undermining the doctrine that baptism is one, however performed. Differences in the mode of baptism could be regarded as 'a parallel case' to the positioning of the font: 'different positions indicate different theological emphases, and certainly the position should not be decided solely on

the basis of visibility ... while a position at the door may speak of our entry into Christ's church, a position in – for example – the centre of the congregation may have more to say about the outpouring of God's grace as he brings his people to a new birth, and a position in close proximity to the altar will emphasise the paschal link between baptism and the eucharist'. The Guidance also recognises that the position of the font prescribed by the Canon 'is 'a symbolic position which speaks of the doctrine of baptism not only at service-time', and 'our liturgical furniture speaks silently to all who enter, even when no liturgy is being celebrated'.

19. Wandsworth includes an instructive summary and analysis of a series of judgments, and of the Guidance. In his judgment, Petchey Ch points out that the Guidance cannot override the Canon, and the remarks about the position of the font were not the result of any query directed to that issue. Canon F1 is based on sound historical practice and is not to be treated as out of date. A departure from its prescription will be allowed only in unusual or exceptional circumstances: the question is not at large and to be determined by the balancing of advantages and disadvantages. Inconvenience, whether for the place or the people, of having the font near the door would be unlikely of itself to amount to such circumstances because the very specification of the place means that, for example, people in the church will need to turn round to see it, and the space it occupies cannot readily be used as a 'welcome' area. On the other hand, there is no absolute legal or theological prohibition on having the font elsewhere if the case is made out. In the present context it is also to be noted that Petchey Ch implicitly endorsed the opinion expressed in Newsom's Faculty Jurisdiction of the Church of England 2<sup>nd</sup> ed (1993) p 122, that although siting of the font away from the main entrance may be authorised by the court where there is a need for that 'in few cases will such a need result in the font not being conspicuous to anyone entering the church'.
20. Petchey Ch observed that each of the decisions he analysed, whether allowing or refusing the removal of the font – or the introduction of a second font – had been made on its own facts. The same, of course, applies to all the other numerous decisions on the same topic. In Wandsworth itself, the existing font was near the principal entrance, but was surrounded by screens making it difficult for anybody not gathered around it to see a baptism. It could have been re-sited outside the screens, but there was a practice in that church, dating back some seventy years, of baptisms using a portable font (which should have had, but apparently did not have, Faculty authority) at the east end of the church, 'on a dais at the front of the nave'. These circumstances justified the font's removal as proposed.
21. In Stoke Golding de Mestre Ch allowed the font to be moved from its position near the door, where it had been only since the mid nineteenth century, to a distant location in the opposite aisle. Again, the decision depends on its own facts. Here the starting-point was that the font was in such a confined space that it presented safety issues: the space was, as the Chancellor found, 'insufficient to safely and

reliably administer baptism', given the likelihood of unpredictable movements by young siblings and other family members, the requirement of sufficient space safely to cradle a baby, and the comfort and dignity of the minister, all being considered, as she put it 'in the COVID era'. There were therefore powerful reasons for the relocation of the font; and the proposed new position was better than another position close to the door, which would have had other disadvantages.

22. In the context of the arrangements at Almeley, and the stated justifications for a move, it is perhaps worth pointing out that in Re Salisbury, St Thomas a Becket [2023] ECC Sal 1, Arlow Ch approved a scheme in which a large Victorian font sited at the west end of the south aisle would be replaced by a modern font at the west end of the central nave aisle. She referred to the remarks on the position of fonts in the Guidance, as quoted above, and said that a font in the position proposed 'would serve each of these three symbolic aims'.
23. It is for the Petitioners to make their case, and I must determine it on the material before the Court. In the light of the legal principles emerging from the cases and the interpretation of the Canon, however, I sought further information on two specific points. The first was the current practice in relation to baptisms. At my request the parish provided details of baptisms over the period from 2017 to the middle of 2023, recognising that there would be a gap during the pandemic (although that might not affect the numbers of baptisms but rather delay some). There have been 18 baptisms in the church during that period. Nearly two-thirds of them (11 of the 18), have been outside a normal service: if the period since the pandemic is considered, that figure is 8 out of 11. The 'possible numbers attending' are however said to have been very high, amounting to 'full church' on a number of occasions, and other numbers as great as 85 for baptisms not during a service. I do not know the source of the attendance figures, but the person who provided them recognised that the records might not be adequate for the purpose of providing them: there is a Register of Baptisms, but no register of services seems to have been available for consultation.
24. The second point I have already mentioned. When I visited the church I noted that the place chosen for the font was in principle visible by a line of sight from the south door (though by no means easily from everywhere else in the building). It occurred to me that if the font were raised on a platform it might be possible to say that it was prominent on entry to the church, which might be a factor to be taken into consideration. I did not, of course, indicate that that would be sufficient to meet all other difficulties. The parish considered the possibility, and the architect produced a scheme. However the advice was that raising the font on a new platform would amount to unlawful discrimination. The DAC visited the church. They re-assessed the proposal on the question whether the font would be visible

from the entrance if it were not raised. They again recommended the proposal for approval by the Court.

25. The DAC had the benefit of sketches showing what it was said would be able to be seen from the door. It is not absolutely clear that they do accurately show the font standing on the floor (the relationship to the sills of the windows is remarkably similar to that shown in an architect's scheme for a raised font), but in reality the importance of the sketches from my point of view is in showing that my suggestion would not alleviate the problem at all. Although the top of the font might be visible from the door, the font would be entirely insignificant in the view of the interior of the church from there or almost anywhere else, except perhaps the north aisle itself, and to anybody at the east end of the nave who happened to look northwards. And, of course, it would not itself be near the door, nor would it be able to have most of the symbolic significance of such placing.
26. I turn then to make my decision. The facts I find are as follows. The font is at present in a traditional position near the principal entrance, and clearly visible from it. That is a position which is not inconvenient for baptisms, or crowded. The reasons given for its being moved are that it is inconveniently in the way of recreation and social events which might take place at the west end of the church, and that its placing in the corner most distant from the door is a part of a coherent set of proposals that do not lend themselves to piecemeal amendment. It is also said that it is difficult to see when in use, because people in the body of the church have to turn round.
27. The church is not one that has any tradition of baptism at the front of the church, and the present trend seems to be away from (or at any rate not strongly towards) baptisms taking place during other worship. The proposed position is barely visible from the door, and during a service in a full church the font would not be noticeably more visible from people's places than it is now.
28. There are no unusual or exceptional circumstances going beyond the normal and expected consequences of placing the font near the main entrance, that would justify an exception to the general rule. It is not now said that there is any liturgical justification for moving it from the place where it now is; and in liturgical terms the proposed place is not noticeably appropriate: it is still outside the area where the generality of the congregation will be sitting, and for most of them seeing a baptism will still mean turning, and looking away from the altar. It would not be 'at the heart of the gathered community': it would be on the edge, in a corner.
29. I am prepared to accept that the font might well be lowered, by removal of its base, and that it could lawfully be moved from its present position. In the context of Almeley church, however, that does not necessitate or even point to a move away from the place sanctioned by tradition and prescribed by Canon. There is in my judgment no good reason why it should not be in the south aisle, either to the east or to the west of the door: in reality, the only argument deployed against such a



position is that it would interfere with arrangements settled without regard to the Canon. In truth, if the font is moved, it can be moved to a place coming within the terms of Canon F1.

30. For these reasons I am not persuaded on the facts that there are sufficient reasons why the placing of the font as prescribed by the Canon should not apply. In view of the fact that this decision will mean that the reordering of the church will need to be looked at again as a whole, and because of the parish's position that the present Petition needs to be considered as a whole, I express no concluded view on any of the other work proposed. The DAC will need to consider any new Petition and give the Court its advice in due course.

31. I decline to grant the Faculty sought by the Petition.

C M G Ockelton MA BD

Chancellor

12 December 2024