

IN THE COMMISSARY COURT OF THE DIOCESE OF CANTERBURY

ST.MARY, LENHAM

JUDGMENT

1. INTRODUCTION

- 1.1. The Petitioners are the Revd Richard Venn, Priest-in-Charge, Ms Vera Congdon, Churchwarden and Mr Doug Matthews, Deputy Churchwarden of the Parish of Lenham. By a Petition dated 19th September 2014, they seek a Faculty to authorise the following works:

"Relocation of the font and the removal of a single pew at the rear of the nave in accordance with a Statement of Needs and an estimate dated 24 April 2014".

- 1.2. The Statement of Needs explains that the PCC wishes to make alterations to the church as part of its response to the Diocesan "*Finding Welcome*" initiative. Specifically, the Petition seeks to move the font from its current position in the

north-west end of the church to “*a more accessible and theologically appropriate place*” at the north-east end of the chancel and to remove a pew at the rear of the nave. The PCC unanimously resolved to seek a Faculty for these works on 18 September 2014.

- 1.3. There are several practical reasons for wanting to move the font. Recently, accessibility ramps have been introduced into the western end of the nave and the font is something of an obstruction to people using them. The raised area at the western end is used for social activities and “Fresh Expressions” of worship such as “Messy Church”. The Statement of Needs explains that the font is inconveniently placed because of the need for the congregation to turn round in their pews to witness baptisms and because of some degree of visual obstruction due to pillars. I have been provided with some photographs of a Breakfast Service demonstrating the use of the raised area in the western end. The font is clearly visible in these pictures, surrounded by tables and chairs with people of all ages enjoying child-centred activities and refreshments. Following my request for further information I have also been provided with some very helpful pictures of the western end without any people in it as well as photographs of the proposed new font location at the chancel steps.
- 1.4. The Petitioners have also now provided the Church’s Statement of Significance (drafted by the DAC Secretary) and a document entitled “*Proposal to move the font*” dated 31 October 2014 from the Inspecting Architect, James Ford RIBA.,

AABC. This latter statement confirms the practical difficulties occasioned by the font in its current position. It then, helpfully, describes the font as follows:

"The 15th Century stone font is octagonal in plan and is set upon a curvilinear carved panelled pedestal; all in a Perpendicular style. The stone work of the font is in good condition.

The base of the font is set below the raised timber platform occupying the west end of the church; the platform being cut around the edge of the base. The present position is thought to date from the 1970s. The PCC have consulted the Diocesan Archives and there is a Faculty application dated 1973 relating to this move."

The document deals, at my request, with alternative positions for the font as follows:

"West end of nave

Moving the font to a position elsewhere at the west end would not satisfy the PCC's requirement for uninterrupted space at that end of the church.

North aisle/nave

There are fixed pews in the aisle and nave to the east of the porch entrance which are to be retained. There is no room in this part of the church for the font, or enough clear space for carrying out baptisms.

Chapel

A restricted space with an altar at the east end and a substantial organ at the west end.

Choir/Chancel

There is available space for the font on the north side of the chancel, adjacent to the Sanctuary arch. This position would allow room for baptisms and be closer to where worship currently takes place.

There are no ledger stones or brasses in the floor at this point, and the font in this position would not obstruct a clear view of the Sanctuary from chancel/choir.”

- 1.5. Turning to the proposed location, the Statement of Needs explains:

“Our proposal (following initial DAC advice) is to move the font to a position close to the communion rails on the North side of the chancel, south side of the chapel. The font would be used for some baptisms, but most would use a portable font placed at the front of the nave where all can participate more easily and the clear message will be that those being baptised are included, welcomed and valued as members of the church community.”

- 1.6. The stated rationale for removing the pew is twofold. Firstly, it would compensate for space lost to the disability ramps and, secondly, it would *“create a more pleasing sight line across the church on entering”*.

2. SIGNIFICANCE OF THE CHURCH

- 2.1. The church is listed at Grade I; the listing description notes that it dates from the twelfth to the fifteenth centuries, with rebuilding of the east wall having occurred in 1867. The 15th Century font is noted and briefly described, as are the nave pews, which are said to incorporate *“much C17 panelling”*. Pevsner’s *“Buildings of England”* notes that the font is perpendicular, with a panelled stem. The Statement of Significance observes that *“the pews in the nave and aisle are of a box pew design and incorporate a significant quantity of 17th Century panelling”*, concluding overall:

“This is a building which retains a strong sense of its medieval origins balanced with the work of the 20th

century particularly evident in the reordered west end, the organ screen and the sanctuary. The chancel stalls, pulpit and timber lectern are of particular interest, as are the good quality pews in the nave and aisle incorporating the older panelling as referred to above.”

2.2. The DAC’s Notification of Advice is dated 14 August 2014. It recommends that a Faculty be granted for the works subject to a condition requiring the DAC’s Archaeological Adviser to agree a method statement for the relocation of the font with the contractor before work commences. The Committee has also certified that in its opinion the proposed works are not likely to affect the character of the church as a building of special architectural or historic interest, the archaeological importance of the church or archaeological remains existing within the church or its curtilage.

2.3. According to the Petition, English Heritage, the Society for the Preservation of Ancient Buildings and the Victorian Society have been consulted. The only response which I have seen came from the Victorian Society, who deferred to the Society for the Preservation of Ancient Buildings, owing to the limited extent of Victorian elements within the building. I proceed upon the basis that there are no concerns on the part of any of these bodies.

3. LEGAL PRINCIPLES

3.1. This Petition gives rise to important legal considerations which explain why it has been necessary to ask for further information. I hope that it will assist the

Petitioners and any other readers of this Judgment if I explain what information is required in order to consider this type of Petition properly.

3.2. In any Petition involving works to a listed church or its churchyard, the Statement of Significance is an important tool, not only for the process of determination but also one which should be consulted and used from the inception of a project. This is because, as explained by the Court of Arches in Duffield, St Alkmund, significance is the concept which is now regarded as central to the consideration of impacts upon heritage assets in both the secular system of listed building control and the ecclesiastical Faculty Jurisdiction. Consideration of significance involves asking, in relation to a listed building or its setting, “*What matters and why*”.¹ The Court of Arches in Duffield laid down a set of guidelines for the consideration of Faculty Petitions concerning listed buildings. The guidelines are as follows:

- "1. *Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?*
2. *If the answer to question (1) 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 particular nature of the proposals (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary’s White Waltham (No2)** [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.*
3. *If the answer to question (1) is ‘yes’, how serious would the harm be?*

¹ English Heritage, The Setting of Heritage Assets, p.17

4. *How clear and convincing is the justification for carrying out the proposals?*
5. *Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see **St Luke, Maidstone** at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), 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 which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed."*

3.3. Mr Ford's note deals with impact on historic significance. He says:

"Although traditionally placed near the entrance to the church, in its present position the font is rather 'marooned' from those parts of the church where worship currently takes place.

The position within the choir/chancel preferred by the PCC will give the font a suitable location without any impact on the historic significance of the church. It will improve the use of the west end of the church, and better link the service of baptism to other related activities at the east end of the church."

He also notes the support of the Archdeacon of Maidstone and the DAC with regard to significance and the proposed liturgical arrangements. In view of the lack of comment from citation bodies and the DAC's certification, I treat this opinion as undisputed. I attach considerable weight to it because Mr Ford is an architect with long experience of working in historic churches.

3.4. Before reaching my own conclusions under the Duffield guidelines, I must also consider the law concerning the position and liturgical significance of fonts. These matters have been considered exhaustively and with great erudition by Petchey Ch in the Judgment In re Holy Trinity Church, Wandsworth.

3.5. The starting point for consideration is Canon F1 (*"Of the font"*) which provides:

"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."

3.6. Petchey Ch traced the history relating to font position in the English Church, noting its traditional, pre-Reformation position near the principal entrance to the building. This symbolised that baptism was *"the door of all sacraments"*.² At the Reformation, controversy raged about the position of fonts (as so much else), the Puritan stance favouring the administration of baptism *"in the face of the Congregation, where the people may most conveniently see and hear; and not in the place where fonts in the time of Popery were unfitly and superstitiously placed"*.³ Debate and different fashions seem to have come and gone between the seventeenth and twentieth centuries. The current

² Judgment paragraph 31

³ Op.cit. paragraph 33

version of Canon F1 was established in 1969. The Chancellor also noted that, in 1979, the wording of Canon B21 was changed to read:

"It is desirable that every minister having a cure of souls shall normally administer the sacrament of Holy Baptism on Sundays at public worship when the most number of people come together, that the congregation there present may witness the receiving of them that be newly baptized into Christ's Church, and be put in remembrance of their own profession made to God in their baptism."

3.7. The Judgment notes a divergence of views between Chancellors as to the approach to Canon F1. Having rehearsed all the principal relevant Judgments and noted the contributions of the House of Bishops to the debate, he concluded:

"It seems to me that the provisions of Canon F1 as regards the positioning of the font reflect the historic practice of the Church of England..... . Further, that historic practice is based upon a piece of symbolism which is readily understandable and which remains valid. The Canon certainly cannot be described as a piece of antiquated church law that has long ago fallen into desuetude. The Canons have, of course, frequently been amended since they were originally promulgated; but Canon F1 has not been altered. Accordingly, on the face of it, the Canon is fully binding on me and should be upheld by me; and I should regard the proposition that the font of a church should be located near the principal entrance to that church as one having considerable weight. I do accept that at the time that the Canon was debated and, to a lesser extent, at the time that it was promulgated, the practice of baptism taking place in the main Sunday service was not as extensive as it is now. However Canon B21 was promulgated in its present form (emphasising the desirability of the administration of the sacrament of baptism in the main Sunday service) in the context of Canon F1 both existing and having the wording that does. I think that the change in practice may

be an argument for changing Canon F1; but I do not see that it affects its interpretation."

Noting that not all Chancellors had reached the same interpretation, following a review of the case law, he said:

"67. In In re St Mary and All Saints, Trentham, Shand Ch adopted a similar approach and once again I find myself in disagreement with him. In addition to the Response by the House of Bishops to Questions Raised by Diocesan Chancellors, he relied upon the view expressed by Rt Rev Keith Sutton that the position of the font is believed to be less significant than the need for the font to be in a space of its own. It seems to me that, in any particular case, it might be that, because of the particular arrangements in a church, there was a strong argument for moving the font so that it might have space of its own which it otherwise lacked. It does not, however, seem to me that this bears upon the correct interpretation of the Canon. I agree with Shand Ch that the views of Bishop Christopher Hill (now Bishop of Guildford) carry enormous weight in these matters and I have no reason to differ from his view that there is no decisive theological argument for the positioning of the font at the west end of a church. However, this is not the point at issue, namely the correct interpretation of the Canon. It seems unlikely that in the 1960s anyone would have thought that there was a theological objection to the positioning of the font in a place other than the west end of a church: what it seems to me that the Convocations were doing was to say that, of the possible theologically acceptable positions, they preferred a position at the west end of a church.

68. Accordingly I agree with the view expressed by Mynors Ch In re Holy Trinity, Eckington where he said that the basic rule was that the font should be as near the principal entrance into the church as conveniently may be, although it may be permissible for it to be situated elsewhere in exceptional circumstances. I also agree with him that there is no absolute legal, liturgical or theological bar to the font being located elsewhere. There is no legal bar because the Canon envisages that

the Ordinary may direct that the font may be located elsewhere; that there is no liturgical or theological bar is demonstrated by the evidence received and accepted by Shand Ch in In re St Mary and All Saints, Trentham. However this does not affect what is the preferred position under the Canon.

71. *I think if the Canon is properly to be interpreted it must require exceptional circumstances in the sense of something out of the ordinary course. All other things being equal I would describe these as special circumstances but I am conscious that in In re Blagdon Cemetery the phrase special circumstances was used to describe any circumstances which justify an exception being made.⁴ By contrast, in R (Chelmsford BC) v First Secretary of State⁵ Sullivan J (as he then was) had to consider what were very special circumstances for the purposes of green belt policy. By reference to the Oxford English Dictionary, he defined special circumstances as circumstances which were unusual or exceptional i.e. (as I read his judgment) requiring something extra (and very special circumstances as something further still – although I am not concerned with this aspect of the matter). In my judgment it is special or exceptional circumstances in Sullivan J’s sense that are required to justify an exception from the “norm” of Canon F1. Newsom and Newsom on the Faculty Jurisdiction of the Church of England expressed this by categorising the need that had to be shown as justifying a departure from the norm as being overriding. I think that it is probably better to avoid the phrase special circumstances to describe what I consider is required. I think that this can be expressed by saying that there needs to be shown circumstances out of the ordinary.*

72. *The further question arises as to what the something “extra” or out of the ordinary might be. It seems to me that I am not called upon to go further than to examine the facts of the case which I must decide, but I should acknowledge at once that in the abstract, at least, there is a difficulty. For although I have been critical of the reasoning expressed in some of the cases, I am not expressing the view that any of them were wrongly decided. Thus in In Re Holy Trinity, Knaphill,*

⁴ See paragraph 35

⁵ [2004] 2 P&CR 34

there may have been circumstances out of the ordinary in the sense that I consider is required. But this does not mean that the test I propose is circular, namely that circumstances out of the ordinary are those that the Chancellor says are out of the ordinary. If the circumstances are not out of the ordinary, then the Chancellor's judgment may be subject to criticism on that basis and might be subject to appeal.

73. It is instructive in this regard to look at the judgment of Mynors Ch in In re Holy Trinity, Eckington. Although apparently decided on the basis of the balance of advantage, it is hard to avoid the conclusion that in rejecting the Petitioner's evidence of reasonable need and looking for exceptional circumstances, Mynors Ch did in fact require something out of the ordinary to justify the change. If this is to be the requirement, it seems to me that it should be expressly articulated.

74. I think that it is worth adding the following two points.

75. First, I think that in practice the Canon is not straightforward to apply. This is because it might be thought that, all other things being equal, the inconvenience of a font being positioned near the principal door of a church might be circumstances out of the ordinary, justifying locating it somewhere else. It might well be inconvenient because:

- (i) it gets in the way of use of the west end of the church as a "welcome" area;*
- (ii) it obstructs processions;*
- (iii) if baptism is in the main service, it requires people to turn around to face the west or to process to the font, where there may not be room for everybody.*

Moreover, it may be possible to point to a change in practice in the administration of baptism, so that it now takes place in the context of the main Sunday service.

76. I think that by its clear wording the Canon must be taken to envisage that inconvenience of this kind would be likely to arise and so would not of itself amount to circumstances out of the ordinary (even if, at the time it was drafted, it may not have been usual for baptism to take place in the context of the main service on Sunday). That it is appropriately so interpreted is emphasised by

the fact that Canon B21 took its present form in 1979 against the background of the existence of Canon F1. I also think that the wording of the Canon envisages that locating the font near the principal door might to a degree compromise the spaciousness and well-orderedness of its surroundings. Thus I think that only if the inconvenience is particularly marked or if the compromise were too great, might it amount to circumstances out of the ordinary justifying moving the font.

77. Second, in practice it may be that it is only in respect of Victorian (or later) fonts that it is likely that there will be proposals for relocation; if the font is earlier, there is likely to be a heritage objection to moving it. Thus the natural reluctance that a Chancellor might feel to authorise moving a font from the position it has occupied for centuries might well be justified on heritage grounds. But, while the Canon remains in place, it seems to me that that reluctance is also based on the wording of the Canon as I consider it should be interpreted.”

I agree with Petchey Ch’s interpretation and application of Canon F1.

- 3.8. In the course of his review of the law, Petchey Ch noted that, although in In re St.Nicholas, Gosforth, Blackett-Ord Ch held that there could only be one font in a church, Newsom QC Ch and Judge Newey QC Com Gen held in In re St.Barnabas, Kensington [1991] Fam 1 and In re St.George’s Deal respectively, that there could be more than one. Halsbury’s Laws⁶ notes two further such cases.⁷ The question of there being two fonts has most recently been considered by Bishop Ch in In the matter of All Saints, Winterton. In that case, it was proposed to move a mediaeval font to the position occupied by an Edwardian font, donated to the church at a date prior to the recovery of the

⁶ 5th Edn, para 770

⁷ St Margaret, Brightside (1996) 15 CCCC 28; Re St Lawrence, Denton (2001) 20 CCC 16.

mediaeval one, which had been removed at the time of the Reformation. The proposal was for the destruction of the Edwardian font. The Chancellor said, at paragraph 6:

"There is no Canon or rule of law which prevents there being more than one font in a church, although one is normal. In Re St Barnabas Kensington 191 Fam 1 it was held by Chancellor Newsom QC that here was no objection to there being two fonts – one being a baptismal pool and the other being a ‘conventional’ font for baptism by affusion for infants. In that case both fonts were continuing to be used for baptisms and it could be thought that this practice might give rise to certain anxieties, based on a misconception, that baptism in the pool rather than the font (or vice versa) was the only valid method of baptism. In Re St Nicholas Gosforth 198 1(5) Ecc LJ 4, the contrary view to St Barnabas was enunciated namely that there should be only one font in a church because there was only one baptism. Certainly, the liturgical norm is that there should be only one font at which baptisms take place. Bishop David Stancliffe’s article in Ecc LJ 193 on this topic is apposite.”

He approved the relocation of the mediaeval font, subject to the understanding that proposals would be worked up to place the Edwardian font in a place where it would not be used but could “co-exist peacefully” with the mediaeval one. Clearly, no question of confusion or “first and second class baptisms” could thereby arise.

4. CONSIDERATION

- 4.1. I shall deal with the particular issues which arise in relation to the font first, then consider the overall proposal within the framework of the Duffield guidelines.

- 4.2. I must start with the principle, derived from Canon F1, that the font should be “*as near to the principal entrance as conveniently may be*”. In this church, the principal entrance is the north door. Clearly, the proposed removal would take the font further away from the door. I must accord that fact considerable weight.
- 4.3. The locational principle is not the only relevant principle to be derived from Canon F1, however, since it also requires that the font “*shall be set in as spacious and well-ordered surroundings as possible*”. The font’s current position, even when the west end is not in use for church activities, does not satisfy this second Canonical requirement. The font is surrounded by the paraphernalia of inclusive, all-age modern forms of worship – chairs, tables, toys and so forth. One of the disabled access ramps terminates quite close to the font. From a heritage point of view, the practical modern parquet floor is not an ideal setting for such a fine and significant mediaeval object. The proposed location is undoubtedly more spacious, less cluttered, better ordered and more aesthetically unified. The fact that the font has become crowded in this way is due to the needs of this church to serve the Gospel and the community in contemporary ways, which are clearly proving attractive and worthwhile. Whilst such initiatives are, happily, not unusual in the Diocese of Canterbury or the wider Church, I do find that there are particular circumstances here which are out of the ordinary. These are:

- (1) that the font is not in its original, mediaeval position, having apparently been moved in 1973;⁸
- (2) that the exigencies of contemporary disabled access provision (a matter of great importance where, unlike here, the wider Church does not always lead by example) have led to the font's becoming rather crowded and a slight hazard, as well as "*marooned*" from those parts of the church where more formal acts of worship take place;
- (3) that one part of the Canon is clearly not currently being met but could be met as a result of the proposal;
- (4) that the font – which is an object of historic and aesthetic significance in its own right – would enjoy a much more sympathetic setting in its new position.

For all these reasons, I conclude that circumstances sufficiently out of the ordinary exist to justify moving the font away from its position relatively close to the principal entrance as proposed.

4.4. I am, however, troubled by the suggestion in the Statement of Needs that, even in its new position, the font in question would not be used for all baptisms. The majority would, apparently, be conducted using a portable font placed "*at the front of the nave*". I share the concern of Bishop Ch⁹ that the use of two fonts has the potential to lead to confusion and to diminish the symbolism

⁸ It is unfortunate that the Petitioners have been unable to find any more information about this part of the history.

⁹ A Chancellor who, as well as being a secular Judge, is also a priest.

associated with entry into the Body of Christ which Canon F1 recognises as important. It also strikes me as an unfortunate detractor in terms of heritage significance. I deal with this aspect in my conclusions below.

4.5. I turn now to consider the pew. No particular legal questions arise in relation to it, unlike the font, but I must assess the proposal in the light of the Duffield guidelines. Whilst I note the certification of the DAC, it seems to me that there would be some harm to significance arising from this aspect of the proposal, because the pews in the nave are clearly of some interest in their own right and are noted in the listing description and Statement of Significance. The harm, it seems to me, however, would be very slight because the majority of pews would remain. The justification for removal is clear and convincing because this one pew currently obstructs to some extent an area which has been designated for very important activities within the life and mission of this church. I therefore find that this very slight harm would be outweighed by the pastoral advantages which a minor re-ordering in this part of the nave would bring.

4.6. There is no evidence to suggest that the current position of the font is of any special architectural or historic interest. The font, which dates from the Middle Ages, has only occupied its current position since the 1970s. Whilst it is probable that its historical position would have been close to either the north or west door, there can be no certainty about this as there is no evidence as to its actual mediaeval position. Since the precise position is not historical, the only

significance of the present location is that it appears to represent the tradition of the Church which is embodied in Canon F1. I have already dealt with that provision and I note from Petchey Ch's Judgment in Holy Trinity, Wandsworth that, even in mediaeval times, fonts were not invariably placed near the principal entrance. I find that this font would benefit aesthetically from the proposed move in terms of its setting. Provided that its relocation is carried out with scrupulous care, pursuant to a suitable condition, there is no reason for concluding that it would sustain any physical harm. Therefore, I answer the first Duffield question in the negative. Thus, Duffield questions 3 to 5 do not arise. Question 2 is answered by reference to the heritage benefits of moving the font as well as the advantages of rationalising the access and informal activity area at the west end of the nave. While the PCC's preference for baptisms in the eastern end of the church is a further factor, I do not attach great weight to this for the reasons stated by Petchey Ch – namely that it must be supposed that those who enacted Canon F1 were aware of the practical consequences of presuming in favour of the traditional location of fonts, notwithstanding modern baptismal practice.

5. CONCLUSIONS

5.1. I conclude that a Faculty should, in principle, be granted for the proposed works.

This should be subject to standard conditions as to duration (12 months), the obtaining of insurance cover and the DAC's proposed archaeological condition. I also consider that the pew should be removed but retained. The

PCC resolution envisaged either that it should be broken up and recycled into some other piece of church furniture or sold. Since it is an item of some historic significance, I think that it should be preserved intact in the church; its future location should be discussed with the DAC but it might be possible, for example, to make use of it in the vestry or the porch. Finally, I should like the PCC to reflect carefully on what Bishop Ch and I have said about the use of two fonts and to discuss the matter with the Archdeacon. I am not imposing a condition to the effect that use of the mobile font should cease but it does seem to me that much of the liturgical rationale for an easterly position is destroyed by the use of a mobile font for many baptisms. Such a practice would also detract from the heritage significance of this beautiful mediaeval object.

A handwritten signature in black ink, appearing to read 'M. Ellis', followed by a long horizontal line extending to the right.

MORAG ELLIS QC

3 December, 2014