

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK
IN RE HOLY TRINITY CHURCH, WANDSWORTH

JUDGMENT

Introduction

1. This is a petition received in the Registry on 31 January 2012 by the Reverend Gregory Prior, Simon Wakely and Olaniyi Ogunsina, the Vicar and Parish Wardens respectively of the parish of Wandsworth, All Saints with Holy Trinity.
2. The petition seeks permission for works to Holy Trinity Church, Wandsworth. Permission is sought to remove the existing pews within the church and replace them with chairs; to reconfigure the existing dais at the east end of the chancel; to move the font from its existing position in the south west of the church to a new position in the north transept; to convert the existing baptistery into a servery; to renew the heating, lighting and audio visual systems; to redecorate the church interior; to build an extension on the south side of the church to provide offices; to provide an enclosed garden area on the south side of the church between the church and the church hall; and for associated works. The architect for the works is Mr Julian Vallis of HMDW Architects of Chichester, Sussex.
3. The PCC resolved to apply for a faculty in respect of the works at a meeting held on 23 January 2012. Of the 13 members of the PCC, one was absent on account of illness.

Of the 12 members attending the meeting 11 voted in favour of the resolution and 1 abstained.

4. The proposals were advertised in the *Wandsworth Guardian* on 8 March 2012. No representations in respect of the proposals were received as a result of that advertisement.
5. By a certificate dated 4 January 2012, the Diocesan Advisory Committee decided to recommend the proposed works.
6. As I shall explain more fully below, English Heritage and the Victorian Society object to the proposals, particularly in relation to the font. The Church Buildings Council has also expressed some reservations, particularly in relation to the font. None of these bodies wished to become a party opponent, but they all wish me to take their views into account.
7. I visited the church on 22 March 2012 when, as well as representatives of the parish, the Archdeacon and representatives of the DAC, English Heritage and the Victorian Society also attended. I am grateful for everyone who assisted me on that occasion. At my prompting the architects and representatives of English Heritage and the Victorian Society subsequently had a further meeting in the church. Although this did not lead to agreement, it narrowed the areas of disagreement and again I am grateful to those who took part for assisting me in this way (see, further, paragraphs 25 and 98 - 99 below).

Holy Trinity Church

8. The parish of Wandsworth, All Saints with Holy Trinity has two parish churches. I am told that, historically, the church of All Saints served Wandsworth Town and the church of Holy Trinity the more affluent area of West Hill. All Saints, which is listed Grade II*, is the finer architecturally. It dates from the 17th century. Holy Trinity, which is listed Grade II, dates from the mid-nineteenth century. The listing reads as follows:

Main building mid 19th Century. Circa 1863. Plaque dates south aisle and transept to 1872 by John M K Hahn. Decorated style: nave and transepts. Kentish Rag with ashlar dressings. Slate roof with green slate bands. The north-west tower with angle buttresses and tall stone broach spire is the key to the asymmetrical composition. Spire added 1888. Pointed-arch tower door on north side with good wrought iron gates and hanging lantern within. Traceried east window. Interior with octagonal piers and stiffleaf capitals, ribbed open timber wagon roof. Chancel arch and timber chancel roof.

9. The church receives a two-line entry in Pevsner (i.e. *The Buildings of England: London 2: South* by Cherry and Pevsner (1983)):

HOLY TRINITY, West Hill. 1863 by JMK Hahn; ragstone, Dec; spire 1888 by G Patrick.

This short entry contrasts with the 14 lines devoted to All Saints.

10. Holy Trinity with its impressive spire stands prominently at the top of West Hill on the A3. Inside it is a typical church of the period. Lofty and naturally well lit, it is an attractive building. The chancel is separated from the nave by a fine metalwork screen. In the south west corner of the church there is a baptistery containing a stone font which is separated from the body of the church by metalwork screens. These are contemporary with the chancel screen and face east and north. The screen facing east forms the entrance to the baptistery and contains gates¹. The screen facing south is a

¹ These must be the gates referred to in the listing.

“half” screen, the lower half being formed of varnished plywood. I think that the reason for this may be that originally the cleared area at the west end of the church now forming a northex was originally pewed; accordingly there would have been no reason for wrought ironwork to have been provided rather than the varnished plywood, because it would not have been visible if it had. The chancel screen and the baptistery are not thought to be contemporary with the church but to date from about 1889. It is not known who designed them.

11. At the east end of the church there is a painted and sculpted reredos with a wall painting of the Last Supper.
12. On the south side of the chancel, there is a three manual organ dating from 1889 by “Father” Willis. It retains its original pneumatic lever mechanism. It is an instrument of high quality.
13. Finally of the fittings of the church, I should mention the bells, although they are not affected by the proposals. They are a 15 cwt ring of 8, cast by Taylors of Loughborough in 1926, and are considered one of the finest rings in the old county of Surrey.
14. The church underwent a conservative re-ordering in 1959. A dais was introduced in front of the chancel screen on which was placed a second Holy Table. The original Victorian pews were retained.

15. Immediately to the south of the church is the Holy Trinity Centre, which was built in 1995. This provides accommodation for a nursery school at ground floor level, with a church hall, meeting rooms, parish office and ancillary facilities above.

Proposed works in detail

16. A comprehensive description of the proposed works is contained in the *Statement of Significance and Needs*:

In order to meet the needs of today's ministry to a broadly based congregation and to enhance the ability of the church to provide safe, spacious and high quality facilities for parish and community events, the following works are proposed for Phase 2:

- *To reorder certain aspects of the church to increase the flexibility of the nave and chancel for ministry, worship and community use:*
 - *Relocate the font from the private baptistery to the front of the nave to enable the use of the font for baptisms during Sunday worship.*
 - *Provide a larger open space at the rear of the nave for hospitality purposes through the sensitive adaptation of the private baptistery for use as a server.*
 - *Remove the existing dais at the front of the nave and create a new dais, level with the chancel floor, at the front of the nave. The existing dais is on two levels, the base rather awkwardly extending from just in front of the first row of pews up to the chancel and into the transepts. It is clearly not original as one can see where pews have been removed at the front to make room for it. It constitutes a hazard in terms of celebrating Holy Communion, with steps that are not easily negotiated by the elderly and disabled.*
 - *Reposition the font, large 'eagle' lectern, communion table and rails in an appropriate manner in the context of the chancel and new nave dais.*
 - *Replace the pews throughout the nave with appropriate individual seating in keeping with the aesthetics of the building.*

- *To replace, for energy efficiency, safety and aesthetic purposes, the church's heating system including boilers, pipework and radiators, and to extend the existing heating provision to the vestry area. The heating system will be replaced by a modern system which will be less obtrusive and more economical to run. For energy efficiency purposes, the heating in the main body of the church will be under*

floor heating which will enable the provision of a permanent level of background heating in the church for the benefit of the fabric generally and the organ in particular. Also to improve the insulation of the church generally, especially as regards the substantial draughts from the larger stained glass windows.

- *To redecorate and refurbish the nave, transepts and chancel, including:*
 - *cleaning and making good the roof boards*
 - *cleaning all internal stonework*
 - *repainting (and where necessary, replastering) all internal walls*
 - *renovating the reredos and eastern wall of the chancel (the picture comprising the reredos is in poor condition)*
 - *removing all redundant wiring and pipework and chasing all other wiring and pipework into the walls where possible.*

- *To install certain facilities, fixtures and equipment to meet the needs of today's ministry:*
 - *flexible lighting system focussed on enhancing the beauty of the interior and improving the congregation's ability to read; the current lighting arrangements in the church are quite simply inadequate by modern standards. The large lanterns will be retained and will be re-hung in the North and South transepts and at the west end of the church and will in effect provide the suggestion of a lower ceiling and thus a more intimate space.*
 - *new flooring and some limited carpeting in the nave*
 - *upgraded sound system and audio visual media*
 - *welcome desk and noticeboards at the rear of the nave*
 - *a kitchen/servery area with water supply and waste water disposal in the current baptistery area for hospitality purposes, designed in such a way that this change of use will not be evident when the servery is not in use*
 - *consideration also to be given to need to renovate/replace/upgrade wooden furniture such as communion tables and lecterns*

- *To create a glazed, covered walkway/link to connect the church's south porch to the Holy Trinity Centre, to include a manned welcome area. This would be used as the main entrance during services, so that young children could be monitored and groups using the Centre would be under shelter.*

- *To create additional office space at ground floor level as a single-storey extension along the south aisle, accessed from the new glazed link. The existing fabric of the south aisle would remain unaltered, and the external masonry would form the internal wall of the office*

space. The stained glass windows will remain and conveniently provide a suitable level of privacy from within the church.

- *To refurbish, redecorate and renovate the existing vestry area (including rewiring and installation of heating) to include toilets, removing all current partitions contents and furnishings and creating a comfortable, carpeted ground floor space for use as a vestry/crèche facility on Sundays and as a ‘soft’ meeting area for pastoral use by the clergy and other parish staff during the week.*
- *As advised by the Parish’s organ builder, Matthew Copley, to refurbish the visible pipes of the Father Willis organ, install a new organ blower and humidifier in the vestry area and undertake a major repair of one of the organ’s two sets of bellows which is ripped and currently not functioning (this requires a significant dismantling of the internal workings of the organ). The old organ blower and attendant piping, currently situated in an outbuilding, to be disposed of.*
- *To renovate (or replace if beyond repair) and paint in black the external doors to the tower, the organ, blower shed, the external stairway adjacent to the vestry, the old boiler room and the vestry.*
- *To clear and maintain the old boiler room and the water pumping system therein.*

It is the view of the PCC that these works will substantially aid the development of the church’s ministry, especially to families and the young, the continued growth of the congregation and the increased use of the church by local schools and community groups. The church will be more flexible and appropriately equipped for the needs of today.

17. It is necessary to explain in more detail what is proposed as regards the baptistery and the relocation of the font. As regards the baptistery, the east facing screen and gates will be retained. The north facing screen will also be retained but provision will be made to enable it mechanically to be lowered into the new “wall” formed by the panelling of the new servery. The new panelling will replace the existing varnished plywood to match that proposed throughout the building. It will be surmounted by a high quality counter top, whose purpose will not be evident when the servery is not in use. Thus the historic form of the baptistery will be preserved (albeit on its west and north sides it will be lined with the units necessary to create the servery). The north facing screen will only be lowered when the servery is not in use. As regards the

relocation of the font, it is proposed that the new dais will extend into the north transept and the font will be positioned on the northern side.

The reason for the proposed changes

18. The reason for the proposed changes is in many cases obvious or has been explained in the detailed description of the works set out above. The three controversial elements are the replacement of pews by chairs, the proposals as regards the baptistery and (to a lesser extent) the provision of offices on the south side of the church. As regards the pews, the justification for the change is to provide flexibility in the use of the building, including its ability to be used by the community. As regards the baptistery, the proposal is to put to a good alternative use an area which is perceived to be redundant and to replace the present *ad hoc* arrangements (which involve pushing a trolley and urn up and down steps from the vestry at the east end of the church) with something much more fitting, efficient and user friendly. The new location for the font reflects the existing practice whereby baptisms take place at the front of the church (in a portable font).

The objection to the proposals

19. When the papers first came before me, the position of English Heritage was recorded in a letter dated 24 October 2011 from Simon Hickman, Historic Buildings and Area Adviser to the Church's Architects as follows:

I should make it clear that the principle of the font being relocated to the dais is accepted; we recognise this is compatible with the church's current style of worship but it is also theoretically a reversible alteration should the need ever arise for the font to be returned to the baptistery.

However, the changing of the existing baptistery into a kitchen will bring the need for the addition of electricity, plumbing and other requirements such as wipe-clean surfaces to comply with food hygiene regulations. It is

difficult to envisage how these requirements could be accommodated without compromising the special architectural interests of the baptistery, which incorporates good stained glass and a decorative tiled floor as well as the ornamental metalwork.

We therefore strongly suggest that you consider providing a tea point in the area currently proposed for a bespoke timber book stand at the west end of the church, detailed as option 4 in your 'servery and font location planning exercise' document. A bespoke piece of furniture could be designed such that the tea point is hidden when not in use and fully conforms to all modern hygiene requirements, while it could also prove cheaper and easier than the proposal to motorise the existing metal screen.

20. The local planning authority, the London Borough of Wandsworth, did not have any objections to the proposal (see its letter dated 10 February 2011) and has granted planning permission (dated 5 July 2011) for the proposed offices on the south side of the church.

21. The position of the Victorian Society as regards the proposals for the baptistery was set out in a letter dated 20 February 2012 from Edmund Harris, Churches Conservation Adviser to the Church's Architects as follows:

... [we have an] objection to the alterations to this area of the interior [stemming] from the loss of the integrity of this fine ensemble that the proposals would inevitably entail and we are not convinced that there is no viable alternative location for the servery. The physical and visual impact of this proposal on good quality historic fixtures would be substantial and cannot be justified solely on the ground that the font is no longer used for baptisms.

22. The Victorian Society also had a concern about the proposed offices on the south side of the church.

23. The position of the Church Buildings Council as regards the proposals for the baptistery was set out in a letter dated 26 January 2011 from Ms Diana Coulter, Casework Officer to the Church's Architects:

The Council noted that the parish wishes to create a server in the area currently occupied by the baptistery. It understood that the DAC would be content for the font to be moved to a new location in the north transept on the extended dais, which would bring it back into use, which the Council would welcome rather than continuing to use a portable font. However the Council was not fully persuaded by the arguments not to place the font at the west end of the church in the nave.

The Council was content to support the proposals for the screen. Although no designs for the server were available, the Council was content to defer on this to the DAC.

24. As regards the proposed new offices on the south side of the Church, she said:

The Council was content to support the proposed construction of two small offices along the wall of the south aisle between the porch and the transept. While to provide some screening from the sun as well as privacy for the nursery made sense, the Council was concerned about the introduction of timber into a stone-clad environment. It therefore recommended that alternative designs might be considered.

25. Following that visit I asked for further information about other options that there might be for providing facilities for serving tea and coffee. I indicated that HMDW should discuss the matter with representatives of English Heritage and the Victorian Society to see if there was any common ground. These discussions led to considerable clarification of the issues, even though the concluding position of the parties remained the same; on the Petitioners' part that there is no reasonably practicable alternative option for the provision of tea and coffee and, on the part of English Heritage and the Victorian Society that there might be. I shall necessarily consider this aspect of the matter when I come to consider the merits of the Petitioners' proposals, including the views of the DAC on the various options.

The legal context for my decision

Generally

26. In all cases where a change is proposed which will affect a church subject to the faculty jurisdiction, it is for the party proposing the change to establish the case for the change (see *Peek v Tower*²).

As regards a listed building

27. Where a change is proposed to a church which is also a listed building, it is necessary for the Chancellor to address what are called the “Bishopsgate” questions – so called from the case of *In re St Helen’s, Bishopsgate*.³ The questions are as follows:

- (1) *Have the petitioners proved a necessity for some or all of the proposed works, either because they are necessary for the pastoral wellbeing [of Holy Trinity] or for some other compelling reason?*
- (2) *Will some or all of the works adversely affect the character of the church as a building of special architectural and historic interest?*
- (3) *If the answer to (2) is yes, then is the necessity proved by the petitioners such that in the exercise of the court’s discretion a faculty should be granted for some or all of the works?*⁴

As regards moving a font

28. Canon F1 (“Of the font”) provides as follows:

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.*

² (1881) 7 PD 21 (Court of Arches).

³ Unreported, 26 November 1993, Consistory Court of the Diocese of London, Cameron QC Ch. The Bishopsgate questions were endorsed by the Court of Arches in *In re St Luke the Evangelist*, Maidstone (1995) Fam 1.

⁴ See *St John the Evangelist, Blackheath* (Unreported, 26 September 1998, Consistory Court of the Diocese of Southwark, George QC).

29. The application and force of this Canon as regards the location of the font within a church has, as will be seen, been subject to debate. There appears to be a widely held view that, in essence, it no longer has any application. I disagree with this view. Against this background I hope that it will be helpful if I set out my reasons at greater length than might otherwise be the case. In the succeeding paragraphs of this judgment setting out the historical background, I am, as will be seen, greatly indebted to Professor Davies's *The Architectural Setting of Baptism* (1962).
30. In the earliest days of Christianity, there were no church buildings and baptism took place in rivers or any convenient piece of water (see, for example, the account of the baptism of the Ethiopian eunuch by St Philip contained in the Acts of Apostles⁵). When the first churches came to be built they served large areas. It became usual for baptism to be administered in buildings separate from, although attached to, the main church building. This facilitated the baptism of large numbers of people. (The baptistery at Ravenna is a good example).
31. In England, evidence of separate baptisteries is limited and this may reflect the fact that the parish system (the division of the country into comparatively small areas, each served by its own church) became established at an early date. In those parish churches the font was invariably placed near the principal entrance to the church (and thus at the west end). Its being so placed was symbolic. Thus Davies writes:

... baptism, as John Carpenter, Bishop of Worcester, echoing many mediaeval divines, asserted in his Articles of 1460, is the "door of all sacraments". Just as no man can enter the Church without initiation, so no

⁵ Chapter 8 v 36.

*one could enter the church without a visible reminder of the sacrament of initiation*⁶.

32. The administration of baptisms became a matter of considerable controversy at the time of the Reformation. In terms of the location of the font, Calvin thought that it should be near the pulpit, believing the public reading and preaching of the word were of the essence of the sacrament. This view was influential in reformed churches on the Continent. Some considered fonts papistical and advocated the use of a basin, and this became the practice in the Church of Scotland. On 10 October 1561, Queen Elizabeth I issued a Royal Order to the effect that “*the font be not removed from the accustomed place: and that in parish churches the curates take not upon them to confer baptism in basins but in the font customarily used.*” The controversy continued and the Puritans argued against the status quo at the Hampton Court conference in 1604. They were answered by the Canons of 1603.⁷ Canon 81 provided that:

... there shall be a font of stone in every church where baptism is to be ministered; the same to be set up in the ancient usual places.

33. All this was set aside during the Commonwealth, the Directory for Public Worship (1644) ordering that baptism was to be administered:

... 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.

34. This led to a wholesale destruction and disposal of fonts, a process which was reversed at the Restoration. At the Savoy Conference, the Presbyterian divines expressed the desire that the font *may be so placed as all the congregation may best see and hear the whole administration.* The Bishops replied:

⁶ See p 61.

⁷ These date from 1603, but were not confirmed until 1604.

... the font usually stands as it did in the primitive times, at or near the church door, to signify that baptism was the entrance into the church mystical: "we are all baptised into one body"⁸ and the people may bear well enough.

35. In the churches which were built after the Great Fire, the font stood near the principal entrance. In the eighteenth century, however, there are examples of fonts at the east end of the church - see, for example, the remarkable church at Shobden in Herefordshire. This might perhaps have become the norm in new churches but for the Gothic revival. Once again the font was generally sited near the principal entrance to the church. Sometimes the font was enclosed within a baptistery area. This was recommended by Pugin in his influential *The Present State of Ecclesiastical Architecture in England* (1843). The arrangements of what is regarded as his great church – St Giles, Cheadle (RC) – replicate those at Holy Trinity, Wandsworth both as to position and enclosure. He wrote *the font of St Giles, Cheadle will stand within an enclosed baptistery at the western end of the south aisle, and will be furnished with a nicely floriated canopy of the decorated period*⁹.
36. In 1939, the Archbishops established a Commission to examine existing Canon Law. This reported in 1946. It proposed replacing Canon 81 with a new canon (XCVI) as follows:
1. *In every Church or Chapel where Baptism is to be administered, there shall be provide a font of stone or metal with a decent cover for the keeping clean thereof.*
 2. *The font shall usually stand as near to the principal entrance as conveniently may be.*
 3. *The font bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose whatsoever.*

⁸ See St Paul's letter to the Corinthians at Chapter 12 v. 13.

⁹ See Davies at p 128.

37. This wording of draft Canon XCVI was considered by the Upper House of the Convocation of Canterbury on 16 October 1952. It was reported that the Convocation of York had accepted draft Canon XCVI with some changes so that the Canon would read:

The font shall stand as near to the principal entrance as conveniently may be, except that there be a custom to the contrary or the Ordinary shall otherwise direct, and shall be set in as spacious and well-ordered surroundings as can be compassed.

38. The President of Convocation (the Archbishop of Canterbury, Dr Geoffrey Fisher) said that the intention was to get rid of the vague expression “usually”, and to make explicit reference to custom and the direction of the Ordinary; and to refer to the need for the font to be set in spacious and well ordered surroundings. The Bishop of St Edmundsbury and Ipswich (Dr Richard Brook) asked what was meant by “except there be a custom to the contrary” to which the Archbishop replied that “the font might have been for centuries somewhere else than near the principal entrance”. The form of the Canon proposed by the Convocation of York was approved subject to the insertion of the words “in any particular case” after “the Ordinary shall otherwise direct”. However on 20 October 1954, Convocation agreed to delete the words “in any particular case”, apparently on the basis that they were unnecessary.

39. As is well known, the process whereby the Revised Canons were adopted proved to be a long one. The new Canons were promulgated by the Convocation of Canterbury in 1964 and by the Convocation of York in 1969. Canon F1 (“Of the font”) now read as set out in paragraph 28 above. The Canon has remained unchanged since that time.

40. It seems to me that by the amendment to the original draft, the Convocations were, as the Archbishop of Canterbury indicated, seeking to supply some precision in place of the word “usually” by indentifying the circumstances in which it might be appropriate for the font not to stand as near to the principal entrance as conveniently may be. What the amendment does not help with, nor the discussions leading to the amendment, is as to the identification of the circumstances in which it would be appropriate for the Ordinary otherwise to direct.
41. In modern English churches it is still common to find the font near the principal entrance, but not invariably so: *The Architectural Setting of Baptism* contains pictures of the arrangements at St John’s, Hatfield and Holy Trinity, Bristol¹⁰ where the font is at the east end at the side of the Holy Table.
42. Largely since the Second World War there has in many places been a significant change as to the context in which baptism is administered. Although the Prayer Book of 1662 envisages that baptism should be administered either during Morning or Evening Prayer, that ceased to be the usual custom; rather, baptism was administered in a separate service or services, often on a Sunday afternoon. One can see that, in urban areas at least, the large number of baptisms would have suggested this approach. However a different practice seems to be reflected in the wording of Canon B 21 (“OF Holy Baptism) as promulgated in 1964¹¹. It provided as follows:

*It is desirable that every minister having a cure of souls shall from time to time administer the sacrament of Holy Baptism or other Holy Days **at or immediately after public worship when the most number of people come together**, that the congregation there present may witness the receiving of them*

¹⁰ This church was rebuilt within the original walls after being bombed in the war.

¹¹ Note that Canon B 21 has its origin to an amendment to the draft Canons proposed in 1960 i.e. it was not included in the Canons proposed in 1946.

that be newly baptized into Christ Church, and be put in remembrance of their own profession made to God in baptism. Nevertheless (if necessity so require) children may be baptized on any other day (emphasis supplied).

Reflecting the Canon, it became much more common for baptisms to take place in the context of the main Sunday service. This served to emphasise the importance of baptism and its significance as being the moment when a person formally joins the family of the Church. In 1979 the wording of Canon B 21 was changed to read as follows:

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.

Thus the desirability of baptism being included as part of the main service on Sunday was re-established. The mover of the private member's motion in General Synod which led to the change (the Reverend PS Dawes) explained that the purpose of the proposals was *simply to make plain again what is the position in the 1662 rubrics, that Baptism ought normally to be in a main service.*

43. As regards the Roman Catholic Church, the position is that there is no provision in its Code of Canon Law as regards the position of a font within a church. The *Ordo Baptismi* (1969) provides that the font may be in any convenient part of the church to allow the congregation to assemble for baptisms.

44. Unsurprisingly over the years, it has often been necessary for Diocesan Chancellors to address the question of the location of the font within a church. There are a large number of judgments regarding the location of fonts in the collection held in the Library of the Middle Temple¹², and some of the cases have been reported in the Law Reports. It would not be practicable to refer to them all in this judgment. What becomes apparent on reading them is that there is a divergence of view between Chancellors. This will be, I think, sufficiently illustrated by the cases to which I do refer.

45. *In re Holy Trinity, Knaphill*¹³ concerned a proposal to move the font from the west end near the entrance to a point at the east end of the chancel. The church dated from 1907 and it was not clear from the judgment whether it was listed. The font was not being used, baptisms taking place using a temporary font at the chancel step.

46. In his judgment Goodman Ch set out Canon F1 and a summary of the history of the positioning of the font within a church. He concluded:

... the present century has witnessed considerable variety in church architecture and in liturgical arrangements in all the Christian denominations, including the Roman Catholic Church. There are now many examples of fonts being placed at the east end of the building in conjunction with altar, pulpit and lectern, both in the case of new buildings and the re-ordering of existing ones.

It is, therefore, clear that I have jurisdiction to order this font's removal and for it to be re-sited as requested. The more difficult question is whether I ought to do so.

47. Goodman Ch concluded as follows:

Having considered the evidence and the arguments of the parties on this aspect of the matter I have come to the conclusion that it would be of benefit

¹² Many of these are contained in a CD-ROM issued by the Ecclesiastical Law Society.

¹³ Unreported, 28 January 1975, Consistory Court of the Diocese of Guildford, Goodman Ch.

to Holy Trinity if the font was moved. Baptism has been administered at the morning service for some eight years now and it seems to me likely that this will continue to be the practice at Holy Trinity for the foreseeable future. Furthermore, the association of baptism with a public service in church is even more firmly established, having been followed since before Mr Watson's arrival and would appear to be generally accepted amongst those who worship at Holy Trinity. In my view the advantage to be gained by placing the font eastward of the congregation outweigh the feelings of those who believe that a font should always be near the entrance to the church. Even if baptism was practiced again outside the context of a public service, it would still be convenient and satisfactory with the font in its proposed position ...

48. In *In re St Nicholas, Gosforth*¹⁴ was another case where the font by the west door was no longer used, and baptism took place at a temporary font at the Chancel steps. The proposal was to create a baptistery, away from the west door, in the north side of the church.
49. Blackett-Ord Ch held that there was no aesthetic objection to moving the font. However he said that the objection based on the contention that the proper place for the font is near the entrance to the church had *considerable weight*, endorsing the objector's view as to the importance of the symbolism of the font at the entrance to the church. Nonetheless, he granted a faculty on the basis that the proposed arrangement was more convenient.
50. In *In re St Nicholas, Gosforth* Blackett-Ord QC Ch held that there could only be one font in a church. However in *In re St Barnabas, Kensington*¹⁵ Newsom QC Ch held that there could be two, a view with which Judge Newey QC Com Gen agreed in *In re*

¹⁴ Unreported, 27 October 1988, Consistory Court of the Diocese of Newcastle, Blackett-Ord Ch.

¹⁵ [1991] Fam 1 (Consistory Court of the Diocese of London).

*St George's Deal*¹⁶ In the light of this disagreement, the Diocesan Chancellors asked the House of Bishops the following questions:

- (i) *Is it the view of the Bishops that the legal requirement of a font with a cover, in a fixed position, should be the only facility for baptism in a church?*
- (ii) *If so, does it not follow that the provision of a portable font or of a pool should not be allowed?*
- (iii) *In any event, it is agreed that there can be only one font?*
- (iv) *When new churches are consecrated, should not the Bishop insist on the provision of a traditional font and cover as required by Canon F1 and of no further provision?*
- (v) *If, however, the Bishops are of the opinion that more than one place of Baptism is acceptable in the same church, or the use of more than one font, are there any conditions which they would like the Chancellors to impose before granting faculties for other facilities such as a pool or portable font?*
- (vi) *When application is made for additional facilities (assuming that the answer to question 5 is in the affirmative), would the Bishops welcome a decision by the Chancellors not to grant such applications unless the Petitioner produces an Episcopal authority for what is sought (as is common in the case of reservation)?*

The House of Bishops agreed its response at a meeting held in June 1992.

51. In the course of answering question (vi) the Bishops said:

The position of the font is a parallel case: different positions indicate different theological emphases, and certainly the position should not be decided solely on the basis of visibility. And 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 Eucharist¹⁷.

52. It is appropriate also to set out the two succeeding paragraphs:

¹⁶ [1991] Fam 6 (Commissary Court of the City and Diocese of Canterbury). In the course of his judgment, Judge Newey observed *I think that for a font to be an effective symbol it should be conspicuous to everyone entering the church. Generally it should be near to the door, but sometimes there may be reasons for siting it elsewhere.*

¹⁷ See paragraph 2.6.3 of the Bishops' Response.

2.6.4 *An age like our own that is recovering so much of the symbolic character of liturgy, both in word and act, needs to avoid possible confusion over the way baptism is performed and understood. Historians of the future will doubtless see the twentieth century's enthusiasm for lashings of baptismal water as a natural (and perhaps unconscious) reaction to the minimalistic token of sprinkling, which is often at the heart of the folk religion that has been inherited.*

2.6.5 *The thrust of this paper is to point to a large single font in which baptism can be administered in the three ways indicated previously. This we impenitently regard as the coming norm. However, churches have their own momentum, both in terms of developing liturgical practice, and in ways in which their liturgical furniture is adapted to changing pastoral needs. In the immediate future, we hope that sufficient fonts of this style can be encouraged in key parishes (and all cathedrals?) throughout the dioceses.*

53. In *In Re St James, Shirley*¹⁸ the proposal was to move the font from the west end to a position on the south side of the chancel arch. Clarke QC Ch addressed the question of the approach to be taken as follows:

One starts, however, with Canon B 21 which provides:

“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 baptised into Christ’s Church, and be put in remembrance of their own profession made to God in their baptism.”

This is particularly relevant in the present case, in view of the evidence given regarding the nature, purpose and justification for the proposed font. Canon F1 stipulates:

*“1. In every church ... 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.”*

In Newsom’s Faculty Jurisdiction of the Church of England, 2nd ed., (1993), p. 122, the author says:

“The court can therefore determine where the font should be, having regard to the objectives of the Canon. Thus, the font should serve as a symbol of Christian initiation and should be in a prominent position, ordinarily near to the entrance door most commonly use, ... Siting elsewhere may be authorised by the court, for example, where there is

¹⁸ [1994] Fam 134 (Consistory Court of the Diocese of Winchester).

an overriding need for the congregation to be able to see it during public baptism, but in few cases will such a need result in the font not being conspicuous to anyone entering the church.”

Newsom goes on to refer to In re St. Barnabas’, Kensington [1991] Fam. 1 and In re St. George’s, Deal [1991] Fam. 6, where it was held that there was no present rule of law or canon against there being more than one font in a church. In each case, a faculty was granted for a pool or tank for baptism by immersion or submersion, which was to be kept covered when not in use. It would thus not detract from the symbolism of the conventional font, which it could not replace.

In the present case I am not required to determine an application for two fonts. The proposed font would replace the existing one. Nevertheless, both the passage from Newsom and the two cases cited above must now be read subject to the House of Bishops’ Response of 1992, which stresses the aim from a liturgical point of view of “the norm,” i.e. having just one font in a church: “Anything else must be an anomaly.”

With reference to illustrations, the House of Bishops’ Response points out, however, that it is quite possible to design a font in which people can be baptised easily either by effusion (pouring of water over the head), immersion (pouring of water over the whole body, only parts of which are submerged) or, with careful management, submersion (placing as much as possible of the body under the water). The Response accepts that all three forms of baptism are equally valid in scriptural terms. It continues:

[Clark QC Ch then set out paragraphs 2.6.3 and 2.6.5 of the Response by the House of Bishops].

I am in no doubt that I should have very much in mind the contents of this Response when considering the liturgical issues raised by the present proposal for a new font at St. James’s. In general terms, I am quite satisfied that any liturgical uncertainties or difficulties that might have arisen had this application been determined before June of last year, have been swept away by the Response and the forthright language in which it is couched. As a result, my task is that much easier.

I should add that Newsom’s Faculty Jurisdiction of the Church of England, was published in the summer of 1993. It is unfortunate that this standard textbook does not incorporate reference to the House of Bishops’ Response of June 1992. In my view, the whole section on “Fonts,” on p. 122, needs careful reconsideration in the light of paragraphs 2.6.3., 2.6.5. and 3.2 of the Response. I hope this will be done in time for the next edition or supplement, because, as it stands, the section gives a misleading impression as to the current liturgical position.

54. He permitted the proposal for the following reasons

13. Finally, I turn to the proposed baptistery, a proposal which may well have a wider significance than simply at St. James's Church. It could be said that this is a "key parish" to adopt the phrase used in the House of Bishops' Response of June 1992. It is certainly a parish where, with its evangelical tradition, there are a significant number of adults coming forward to present themselves for baptism. On the evidence that I have heard, I am satisfied that there is a real and genuine demand at this church for the facility of baptism by immersion. I am also satisfied that such demand is likely to continue into the foreseeable future, and after the present incumbent has moved on or retired. Whilst it may be that, with the aid of a portable tub, he introduced baptism by immersion into this church, the demand is likely to continue indefinitely, particularly now that the Response from the House of Bishops has removed any possible liturgical doubts about the practice. It is no longer to be regarded, if it ever was, as a practice which is outside the mainstream of Anglican tradition, as maintained by Dr. Deicke in his evidence. The House of Bishops has made it clear that: (a) baptism by immersion is a perfectly valid and acceptable form of baptism in any Anglican church; and (b) the design of fonts should in future take this into account.

14. As I have already observed earlier in this judgment, the House of Bishops has also established or confirmed that there is no longer any liturgical difficulty about having the font positioned in the centre of a church or, alternatively, close to the altar. As I understand paragraph 2.6.3. of the Response, the position of the font should now be determined by what view the worshipping congregation have with regard to baptism. If a congregation considers that baptism is so central to its faith that it wishes to have the font in the centre of the church, then that is the appropriate liturgical place for it. Similarly, if the congregation wish to emphasise the paschal link between baptism and the eucharist, then the appropriate liturgical place for the font is somewhere near the altar.

15. My task is simply to decide on the particular faculty application in front of me, but the Response from the House of Bishops does seem to me to have potentially far-reaching consequences for the internal lay-out of Anglican churches. I am led to believe that, in order to comply with Canon B 21, ministers use the expedient of a portable font or stoup in order to administer baptism in front of the Sunday morning congregation. But many congregations may now say "Why should this practice continue, if there is no liturgical objection to our moving the font to a central, visible position? Is it not better to move the font from the west end of the church than to continue the existing unsatisfactory expedient?" Each case will have to be determined on its own circumstances, and there will undoubtedly be aesthetic, architectural, historic and other considerations to take into account, as there are in the present case, but, in principle, the proposition, that a font should be positioned where the worshipping congregation wish it to be positioned, would seem to be unanswerable liturgically.

16. I return to the present case. I am satisfied on the evidence that it is the wish of an overwhelming majority of the congregation at St. James's to have

the font in a prominent position in front of the worshipping congregation. They want the baptistery in the proposed position because it makes the fundamental statement that a new convert is entering the fullness of church membership. They do not want the baptistery to be marginalised by leaving it in the narthex, i.e. porch area, or by moving it to somewhere in the north aisle. Further, for the reasons that I have indicated at some length, I am satisfied that the proposed position of the baptistery is liturgically acceptable. Accordingly, that leaves me with the question, “Is there any aesthetic, historic, architectural or other reason why I should not grant the faculty requested?”

Clark QC Ch went on to decide that the proposal was acceptable from the point of view of its effect on the listed building.

55. At the conclusion of his judgment, Clark QC Ch said:

Nobody should read this judgment ... as meaning that I am prepared to give an effective carte blanche to any scheme involving ... the repositioning of a font. There are churches within the diocese, particularly in some of the rural parishes, where I shall need very considerable persuasion indeed to sanction ... [the moving of] a font from the position it has occupied for centuries¹⁹.

56. In *In Re Holy Trinity, Eckington*²⁰ concerned a proposal to move a font in a nineteenth century church from a position near the principal door to a place at the front of the nave. This would have been more convenient, and the proposed position was thought by the Vicar to be more satisfactory from a pastoral point of view.

57. Mynors Ch identified the following relevant principles as regards the location of a font:

34. ... the font should be in as spacious and well-ordered surroundings as possible (Canon F1(2)).

35. ... as to the location of the font, the basic rule is that it should generally be “as near the principal entrance into the church as conveniently may be” (Canon F1(2)). As to the reference in Canon F1 to this not applying “where there is a custom to the contrary”, that presumably relates to the situation

¹⁹ See paragraph 22.

²⁰ Unreported, 7 November 1999, Consistory Court of the Diocese of Worcester, Mynors Ch.

where a font is, for whatever historical reason, already located elsewhere than by the principal entrance, since it refers to the location of the font, and not to that of the sacrament of Baptism, whether in a font or a movable bowl.

36 , however, there is no absolute legal, liturgical or theological bar to locating a font elsewhere in a church (Shirley); and it may be permissible for it to be elsewhere in exceptional circumstances. One obvious example would be where the area around the principal entrance is not spacious and well-ordered, and cannot be made so. Another would be where there is a desire to demonstrate a different symbolic point, such as the outpouring of God's grace in the heart of the church - as highlighted in the Bishops' Response. But the location of the font should "certainly" not be decided solely in the basis of visibility (again, see the Bishops' Response).

58. In the event, Mynors Ch decided the case on the basis that the new proposed location would not be an advantage. (As regards the effect on the listed building, he held that it would have a relatively minor adverse effect).
59. In *In re St Andrews, Cheadle Hume*²¹ Lomas Ch authorised a portable font which, when not in use, would be positioned in the north east corner of the church (where it would be visible on entering the church) and which would be moved to a position in front of the congregation for baptisms. It appears that he evidently considered that the requirement of the Canon would be met as long as the font were a substantial piece of church furniture and not hidden away.
60. In *In re St Mary and All Saints, Trentham*²² concerned a font in a Grade II* listed building dated from 1844 which had been moved without a faculty from its original position at the west end of the church to the east end of the north aisle. In the event, Shand Ch felt able to grant a conditional retrospective faculty for the repositioning and it is not here necessary to examine the detailed reasons for his decision in what was

²¹ [1994] 1 WLR 880.

²² Unreported, 12 July 2004, Consistory Court of the Diocese of Lichfield, Shand Ch.

evidently a difficult and complicated case (they turned upon the necessity to create more space at the west end of the church for additional facilities). As to the approach to Canon F1, Shand Ch said:

Opinion is divided as to the rigour with which Canon F1 should be applied. Some courts (for instance, Chancellor Mynors in Holy Trinity, Eckington) take the view that it is only rarely appropriate to move a font from the position it has occupied for centuries. Others (such as Chancellor Clark in St James Shirley) take the view that older authority must be tempered in the light of the 1992 Response of the House of Bishops to questions on baptism and fonts raised by diocesan chancellors; a view shared by Chancellor Hill in his book Ecclesiastical Law 2nd Edition²³. That Response was directed primarily to issues relating to baptismal pools and immersion, but the following passages are of assistance more generally.

[Shand Ch then set out paragraphs 2.6.3 and 2.6.5 of the *Response by the House of Bishops*.]

Paragraph 3.2 [of the Response] says, “As Anglicans our buildings are, as a rule, public and open, so that our liturgical furniture speaks silently to all who enter, even when no liturgy is being celebrated.”

Specifically in Lichfield Diocese (again in the primary context of an apparent trend to baptismal pools, for instance at Wellington) I sought the guidance of the then diocesan bishop, the Rt. Rev Keith Sutton, who in 1994 indicated 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.”

In the context of this case, I have also been greatly assisted by the guidance of three witnesses. The Rev Michael Ainsworth on behalf of the CCC emphasises that, although there may be different theological arguments, fashions change, and no one position (near the door, centrally or in a tri-focal relationship between font, altar table and pulpit) is paramount. Moreover any axial link between the centres of sacramental worship does not depend on physical proximity. Such a link between font and altar table existed in the old position on an axis down the centre of the church. One must also concentrate on sight lines, spaciousness and access.

The Archdeacon’s paper recognises that the traditional position near the church door signifies that baptism was the entrance into the Church Mystical and that, in considering any proposal for change, account must be taken of whether or not the congregation can hear and see, especially in a well attended service.

²³ By reference to *In re St James, Shirley*, Hill Ch wrote *The strict rigour of the Canon may be regarded as slightly tempered by statements made by the House of Bishops regarding the liturgical appropriateness of the position of fonts*. The passage is reproduced in the 3rd edition (2007) at p 271.

Bishop Christopher Hill, whose opinion carries enormous weight in matters relating to liturgy and the canon law, emphasises the need for a spacious and well ordered setting. He concludes that there is no decisive theological argument for location at the west end of a church. The important thing is that the site emphasises the significance of baptism and in modern churches (such as St John the Baptist at Barlaston, consecrated in 1984) the font is often laced in some association with the lectern/pulpit and the altar table. He endorses the view expressed by Chancellor Lomas in St Andrew, Cheadle Hulme [1994] WLR 880 at 884 that the practice of administering the sacrament of baptism near the altar can be “theologically acceptable and liturgically desirable, particularly when it is approved and accepted by the parishioners”. Bishop Hill, in cross-examination by Mr Goodchild of the CCC, expressed the view that the former east/west axis between font and altar table was not obvious because of the presence of the pews, and that a north/south axis may indeed be preferable, subject to the area around the font being properly ordered.

For my part, I have no hesitation in finding that Canon F1(ii) should be construed liberally in the light of such accumulated Episcopal guidance. Indeed, I have in previous cases in this diocese approved the moving a font from its traditional position where a proper case has been made out.

61. I have not discovered any case since *In re St Mary and All Saints, Trentham* where a Chancellor has in practice held himself or herself constrained by Canon F1 as regards the question of relocation of a font, the cases being determined on what are regarded as their general merits.

62. Finally I should add that I have been assisted in the present case by a paper drafted by Reverend Dr John Thewlis on behalf of the DAC as regards general questions relating to the positioning of fonts. He concludes that:

... it became clear that there is no knock-down symbolic argument to suit every expectation and insight, either traditional or modern.

Dr Thewlis does not engage with the legal issue that I have identified.

63. 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. (I may add that it reflects the

historic practice of the Church in England, since the practice long pre-dates the Reformation). 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.

64. However it will have been seen from the cases that I have referred to above that my interpretation of the Canon is not one which has commended itself to all other Chancellors.
65. In *In Re St James*, Shirley Clark QC Ch robustly expresses the view that the position was altered by the *Response by the House of Bishops to Questions Raised by Diocesan Chancellors*. I am afraid that I cannot agree. First of all, the position is, of course, that

the House of Bishops has no power of itself to alter the Canons, that power being vested in the General Synod.

66. More fundamentally, however, the Bishops were not responding to any question which had been put to them about the location of the font or as to the application of the Canon. In paragraph 2.6.3 they clearly envisage that it might be appropriate for the font to be in close proximity to the altar or Holy Table but said nothing about the circumstances in which this might be appropriate or how they considered Chancellors should apply the provision of Canon F1 about the location of the font.
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. I also agree with the view expressed in Newsom and Newsom on the *Faculty Jurisdiction of the Church of England* and set out by Clark QC Ch in the passage that I have quoted in *In re St James, Shirley*. For the reasons I have stated do not think that it requires modification in the light of the *Response by the House of Bishops*. The senior author of the book was a Chancellor of enormous experience and learning, and Clark QC Ch was not suggesting that his view was intrinsically wrong, only that it needed to be modified in the light of the *Response by the House of Bishops*.

69. I am afraid, however, that this does not quite conclude the matter. In everyday speech where something is justified in exceptional circumstances, those circumstances have to be in some way special or out of the ordinary. However to a lawyer, exceptional circumstances may, more narrowly, be held simply to be circumstances in which an

exception may properly be made i.e. it is not necessary for those circumstances to be in any way special or out of the ordinary. The phrase *exceptional circumstances* was apparently interpreted in just this way by the Court of Arches in *In re Blagdon Cemetery*²⁴, a case involving exhumation:

*Exceptional means “forming an exception” (Concise Oxford Dictionary, 8th edition, (1990) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the Chancellor to determine on the balance of probabilities*²⁵ (emphasis supplied).

70. It is instructive in this regard to return to *In re Holy Trinity, Knaphill*. This was decided only ten years after the Canon had been adopted and long before the *Response by the House of Bishops to Questions Raised by Diocesan Chancellors*. Goodman Ch did not seek to limit the weight applicable to the Canon but he seemed to regard the matter of the resiting of the font to be at large. However, if what is involved is just a balancing exercise – whether the advantages (whatever they are) of resiting the font outweigh the disadvantages (whatever they are) – the Canon might just as well be silent about the norm – in any particular case where moving is proposed, the matter will simply be resolved by the determination of the balancing exercise.

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 made²⁶. By contrast, in *R (Chelmsford*

²⁴ [2002] Fam 299.

²⁵ See paragraph 33.

²⁶ See paragraph 35.

*BC) v First Secretary of State*²⁷ 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*, 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

²⁷ [2004] 2 P & CR 34.

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.

Who is “the ordinary” for the purpose of Canon F1?

78. Newsom and Newsom on *The Faculty Jurisdiction of the Church of England* assumes that the Chancellor is the Ordinary²⁸ as does Hill on *Ecclesiastical Law*²⁹. Goodman Ch in *In re Holy Trinity, Knaphill* expressly said that he was the Ordinary, and all the cases proceed on the basis that this is so. I think that the Canons must have envisaged that decisions as to the location of fonts would be made by the Chancellor of

²⁸ See p 122.
²⁹ See p 271.

the Diocese and not the Bishop (see also Canons F2 and F6 where I think that the same assumption must be made).

Consideration of the Petitioners' Proposals

79. I turn to consider the merits of the particular petition before me.

80. It seems to me that there are three elements of the proposals which are controversial, namely:

- (i) the design of the offices on the south side of the church;
- (ii) the replacement of the pews by chairs;
- (iii) the moving of the font and the utilisation of the space released to provide a servery.

81. As regards the remainder of the works, it is apparent that they are reasonably necessary and would not adversely affect the building. In these circumstances, it is appropriate that a faculty should issue for these works. No one contends to the contrary.

82. As regards the design of the offices on the south side of the church, I note that planning permission has been granted. By virtue of section 66 (1) of the Planning (Listed Buildings and Conservation) Areas Act 1990, it would have been necessary for the local planning authority, in considering the application for planning permission, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

83. By reference to a condition attached to the planning permission, details of the building will have to be approved by the local planning authority. The DAC is happy with what is proposed. It seems to me that the building will not be prominent in any view. My judgment is that in all the circumstances what is proposed is acceptable and that it is not necessary for the design further to be amended.
84. The pews are nothing special. I fully understand however why the Victorian Society should object to their replacement and undoubtedly the building will have some historical interest by virtue of this proposal. Nonetheless, it seems to me that the reasonable necessity for what is proposed outweighs the comparatively modest harm.
85. I turn to consider the proposals for moving the font and the provision of a server.
86. I think that I should begin by considering what is proposed against the requirement of Canon F1 because if the requirements of the Canon are not met it will not matter that the Bishopsgate questions receive a positive answer. (It must, however, be borne in mind that the discussion below is all subject to a possible negative answer to the Bishopsgate questions.) On this aspect of the matter, the Petitioners say:

Over the past 5 years, the congregation of Holy Trinity has grown and the parish's ministry has expanded. Ministry to families and children has become a particular focus of the church's work. Notwithstanding the general decline in the number of baptisms undertaken in England year by year, we are very pleased that the number of children being brought for baptism in our parish continues to increase. On average, one or more baptisms take place within the principal Sunday morning service at Holy Trinity every couple of months.

The custom and practice for Holy Baptism within our parish for at least the last 70 years has been that children are baptised during public worship on a Sunday morning on the dais at the front of the nave. This is in line with our determined custom to focus, lead and direct public worship from the front of

the nave. Due to the inaccessibility of the church's front, baptisms are undertaken using a portable font.

A key aspect of our plans for the redevelopment and refurbishment of Holy Trinity Church has been, from the outset, that the font be relocated to the north transept so that it can be brought back into regular use. The font is one of the finest features of the church, but its current location in the private baptistery means that its use today is impractical.

We have given further consideration to the possible location of the font in a more central location in the narthex at the west end of the nave ... We remain concerned that the location of the font in this position would reduce the amount of circulation space at the rear of the church and that, ultimately, the font would be used as a table for cups, etc and a feature to be leaned against. We also note that the use of a font at the rear of the church is not consistent with our custom and that, if so relocated, it is most likely that the font would continue to remain unused.

87. I accept that the font as currently configured - that is, within the enclosed baptistery – is effectively redundant. It is possible that in due time the number of baptisms may increase so that they may no longer be easily accommodated within the context of the main Sunday service, but even were this to happen, it is difficult to imagine a return to a situation where baptism occurs in a large number of services for individual families i.e. the solution for which the baptistery at Holy Trinity was designed. Thus I consider the case for moving the font is made out.
88. As I have demonstrated, there can be no theological or liturgical objection to the relocation of the font to the north transept. However this does not mean that the proposal complies with the Canon. It is necessary to consider why it should not be moved to another position nearer to the principal door of the church.
89. In the circumstances, however, I have concluded that it would not be appropriate to require the font to be moved to another position nearer to the principal door of the

church and that, in all the circumstances, there do exist circumstances out of the ordinary why the moving of the font to the north transept should be permitted.

90. I accept in the first place that it would be particularly inconvenient for the font to be relocated to a central position in the narthex. Part of the current proposals is to create an attractive “welcome area” at the west end of the church. The font would not make this area less attractive, but it would make it less useable. It seems to me that this is a legitimate reason justifying moving the font to the north transept but that it is not, of itself, a circumstance out of the ordinary: many churches have fonts in a comparable position. I would also accept that its being relocated to a central position in the narthex would, to a degree, compromise the extent to which it was in spacious and well ordered surroundings. Again, this is a legitimate reason for justifying moving the font to the north transept, but I would not regard it, of itself, as amounting to a circumstance out of the ordinary. Moreover, as the Petitioners fairly recognise, the proposed location of the font in the north transept does not give complete visibility from the body of the church (because some of the views are obstructed by columns). Although this may not be a determinative factor, if part of the objection to a position at the entrance to the church is its inconvenience, it is necessary to take into account the fact that siting the font at the front of the church may not be ideal.

91. What does seem to me to make the case special is the fact that for the last 70 years or so, baptisms have taken place from a portable font at the east end of the nave. At first sight, indeed, it might appear that this is a case where a custom has been established that baptism takes place otherwise than at a font near the principal entrance to the church. I do not think that this is correct. It is not suggested that the introduction of the

portable font was by faculty and I doubt if it was. Although an exhaustive search has not been made, it does not appear from the archives that such a faculty was granted.³⁰ Nonetheless, I think that had an application for a faculty been made 70 or so years ago, it would have been appropriate to grant it on the basis that baptism at the existing enclosed font was not appropriate. However with or without a faculty, what has happened is that a tradition has grown up of baptisms “at the front”. If there had been a faculty, that tradition could have continued even though the font had been relocated to an unenclosed position near the principal entrance to the church. It can be argued that better than continuing to use a portable font in these circumstances would be the use of a permanent font relocated in the north transept.

92. In the present case the Petitioners say in terms that *it is most likely* that the temporary font would continue to be used if the permanent font ended up being relocated at the principal door. I would hope that this would not happen if that were my decision and I do not think that properly I can attach weight to it in the argument - apart from anything else, a different view might be taken by the parish hereafter. But I do think that I can properly attach weight to the reasonable tradition of the church where what is proposed is an improvement upon the existing arrangements and to which there is not a theological or liturgical objection. I can see an argument that it would not take much to establish a new tradition in the church. However I must be astute not to apply the Canon more strictly than can reasonably have been intended; and it does seem to me that it did indeed intend to permit the continuance of reasonable traditions of the font being located other than near the principal entrance. Further, although it may not amount to circumstances out of the ordinary justifying the relocation of the font, it is

³⁰ If the point had been determinative of this petition, I would have required a thorough search to be made. I should make it clear that I am not being critical of anyone – even at this distance of time – in not applying for a faculty; I know nothing of the circumstances.

important to note that in its new position the font will speak symbolically of the importance of the baptism – certainly in a more direct way than at present, enclosed within the baptistery, it is able to do.

93. I turn to consider the Bishopsgate questions.

94. In the light of the discussion and conclusion set out at paragraphs 83 - 89 above, I consider that a case of reasonable necessity for the proposals is made out; and in the light of the description of the baptistery at paragraph 10 above and the views expressed by English Heritage and the Victorian Society, it may readily be seen that the loss of the baptistery will adversely affect the character of the church as a building of special architectural and historic interest. Accordingly as regards this aspect of the proposals, their acceptability turns on the answer to the third Bishopsgate question.

95. In addressing the third Bishopsgate question it is necessary to consider just how valuable in listed building terms is the building adversely affected and, if appropriate, the part of the building adversely affected. It is common ground that the baptistery is an important feature - in their Statement of Needs and Significance, the Petitioners describe the baptistery area as an unusual feature and the ironwork screens as being a fine feature. Sometimes it is possible to be told how many other examples of a particular feature of a building that there are - both locally and nationally - but I have no such information here. All listed buildings are valuable of course but with that caveat I believe that I can appropriately categorise the baptistery in the present case as an attractive feature of an attractive church but that neither are intrinsically of the highest quality. It may be dangerous to hang too much on the wording of the listing,

but it is the gates that are specifically identified, not the baptistery (and of course, the gates will be preserved in their existing location). It is significant in this regard that the north-facing screen is only half length – the baptistery enclosure would be finer if it were not. It seems to me that it is in the light of judgments of this kind that the DAC's have recommended the proposals to me. Moreover I consider English Heritage's position instructive. It clearly does regard the baptistery as important because it says so but it is, nonetheless, prepared to contemplate its integrity being severely compromised by the removal from the baptistery of the font. Thus to the question *How valuable is the baptistery?* English Heritage gave the practical answer that it is sufficiently valuable so as to want to preserve the metalwork *in situ* and for it not to be converted into a servery but not so valuable that the font cannot be removed from it.

96. The Victorian Society takes a stronger line and argues for the retention of the font as well as the screens *in situ* – that is, it argues that the baptistery should be preserved as a feature of aesthetic and historical interest within the Church. The consequence would be that baptisms would continue to be at the portable font – I can make it entirely clear that I would not contemplate the introduction of a second permanent font within the church even if the Parish were to propose it (which is unlikely). From the Victorian Society's point of view there could be no objection to this, but from the Parish's point of view it is unsatisfactory. The Parish naturally wants baptisms to take place from a permanent font – and the font that has been associated with the church almost since its consecration. No one apart from the Victorian Society has suggested that the baptistery is so valuable that it must be preserved intact. Although I have some sympathy with the Society's view, I cannot accept it.

97. However, having once taken the view that the removal of the font from the baptistery may properly be permitted, I am afraid I am less sympathetic to the argument that it cannot properly be converted into a servery. In the first place the ironwork will be preserved around it. In the second place I think that the reversibility of the proposals here becomes very relevant. Against the background that the integrity of the baptistery is to be compromised in any event, it seems to me that such an arrangement involving compromise is more readily justified by the fact that the proposals are reversible. Further, it is important to note that all the wrought ironwork will be preserved within the church.
98. Against this background I am less concerned about the availability of alternative options for providing servery facilities. I am grateful for all the work that has been done in this regard – more than I envisaged – and which I found very helpful. As I have stated, English Heritage and the Victorian Society maintained the position that they were not satisfied that there was nowhere else that the servery could be located within the church.
99. What the work demonstrates is that there are drawbacks to all the possible other options for providing a servery. I do not think that it is a matter of absolutes and it would be surprising if there were no way in which alternative provision could be made. The most natural alternative provision would be to locate the servery on the south side of the baptistery, and the Victorian Society has said that it would not object to this. However it does recognise that it would have a detrimental effect on the character of the west end of the church; and the DAC is strongly of the view that this would be unacceptable. It seems to me that when one gets to a solution which, to avoid one

particular adverse effect on a building, involves another adverse effect, that solution must be very carefully examined.

100. My overall conclusion is that the justification for the Petitioners' proposals survives the suggestion that the adverse effect upon the listed building which flows from them could reasonably be avoided by adopting an alternative solution for the provision of a servery. I think that there are good reasons for rejecting those alternative solutions.

A further option

101. Following my visit to the Church on 22 March 2012 and the further consideration of options which I then encouraged, the Petitioners identified a further option for the treatment of the north facing screen. Rather than what is described at paragraph 16 above, it would be relocated to the north transept. The DAC support this amendment to the proposals.

102. English Heritage and the Victorian Society have been informed of this alternative option and that it now represents the Petitioner's preferred option. Nonetheless, the Petitioners have not sought to amend the Petition. If it were to be pursued, an amendment to the Petition would be required, involving a delay. What I propose to do is to direct that a faculty should issue as prayed and the Petitioners can, if necessary, pursue an amendment thereafter. If the Petitioners wish to pursue the amendment at this stage they should so inform me; but they should note that it involves the risk that the whole Petition might fail if the amendment were found not to be acceptable. On the face of it, it makes better sense to pursue an amendment after the grant of a faculty. If this is to be done, I will require the specific views of the Church Buildings Council,

English Heritage and the Victorian Society on the amendment and, generally, the requirements as regards publicity for new proposals to be gone through in respect of the amendment.

Conclusion

103. I direct that a faculty should issue. These are detailed proposals, and the DAC have already looked at (and recommended), for example, the detailed proposals as regards the new chairs which will replace the pews. Accordingly, apart from the usual condition that works be completed to the reasonable satisfaction of the Church's Inspecting Architect, the only condition I need to impose is that a good quality photographic record be made of the baptistery, that a set be retained by the Church and copies be supplied to the Church Buildings Council, English Heritage, the Heritage Service of the London Borough of Wandsworth and the Victorian Society.

Concluding remarks

104. The Petitioners have drawn my attention to six cases since 2004 where permission has been given in the Diocese of Southwark to relocate a font. If in the present case I were not otherwise minded to grant a faculty it might be necessary to examine those cases in some detail, because questions of fairness would arise if it transpired that other churches had been permitted to relocate their fonts in circumstances similar to those that arise in the present case. As it is, that exercise is not necessary.

105. These were all cases in which what was proposed was unopposed, and I do not know the approach adopted by my predecessor. For my part, I had not hitherto examined the position under Canon F1 in detail and so the petitions that I have decided cannot have

expressly applied the test that I have now held to be appropriate, even though I have always been aware both of the existence and also of the importance of the Canon. It is interesting to note that, in the period since 2004, there have been at least six cases involving relocation of font (and I am today handing down judgment in another such case³¹). I think that it is important that the correct approach is applied in the future.

106. I am conscious that in my interpretation of Canon F1 I am differing from views expressed by experienced Chancellors in other dioceses; and that in practical terms it would be much easier if the matter were one that were at large. On the other hand, I have looked at the matter in considerable detail and given reasons for my interpretation of the Canon with, I hope, due deference to the views of others. Having looked at the facts of a large number of cases, I think that the approach adopted could make a difference to the outcome in particular cases; however in any particular case it may be that a change in the location of the font can fully be justified by reference to the Canon by reference to circumstances which are not ordinary ones.

107. Turning to the case before me (which of course includes a great deal more than moving a font), this is an imaginative and well thought out scheme which will restore and improve the fabric of the church. I know that the Petitioners and the parishioners they represent are keen to begin the works as soon as possible. From that point of view, I know that the time that it has taken for the proposals to go through the system is unfortunate. However the Petitioners found themselves guardians of an historic building in circumstances where English Heritage and the Victorian Society objected to their proposals for change. It is necessary in these circumstances that the matter be

³¹ *In re St Paul's Church, Herne Hill.*

fully and carefully examined. From the “heritage” point of view, I recognise that my decision will be disappointing to English Heritage and the Victorian Society, involving, as I acknowledge, some heritage loss. But the metalwork is to be preserved and I have decided in the light of the representations to me that the baptistery is not a feature of the highest quality. It is always difficult to judge need against value but I think that it would be attaching too great a value upon the baptistery to hold that it could not be changed and to require a living (and lively) church to maintain within the church building a redundant feature. It is important not to lose sight of the bigger picture: the carrying out of these extensive works (and the justification laying behind them) makes it likely that the building will survive into the future as a valued church of considerable heritage interest. The Petitioners have told me:

The PCC and the members of our church family believe that our church is one of our greatest assets. We are privileged to be the custodians of this beautiful building for this current generation. Everything that we have sought to do in planning for the future is intended to enhance and conserve our church, not detract from it.

Although they did not agree with all the heritage bodies as to every aspect of the current proposals, I am sure that those bodies will find this very positive attitude very encouraging, as do I.

PHILIP PETCHEY

Chancellor

4 September 2012