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**JUDGMENT**

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1. This is a petition from the churchwardens (the “Petitioners”) of St Margaret, Stoke Golding - a grade I medieval church - for the relocation of its font (the “Petition”). The parish is in vacancy. The Petitioners seek a faculty for the relocation of the font from its existing position against the west respond of the arcade to a new position in the south aisle adjacent to the Lady Chapel.
2. In addition the lower step of the font has disintegrated and it is intended that it will not be replaced when the font is moved. The lack of replacement of the disintegrated step is not noted as a separate element of work in the Petition, but rather detailed as an integral element of the relocation proposals in the Statement of Need. I consider that it ought to have been so identified in the Petition. However, given that the Statement of Need was available to all as part of the papers referred to in the Public Notice and was provided to consultees (and here I note the Society for the Protection of Ancient Buildings (“SPAB”) responded specifically to this element of the works) I consider that no prejudice has arisen from a failure to identify this as a separate element of work. I therefore waive this defect and have considered it as a separate element of proposed works in my judgment below.

**The proposed works**

3. The font has had to be temporarily removed to enable flooring works to take place under the authority of a separate Faculty. The Petitioners wish to use this as an opportunity to relocate the font permanently within the church.
4. The Statement of Need sets out that the font, in its existing position, results in a lack of safety when the minister has to stand in a cramped and restricted space in order to baptise while facing the congregation. The congregation also has to turn through 180 degrees in their seats to watch the baptism take place. They assert that by re-positioning the Font in the south aisle there will be greater space around it. The Petitioners say that the new position

chosen would allow the maximum number of the congregation to witness a baptism without having to turn around in their seat. They also propose not retaining the lower step of the font, which has undergone various repairs in the past and is no longer solid stone, having disintegrated during the recent works to the church floor. If the lower step is not retained the height of the font will be reduced. The lower height and the increased space will, in the Petitioners' submission, improve the safety of the font's use. They also point to the fact that in the proposed new location the font will stand in its own space and its beauty and heritage will be more readily seen as well as allowing visitors an unimpeded view into the church from the entrance door to the northwest corner. This, the Petitioners say, would also allow the beauty and architectural features of the arcade to be more fully appreciated.

5. The font is ancient and striking, decorated with standing figures of St Margaret of Antioch with the conquered dragon beneath her feet, St. Catharine and a bishop. It dates to the 'Great Rebuilding' of the church in the late 13<sup>th</sup> or early 14<sup>th</sup> centuries. The font has been repositioned before. In 1843 it was standing against the first pillar of the arcade and at some later time was moved to stand in its existing position against the west respond of the arcade.

#### **Development, consultation and representations**

6. The proposals have been subject to extensive thought and consultation. In its planning and development phases the PCC identified five possible options as positions for the font, completed options appraisals for each of them and ultimately narrowed the choice to two positions. The final choice was arrived at by secret ballot. Six out of nine members favoured the proposed new location. The PCC passed the proposal to seek a faculty by a majority of 8:1, there being nine members. Following the CBC's input the proposals were further reviewed and further options comparison appraisals undertaken between the proposed new location and the location suggested as a more acceptable alternative by the CBC.
7. The Diocesan Advisory Committee have recommended approval of the works and do not consider that they would affect the church's character as a building of special architectural or historic interest.
8. The period of public notice ended on 3 September 2021 and there has been one response to it. Mr Anthony Collett ("Mr Collett") wrote on 20 August 2021, and further by email on 10

September 2021, objecting to the proposals. Mr Collett is a former churchwarden and a current member of the PCC who is highly knowledgeable about the church and has written and published a book about it. He refers to the fact that the font is located in a traditional position near the entrance to the building (a point overlapping with the response of the Church Buildings Council (the “CBC”) below.) He is concerned that the proposed new location would lead to congestion near the entrance to the Lady Chapel and would block the view of a 13<sup>th</sup> Century piscina and evidence of an ancient altar. He also expresses an overarching concern that moving the font would prejudice and reduce the presentation of the church, particularly as the font is seen on entry to the church in combination with the beautiful arcade, with which it is contemporary.

9. Historic England and the Ancient Monument Society were consulted and made no objection, instead deferring to the views of the DAC.
10. The CBC expressed appreciation for the thought that has gone into proposing the new location, but concluded that it could not support the proposal as it is, in its view, contrary to Canon F1. It suggested an alternative location as being more suitable (a similar suggestion was also made by Mr Collett).
11. The Society for the Protection of Ancient Buildings (the “Society” or the “SPAB”) responded to consultation with a concern that there might be an increased risk of damage to the font by moving it to a new location, although it was accepted that the advice of a suitably qualified conservator to supervise any relocation would deal with this concern. The Society also raised a point regarding the intended loss of the lower step. Whilst recognising its poor condition, the Society felt that the step adds dignity to the font and expressed its preference for it to be retained and repaired.
12. All of these points are considered below.

### **Legal principles and application to facts**

13. The questions of the relocation of the font and the removal of the lower step fall to be considered by reference to the framework for Chancellors set out by the Court of Arches in *Duffield, St Alkmund*<sup>1</sup>. The issue of the relocation also requires further consideration by

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<sup>1</sup> [2013] Fam 158

reference to those principles particularly applicable to the movement and positioning of fonts (per Chancellor Eyre in *Alrewas: All Saints*<sup>2</sup>).

14. Dealing first with the *Duffield* framework (as modified in *Re Penshurst: St John the Baptist*<sup>3</sup>), the questions to be addressed are:

- (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 (*Peek v Tower*<sup>4</sup> and *In re St Mary’s Churchyard, White Waltham (no 2)*<sup>5</sup>). In this scenario, questions 3, 4 and 5 do not arise.
- (3) If the answer to question (1) is “yes”, how serious would the harm be?
- (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 the Evangelist, Maidstone*<sup>6</sup>), will any resulting public benefit outweigh the harm? In answering this question, 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 I or Grade II\*, where serious harm should only exceptionally be allowed.

15. The *Duffield* questions 1-3 can conveniently be considered together. Doing so leads me to conclude that neither moving the font from a position it has occupied since the 1840s to a position towards the east end of the South Aisle nor removal of the lower step to the font will result in harm to the significance of the church as a building of special architectural or historic interest. I do not consider that there would be any material detraction to the church building by either change.

16. In reaching this conclusion I have first considered what gives this church its particular architectural or historic interest (noting, in this regard, its grade I listing.) Plainly the presence of the font is part of what makes this church special. It is described in some detail in the church’s listing and by Pevsner and others, who note its great age, its octagonal shape, the beauty of its decorative panels, tracery, carving and standing figures amongst other features.

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<sup>2</sup> [2012] Lichfield

<sup>3</sup> (2015) 17 Ecc LJ 393

<sup>4</sup> (1881) 7 PD 21 26-28

<sup>5</sup> [2010] Fam 146, para 11

<sup>6</sup> [1995] Fam 1, 8

17. Mr Collett raises the point that the view of the font upon entry to the church is a particularly attractive presentation because it is seen with the arcade and they are contemporary. However I note that its present setting - against the west respond of the arcade - is not identified as an element of or enhancement to the features that are drawn out in the listing or in any other commentary.
18. I accept the Petitioners' evidence (which is unchallenged by those who have raised concerns about the proposed move) that the present location is cramped and results in safety concerns for use of the font as well as restricting the effective use of the space at the rear of the Church. Moving the font as proposed would in fact mean that the font would become more easily visible by the seated congregation than it is at present when baptisms are performed, as well as giving greater visibility to the arcade, with its notable architectural features. Furthermore the previous movement of the font, and its most recent temporary uplifting to accommodate re-flooring works, illustrates that the proposed changes are reversible.
19. Similarly, although there is a reference to the fact that it stands on a "...*shafted base*...", given the emphasis in the listing on the specific details, carvings and other remarkable and ancient decorative features of this font I am unable to conclude that the height of the font and the presence of the lower step are features which render this font and its interaction with the church building of special interest or importance. Although the font will be lower than it has previously been if the lowest step is not re-instated (under the proposed changes the top of the font would sit 110cm above ground level), I accept that this is desirable in this case because (and I find) the font's previous height resulted in difficulty for people using it. Contrary to the SPAB's response to consultation I do not consider that the reduction in height will affect the visual impact or dignity of the font. I accept the Petitioner's evidence as to the difficulties created for some during the administration of baptism by the present height of the font and I consider that there is likely to be an enhancement to dignity when in use by reason of the greater ease of access without need for straining or over-extension when the font was too high for some to use. There are also visual benefits in removing a badly damaged and disintegrated step.

20. As to rebuttal of the ordinary presumption in faculty proceedings “in favour of things as they stand” this is achieved in this case given what I find to be the disadvantages of the 1890s location (in particular the limited and cramped space for the minister administering baptism) and the irreparable nature of the disintegration of the lower step. These are taken in tandem with the relative advantages of space and visibility of the proposed new location and of improvements in utility and appearance by the removal of the lower step.
21. For the avoidance of doubt, even if it were thought that either the relocation or the lack of reinstatement of the lower step would result in harm to the significance of the church as a building of special architectural or historic interest, for the reasons I have identified above any such harm would, in my judgment, be minimal. There are clear and convincing justifications for carrying out the proposals (in particular the avoidance of safety concerns arising from the present location, the increased visibility and accessibility of the proposed new location and the improved utility of the new lower height of the font) and the resulting public benefit arising from the safer and easier use and the more spacious and readily viewed setting of the font outweigh any minimal harm that may be thought to arise.
22. Although I have concluded positively in my consideration of the *Duffield* questions, that conclusion must yield if the consideration of the factors specifically relevant to the movement of fonts leads to a conclusion that the proposed relocation is not justifiable.
23. The starting point of these specific factors is Canon F1(2) which provides that:
- “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.”*
24. In 1992 the House of Bishops produced a document clarifying its understanding of the proper legal interpretation of Canon F1. That document notes that different positions of fonts indicate different theological emphases and that the position should not be decided solely on the basis of visibility.

25. The historical background was considered at length in *Wandsworth, Holy Trinity*<sup>7</sup>, in which the Chancellor also examined the principal decisions of the courts relating to proposals to relocate fonts. He concluded (following the decision in *Eckington, Holy Trinity*<sup>8</sup>) that the basic rule was that a font should be as near the principal entrance to a church as conveniently may be, but that it may be permissible for it to be relocated elsewhere in exceptional circumstances. This approach was endorsed more recently in *St Nicholas & All Saints, Worcester*<sup>9</sup> where the proposed relocation was refused for lack of exceptionality.

### ***The need to move the font***

26. This is a case where the font presently sits very near the main doorway into the church and the proposed move to the south aisle would move it out of the line of sight upon first entering the church building. As explained above, the basic rule is that a font should be as near the principal entrance to a church as conveniently may be, but that it may be permissible for it to be located elsewhere in exceptional circumstances.

27. In *St Nicholas & All Saints, Worcester* the fact that the font, in its position near to the doorway, was said to be “in the way” was not found by Chancellor Mynors to be exceptional. This was because reminding worshippers of their own baptism as they walk through the door is the whole point of the symbolism of a font being at the entrance. It was therefore likely to be a common issue for all fonts so positioned.

28. In the present case, the complaint is not that the font is “in the way”, but rather that it presents safety issues in its current location by reason of the limited, cramped space available to the minister administering a baptism while facing the congregation. I take judicial notice of the fact that baptisms are frequently of newborns and infants, sometimes involving young siblings and relatives moving unpredictably near the font and that sufficient space to move and cradle the baby safely and with stability is therefore required. Such space is also necessary for the comfort and dignity of the minister. The evidence in support of the Petition includes detailed measurements and photographs which indicate confined space which in my judgment is insufficient to safely and reliably administer

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<sup>7</sup> (2012) 15 Ecc LJ 125

<sup>8</sup> (1999) 5 Ecc LJ 489

<sup>9</sup> [2019] ECC Wor 1

baptism in the circumstances I have indicated. There is no attempt in any of the objections or responses to gainsay the evidence of the Petitioners that the space available is insufficient for safe and convenient practices or that the space in the proposed new location is greater (indeed consultees appeared to understand the motivations and the CBC referred to the thorough nature of the thought and detail that had gone into the proposals.)

29. In addition, in the COVID era, when space between people congregating indoors is to be encouraged it is said by the Petitioners that the font, as presently located, considerably restricts the space for people to move through the bay of the arcade when a large number of people are using the rear of the building.

30. I am satisfied that all of the foregoing points are made out and I find them as facts.

31. These findings are also linked with evidence that there will be an increased prominence and ease of visibility of the font and of baptisms in the proposed new location. I am similarly satisfied that the new location has these advantages and also find these as facts. Visibility factors alone would not be a sufficient reason to justify relocation (per the House of Bishop's 1992 paper) but I do take them into consideration as an element of the benefits that are associated with relocation in this case. That is not least because of the rare beauty and historical detail of this particular font.

32. These factors (in particular the safety issues caused by working in a cramped space, the increased visibility of an unusually beautiful and historic font and of baptisms taking place using it) are unusual. They are of sufficient impact in this particular church to amount, in my judgment, to exceptional circumstances such that relocation as proposed is permissible and is justified in this case.

33. For these reasons the CBC's reservations on the grounds of Canon F1 (and the objection expressed in similar terms by Mr Collett) are obviated. In expressing concern about the possible non-compliance with Canon F1 the CBC had also suggested that relocation of the font to a position in the southwest space, central to the large west window would be more suitable (in particular being very close to the main entrance) than the proposed new location in the south aisle. I note that the Petitioners gave careful thought to this idea, producing an evaluation document minutely comparing the proposed locations, but ultimately concluded

that the south aisle location remained preferable. The reasons for this included the fact that the font would take up space in an area which is important as a welcome area for the church, that the congregation would still have to turn around in their seats to view baptisms taking place and that the view of the font itself would be obscured on most occasions by church furniture (in particular the hymnbook distribution table). Although I acknowledge that visibility of the font should not be the sole motivation when considering relocation, the ability of the congregation to see the baptism taking place – and thereby to integrate the welcome being given to the newly baptised, allowing them to be taken to the heart of the congregation – is a factor of some importance in a balanced assessment. I have also already found that the rare beauty and interest of this particular font are unique and exceptional features, such that they form an important element of evaluating the justifications for moving it. Furthermore, the fact that the view of the font to those entering the church would be obscured on most occasions, despite its proximity to the doorway, undermines the purpose underlying Canon F1. It follows that the alternative location mooted by the CBC is not, in my view, a suitable one.

34. I am also satisfied that Mr Collett’s objections do not amount to barriers to relocation. His overarching concern that “*the new proposal would greatly prejudice and reduce the presentation of this beautiful, historic and nationally renowned Church*” I have found against in my evaluation of the proposals against the *Duffield* framework. His more specific concerns, in particular that the proposed new position would lead to congestion and would block and reduce the appearance of a 13<sup>th</sup> century piscina and evidence of an ancient altar I find are not well founded. I accept the evidence of the plans and measurements provided and conclusions drawn by the Petitioners in responding to this objection that there is sufficient space in the new location to avoid any congestion (whether in respect of access to the Lady Chapel or generally) and that the views of the piscina will not be blocked. I am supported in this by the evidence of the level of care and attention to detail that has been given by the Petitioners in their work to evaluate and appraise suitable sites for the font, and the endorsement of this by other consultees.

## **Conclusion**

35. It follows from the conclusions above that I am satisfied that a Faculty should issue in this case. Accordingly I direct that a Faculty shall be issued in the terms sought in the Petition, with works to be completed within 18 months, subject to the usual logbook condition. Furthermore, given the age and significance of the font, its relocation shall be supervised by a suitably qualified conservator.

36. I wish to express my gratitude to the Petitioners, to Mr Collett and the consultees who have fairly raised points requiring careful consideration. In accordance with the usual practice the Petitioners will be responsible for the Court's costs. An order for additional fees in respect of the time spent by the Registry in dealing with correspondence and papers that time is, in my judgment, appropriate. The preparation and correspondence time indicated will be presented to me and I will then assess the reasonable amount to be payable in accordance with the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2020. Once assessed, I will make an order for additional fees in respect of that work together with payment of the Court's costs.

**Lyndsey de Mestre QC**

**Chancellor**

**13 October 2021**