

Neutral Citation Number: [2024] ECC Wor 1

**OFS CASE NUMBER: 2022-069142
IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER**

RE: HOLY TRINITY WORDSLEY

RE: Reordering works including the construction of a prayer room and relocation of fonts

JUDGMENT

INTRODUCTION

Background

1. This judgment is unusual in that it follows a full, in person, consistory court hearing for an unopposed petition. I took the step of directing such a hearing due to the petition including applications for multiple confirmatory faculties due to the following unlawful actions taking place:
 - a. The destruction without a faculty of a wooden pulpit directed to be retained under a previous faculty;
 - b. The introduction into the church of a new moveable font, without a faculty;
 - c. The cutting down of a mature tree and replacing it with a stone or concrete plinth without either List B permission or a faculty; and
 - d. The moving outside of a Victorian font without a faculty, subsequently restored to its original location pursuant to a direction by the Archdeacon.
2. It was therefore necessary both to determine why such unlawful actions have taken place and to subject both the confirmatory and prospective faculties applied for to a higher than usual level of scrutiny.
3. Such scrutiny is appropriate where unlawful actions have taken place, as the faculty jurisdiction is an ancient and important part of the law of this country and should be complied with. The requirement to obtain legal permission before any major changes are made to a Church of England church building or its contents are to be carried out is an important way of recognising that a parish church is not the private property of the Parochial Church Council of that church, or of any private individuals connected to the church. It is there for the benefit of the whole people of God in that place, both past and future; and in the present it is there for the whole parish – all those for whom the Bishop and Minister of the church have cure of souls.
4. Therefore, changes to that building, and its contents are matters that should be undertaken carefully and prayerfully balancing the past record of faithful worship and the current and future needs of worship and mission. Part of that includes consideration of the heritage of the church, which is of value both in its own right, and in terms of rooting the current worshipping congregation in the history of the locality and the worshippers of the past. That is why amenity societies such as the

Victorian Society and Historic England are stakeholders who properly need to be consulted to help parishes understand the importance of their buildings and historic items within it and offer advice as to how changes may be undertaken in sympathy with historic fabric. This shared heritage can be overlooked if the faculty process is not properly pursued.

5. Further, the existence and proper operation of the faculty jurisdiction enable parish churches to be exempt from secular listed building controls. Without the faculty jurisdiction, parish churches would be subject to listed building controls, the statutory tests for which do not take into account the importance of a church building as a local centre for mission.
6. What the faculty system also provides, in its current form, is a wealth of access to free expert advice from the Diocesan Advisory Committee (DAC) and the Church Buildings Council (CBC). Private owners of listed buildings, who need such advice when planning changes to those buildings, would normally have to pay for the expertise that is available free to petitioners, from specialists and professionals who volunteer their expertise unpaid, for the benefit of parishes. This is a very valuable resource for which all of us concerned with church buildings should be extremely grateful. By taking steps unilaterally and unlawfully the opportunity to benefit from this free advice is lost or comes too late.
7. In all cases then, the proper procedures should be followed, and petitioners can expect to face full consistory court hearings where unlawful behaviour is serious or persistent.

Details of the church and the parish

8. Holy Trinity Church is a Georgian Church built in the Perpendicular Gothic style in 1829-1831 under the guidance of architect Lewis Vulliamy. He was a prolific architect of national significance working in London and throughout the country on both churches and secular buildings. The chancel was replaced in 1886-1887 under the guidance of the architect Alfred Perry, who is much less well known. This reordering introduced the very fine alabaster reredos carved by well known local carver Robert Bridgeman.
9. The oak pulpit and lectern were added in 1931-1932. These were designed by the furniture and stained-glass designer Geoffrey Fuller Webb – whose stained glass work was widely commissioned in the South and Midlands across the first half of the 20th Century.
10. The building is also noted for its fine late Victorian stained glass and a striking pre-Raphaelite enamelled plaque of the Angel of the Resurrection dating from 1907 by Sidney Meteyard, an artist with family links to the church.
11. There was a further substantial re-ordering in 1996 under architect Jack Cotterill of Norman and Dawbarn, an important local firm best known for the BBC TV Centre building. This reordering is considered further below.

12. Modest further work has been done under faculty in 2020, introducing a toilet and kitchenette installed in the NW corner of the Nave and the West and North entrances were also redesigned for equal access. This work has been undertaken to a high standard and was stated to be working well.
13. Holy Trinity is a grade 2 listed church, because it is of special interest warranting every effort to preserve it. Ninety-two percent of all listed buildings are grade 2. Whilst the land and some of the funding to build this church came from the Earl of Dudley and the Church Commissioners, a significant proportion was raised from local people. The hamlet of Wordsley grew significantly in the early years of the 19th century, and the main industry in the area was glass manufacture, to which two local museums are dedicated. The parish now comprises this historic area, a rural area of South Staffordshire and large urban area of post 1950s housing development within Dudley Metropolitan Borough Council ('MBC'). It forms part of the borough of Dudley in the county of Staffordshire. The building, including the windows and the enamelled plaque all show strong links to the local glass industry. This industry continues, not least at the Ruskin Glass Centre in Stourbridge about 1 mile south of Holy Trinity Church.
14. Holy Trinity is located in an area of the country rightly renowned for and proud of its history of fine craftsmanship. This is reflected in the church, not only in the architectural and liturgical elements noted in the building's formal listing, but in other everyday objects that are nevertheless well made and clearly loved. For example, I noticed a fine lace tablecloth and well-made furniture. The building itself was spotlessly clean and well maintained, showing evidence of having been internally repainted relatively recently.
15. The churchyard has an older part now closed and managed by Dudley MBC, and a new part that remains open for burials. Part of the churchyard to the southwest of the tower has been designated as the 'baby memorial' (See below).
16. The worship at this church sits in the Anglo-Catholic liturgical tradition with a strong focus on Eucharistic worship. As well as well attended regular Sunday and weekday services, significant numbers attend the pastoral services. The church appears well integrated into its community with school visits and services and the hosting of local orchestras and choirs. Its own Sunday afternoon organ recitals are well attended. The church serves as a collection point for a local food bank and supports other mission organisations.

Faculty granted by Peter Boydell QC on 20.12.96

17. Under this faculty, the petitioners (the Rector and members of the PCC) sought to raise the height of the chancel, move choir stalls, remove the lecterns at the end of the choir stalls and use the wood to construct a president's chair and servers stools, remove the pulpit for use in another church, reduce the height of the eagle lectern and modify and relocate the communion rails and introduce the altar that was at the time in the Lady Chapel. The petition was controversial with formal parties opponent representing a significant minority of the community.

18. Significantly for the current petition, Jack Cotterill, the architect of the 1996 re-ordering is one of the current petitioners, and also Christine Leashorne, one of the parties opponent in 1996, remains a member of the worshipping community and attended the current hearing.
19. The petition was granted but with an important condition, namely that the pulpit must remain in the church until another church has been found to welcome it. The judgement spelt out 'If a suitable home can be found for the pulpit the petitioners may then seek a faculty, on this petition, for its removal.'
20. No such alternative home for the pulpit was ever found, and for the next approximately 25 years it remained in the northwest corner of the nave, gathering dust.
21. This was a controversial re-ordering project that was the source of some bad feeling within the church community long after it was implemented, particularly in respect of the loss of the pulpit. Jack Cotterill's email of 28.3.23 at p.63 of the bundle refers to the disputed re-ordering being 'acrimonious' and it taking 'many years for wounds to heal'.

THE CURRENT PETITION

People

22. The current petition was created on 26.1.22. The petitioners are the Rev'd Colin Stuart Jones, the former Team Rector, Brian Idoine and Martin Berrington, Parish Wardens.
23. However, the Rev'd Colin Jones has since retired. The acting Rector Lyn Rowson has not taken his place, but rather let the Parish Wardens and members of the Fabric Committee of the PCC take the lead. She did, however, give evidence at the hearing, and kindly conducted the site visit I undertook ahead of the hearing.
24. Others acting as petitioners in place of the former Rector were Jack Cotterill, the secretary of the PCC's Fabric Committee and Robert Hill, the PCC treasurer. Brian Idoine and Martin Berrington also attended the hearing as petitioners. The District Warden Kay Entwistle and the PCC secretary Gill Stansbie also attended, the latter to take notes on behalf of the parish. The formal record of proceedings was, of course, made by the Registry.
25. There were no parties opponent and the petitioners were not legally represented. Also present were Mark Carter, as the Judge's witness, the Archdeacon of Dudley Nikki Groake, the Registrar Kirsty Duxbury, the Registry Clerk Elizabeth Matthews and a few members of the church community, who kindly made tea and coffee for the participants.

26. I invited the petitioners to choose a main spokesperson for themselves and they chose Jack Cotterill, a natural choice as he was the major driver of the proposals.
27. Written evidence was provided by the petitioners jointly, both in the form of written statements and supporting documents. I also received a statement, prepared at my request, from Mark Carter setting out the history of relevant faculty applications from this parish and how they had been dealt with by the DAC. I am very grateful to him for providing this clear and accurate history of the case.
28. I heard formal evidence from Mr Carter, Rev'd Lyn Rowson, and Jack Cotterill. As each witness had a contribution to make they were sworn or affirmed but evidence was obtained conversationally topic by topic with each witness contributing when invited, rather than running through a list of questions with each witness in turn.
29. I also heard informally on minor points from Martin Berrington, Brian Idoine , Robert Hill and members of the community observing the proceedings, including Christine Leashorne mentioned above.
30. All witnesses gave their evidence in a straightforward way and when the unlawful actions were considered the relevant witnesses made very frank admissions of responsibility. There was no challenge by the petitioners in respect of Mark Carter's evidence and no-one challenged the evidence of the petitioners. I therefore accept all evidence received as both truthful and accurate.

PROPOSALS

31. The petition sought permission for the following works:
 - a. Construction of prayer/quiet room, southwest corner of Holy Trinity, necessitating removal of 1888 stone font in southwest corner.
 - b. Retrospective permission to dismantle wooden pulpit (removed from the church in a 1996 Faculty), repurpose that wood for a moveable font, install moveable font.
 - c. Reposition 1831 stone font at the West End of Holy Trinity
 - d. Move the 1888 stone font to replace a tulip tree at the centre of the baby memorial in the churchyard.

CONSULTATION

32. Historic England were consulted on the proposals on 18 August 2022 and confirmed on 31 August through Sophie Clarke, Inspector of Historic Buildings and Areas, that they did not wish to offer any comments on the proposals.
33. The Georgian Society were also consulted and provided the following response through their Head of Casework James Darwin:

Thank you for informing the Georgian Group of the above proposal. Whilst the Group has no objections in principle to the proposed works, we would be grateful to pass on the following brief comments.

The Buildings of England mentions two fonts at Holy Trinity one of 1831, and that by JB Davies dating from 1883. We defer to the Victorian Society over the future of the Davies font.

It is not clear if the c1831 font was designed by Lewis Vulliamy or purchased from a firm of church furnishers. Permission is sought for temporarily housing it within the south-eastern corner of the church pending further reordering works. The Statement of Need suggests that the 1831 font is unstable, but it is not clear why this is the case or whether the stability issue is easily rectifiable. As a further font has been commissioned, the long-term future of the 1831 original is arguably in doubt. It would therefore be extremely useful if its structural condition and designer can be established before any decision on its final home is made.

34. This response appeared to have misunderstood the proposals and Mark Carter sent an email clarifying the proposals on 4 October 2022 – making it clear that the proposal was to re-site the 1831 font just inside the west entrance to the church. No further response was received, but as there is no proposal to remove or alter the 1831 font, which has in any event been removed from its original location during the Victorian re-ordering that introduced the chancel, I did not consider this lack of further response hampered my consideration of the proposals.
35. The Victorian Society were also consulted, and they provided a response on 23 September 2022 from Tim Bridges, their Conservation Advisor for Birmingham and the West Midlands. He also visited the Church on 19 December 2022 and provided a detailed email on 4 January 2023. The contents of this response will be considered below as part of the consideration of the proposal to relocate the Victorian Font outside.
36. CBC guidance was also sought and their response on 27 September 2022 is considered below as part of the proposal to relocate the font to the baby memorial garden as that is the main issue to which it relates.

THE PROPOSALS IN DETAIL

The prayer room and the removal of the 1888 font

37. The details of the proposals for the prayer / quiet room are contained in architects' plans prepared by Phil Powell of St Paul Associates and numbered DK3289/001. I asked a few questions to fully understand the plans and it was confirmed that the soundproofing would continue to the ceiling of the room (the underside of the rear gallery). I was also told that the anticipated lifespan of the obscuring film proposed to be placed on the glass for privacy (whilst retaining some sightlines) was 10-20 years and the proposal was that at the end of its life when it became unsightly it would be removed, the glass cleaned and a similar product then re-applied. I was told that etching the glass to achieve the same effect without the use of a plastic film that will deteriorate over time, whilst preferable, was prohibitively expensive.

38. Save for concern about the removal of the font, about which more below, there were no objections to the creation of this space. I heard evidence, particularly from the Rev'd Lyn Rowson, as to the need for a space that was soundproof but with some visibility to provide a safe space for one-to-one pastoral encounters and some privacy for feeding or providing care for very young children during a service. I was also given evidence that small meetings and other small gatherings (for example for prayer groups, small lent or advent groups) would be better undertaken within such a space as there is no other small space within the church building itself. The cost of heating the whole church is substantial and the option to heat only a small space for small groups of people was attractive.

The 1888 font

39. The first proposal in the petition includes a request for the 'removal' of the 1888 font and the fourth proposal is for it to be relocated outside as part of the baby memorial. I will treat these together below as there is no other proposal for the removal or relocation of the 1888 font if removal outside is not permitted, despite my request that the petitioners consider this.

40. The initial petition provided very little information about the provenance of the Victorian Font it was proposed to remove. More was subsequently provided in the amended Statement of Significance uploaded to the Online Faculty System on 17 January 2023, much coming from a souvenir brochure published in 1931 to celebrate the centenary of the church. I was able to inspect a copy of that brochure during my site visit. Further information was also very helpfully provided by the Victorian Society in the January 2023 email.

41. From this information I am able to determine that:

- a. It is made of a carved Caen stone bowl on marble columns.
- b. It was designed by J B Davies in 1883.
- c. J B Davies was part of the architectural practice of Davies and Middleton who produced an unexecuted design for the Chancel extension at Wordsley in the late 1870s. (The Chancel extension was later undertaken by Alfred Perry).
- d. This practice remodelled several Churches in the West Midlands during their years of operation (approximately 1872-1880).
- e. The only other work known to be solely attributed to J B Davies is the ironwork screen at St Andrews Netherton. It is therefore likely that the ironwork on the font lid at Holy Trinity Wordsley is also by J B Davies.
- f. The font was originally located somewhere near the inner west door, although exactly where is not known. It was moved to its current location in 1914.
- g. According to the souvenir brochure it was 'the gift of the women of the parish' although more detail of this was not given.
- h. The font was painted at some previous time.
- i. The paint was subsequently removed causing some wear and tear damage to the carvings, particularly on the font bowl.

- j. If the font were to be moved outside, it would deteriorate and would need some appropriate form of treatment to preserve it.
42. My own inspection of this item also revealed that:
- a. Traces of the previous paint on the Caen stone bowl are clearly visible;
 - b. The carving on the Caen stone bowl was not in good condition;
 - c. It had been treated with a substance, later confirmed to be diluted PVA glue;
 - d. There was recent damage to the base, later confirmed to be caused when removing the font to the garden without a faculty.

Removal outside and return to the Church

43. The font was relocated outside in around August 2022 after this petition was commenced but before it had been submitted to me for determination. Consultation was ongoing and the DAC had not yet provided its Notification of Advice. The font was restored to its previous location on or about 20 or 21 September 2022 at the direction of the Archdeacon. I had previously indicated that if such a direction was not complied with, I would consider an interim injunction, and consider requiring the petitioners to pay the costs of such an order.
44. Jack Cotterill very frankly admitted that it was him who gave direction to workmen to relocate it outside, having engaged them specifically for that purpose. He also admitted it was him who was responsible for painting the bowl of the font with the diluted PVA glue, having instructed workmen to do this. He accepted he was acting on his own initiative, and not on the basis of any PCC resolution. He was aware that he was acting without a faculty and as a retired church architect he was aware that a faculty was required, and he was acting unlawfully.
45. What the temporary relocation did achieve, however, was some feedback from the congregation and visitors that it was appreciated as a focal point for the baby memorial, the tulip tree having been removed (see below).

Retrospective permission for the dismantling of the retained pulpit, creation of moveable font from the wood and introduction of the font into the church

46. PCC minutes and other records show that these actions were taken on the authority of the PCC as a whole, and whilst Jack Cotterill remained a key driver of the proposals, he was acting in this regard with PCC authority so the PCC as a whole must all share responsibility for acting unlawfully in the destruction of the pulpit, commissioning the creation of the moveable font and introducing the new font into use within the church without a faculty.
47. This item was commissioned back in 2020. At this time the work on the 2019 petition to install the toilets and servery were underway, but the other range of proposals for the prayer room and associated reorganising of fonts had not yet been the subject of any formal application. When an informal DAC visit took place in respect of the current proposals in April of 2021 it was admitted that the pulpit had already been demolished, and the moveable font commissioned, manufactured and brought into

the church. At this meeting, at which the Archdeacon was also present, the petitioners were informed that their actions were unlawful, and their petition would need to include an application for a confirmatory faculty to make them lawful.

48. Nevertheless, on 2nd May Bishop Martin, the Bishop of Dudley, was placed in the embarrassing position of being asked to bless the new font that was not present in the church lawfully. The remaining petitioners indicated that it was the former Rector who was responsible for this invitation. Rev'd Colin Jones was not present at the hearing to confirm or deny this but given his position as minister of the parish it is unthinkable that the Bishop would have attended to bless the font without, at the very least, his knowledge and consent. It is difficult to understand why a parish priest would embarrass his bishop in that way.

The pulpit

49. As set out above the 1931 pulpit had been retained in the southwest corner of the nave following the judgment of my predecessor but one in 1996. Its provenance and significance are considered in that judgment. In brief it was octagonal, about 6-7 feet tall with steps up. There is a photograph at p81 of the bundle.
50. Since that judgment no other church could be found to use it, so it remained in the southwest corner and gradually became a 'dumping ground' for other items.
51. I was told by Jack Cotterill that the 1996 reordering proposals and the faculty case hearing those proposals were very acrimonious. The case divided the proposers from the opponents quite severely and the rest of the congregation were confused. The rector at the time retired from parish ministry and worked in an administrative capacity. It took a long time for the wounds to heal and the presence of the pulpit at the back of church was an ongoing reminder of this.
52. Having not found any other church to take the pulpit, thought was then given to how the wood from it could be reused. This was the context in which Jack Cotterill came up with the suggestion of using the pulpit to create a moveable font. Problems had arisen with the existing fonts – location of the 1888 font made large baptisms difficult due to lack of space and fixed pews looking away from it. The 1831 font was not safe to use being very heavy to move and at risk of being tipped over.
53. The proposal to use the wood from the pulpit to create the moveable font was well received by all, including previous proposers and previous opponents. Mr Cotterill said, 'finally we had a solution for a problem that had been ongoing for 20 years or more.' He did not think anyone would object and he 'dealt with it with alacrity'. He wanted to 'strike while the iron was hot'.
54. Investigating this evidence revealed that while the whole PCC agreed to the proposals, the wider congregation and community were not consulted. The PCC at the time did have representatives of both opponents and proposers from 1996, particularly Sue Grainger and Chris Leashorne as opponents. As indicated above, Chris Leashorne was present at this hearing and she confirmed she was in agreement

with this proposal and both she and Mr Cotterill agreed that Sue Grainger also agreed with it.

55. I was told by Rev'd Lyn Rowson that the lack of wider consultation and explanation of these proposals did cause some upset to a member of the congregation who discovered the pulpit in the process of being broken up without knowing why. However, having seen the finished new font, she likes it and is reconciled to the events.
56. What remains of the pulpit are three bare wooden panels with cut outs. No decorative carving remains and no other elements of its construction (legs, stairs, handrail etc). I was told in evidence that whilst the external woodwork of the pulpit was fine, the construction was of inferior materials such as plywood which did not survive when the pulpit was taken apart to remove the better-quality elements for reuse. It was thought that the seventh panel had split and was disposed of.
57. When I raised questions prior to the hearing as to the proposals for the remaining panels, it was suggested that they could be placed on the wall of the new prayer room. Having seen them, what is left is not of sufficient quality to warrant display, and no condition to that effect will be imposed.

The new font

58. It was unanimously agreed that the new font, created from the wood of the pulpit with a specially commissioned glass bowl is a very fine piece of work. It was described as 'wonderful,' 'superb' or in similar terms by all. I understand it was paid for by a donation from Mrs Warren, a member of the congregation.
59. My own inspection of this piece during the site visit had enabled me to form the same opinion. The woodwork is very finely done by professional woodworker and historic furniture restorer Jamie Hubbard who works out of the Ruskin Centre. He has taken three panels from the octagonal pulpit to form an open backed main structure for the font. He has used wood from the pulpit to create the structural elements including the support for the glass bowl. He has skilfully integrated many of the finer carved elements of the original pulpit so that the font is a piece with its own integrity that is also in keeping with other woodwork retained in the chancel. The base of the font has lockable casters enabling ease of movement and stability when in use. It has an opaque glass shelf, below which is a light bulb that can be plugged into sockets located discretely in the floor of the chancel area.
60. The bowl on the top of the font is a hand-blown shallow glass bowl set into the wooden surround. This bowl is made of white glass with abstract line and fine dot patterns of black glass. It was created by Jo Newman, an accomplished glass artist, who also works out of the Ruskin Centre. It is beautiful. When lit from below with the diffused light as filtered through the shelf the effect is stunning.
61. I made it clear when investigating how this item came to be unlawfully introduced into the church that I had no criticism at all of the item itself nor of the craftspeople

who have created it using immense skill and sensitivity on the instructions of the PCC.

62. The CBC offered their advice in respect of the introduction of this new font as follows:

The Council would strongly prefer for the church to be in the position where it had one font present and in use, following the House of Bishops guidance that there should be one place of baptism. The Council noted that the new font, for which a retrospective faculty is sought, has strong links with the local area in the use of glass and with the former pulpit from the church. The Council does not condone the method used to arrive at this solution but would not object to its legal regularisation if the Chancellor was minded to do so.

The repositioning of the 1831 font

63. I indicated during the hearing that I had no concerns or questions about that element of the petition. This font is currently unsecured in the southeast corner of the chancel. It is covered with a Ukrainian flag and a flower display. It has a lid which is stored elsewhere in the church. There is a sign warning people that it is unsafe due to a tipping risk. The proposal was to relocate it to the back of the central aisle, near the inner west door.
64. However, Rev'd Lyn Rowson raised concerns as to why it was considered a good idea to put it there as it would not be used, and it would obstruct funerals as it would make it difficult to carry a coffin into church from the west door (which is usually used for weddings and funerals).
65. Further reflection led to the petitioners indicate that they wished to withdraw that part of the petition. Mark Carter raised the fact that if not moved and fixed in the proposed new location it would remain unsecured and therefore at risk of being pulled over. He therefore wanted it to be made properly safe if it is to remain in its current location.
66. I am content to accept the withdrawal of that part of the petition but will direct that the font is made safe in its present location as set out below.

The relocating of the 1888 font to the baby memorial garden to replace the tulip tree

67. The proposal is to put the 1888 font in the centre of the baby memorial in the churchyard, to be a focal point for those using that space.

The baby memorial garden

68. I also made it clear during the hearing that none of the concerns I raised related to the baby memorial garden itself, which clearly forms an important part of the ministry of this church. The memorial garden was introduced in 2011. The faculty for

it was granted in 2009. This faculty was sought because, until 2005, the Wordsley Maternity Hospital was located nearby and many babies who were stillborn or died shortly after death were buried in Holy Trinity Churchyard. These burials were often without any grave markers. The burials were often arranged by the Hospital such that some parents are not aware where in graveyard their children were buried. The baby memorial therefore provided a welcome focus for the many visitors attending the churchyard in connection with these burials.

69. This memorial comprises a pathway to a circular paved area. It is located a little to the south of the west door of the church on an area of slightly raised ground that affords a view, glimpsed between trees, of the surrounding area. The pathway and circular areas are surrounded by planting, not at its best in January. There is much lavender used in the planting which, when in flower, will give a beautiful scent.
70. At the centre of this raised area a tulip tree was planted surrounded by an iron bench from which people could look outwards. A tulip tree is the common name for *Liriodendron Tulipifera*, a tree with very large flowers which is what I understand was previously planted. However, I am also told that these trees have shallow roots and that by 2022 the roots of the tree planted here was causing the paving to rise making it a tripping hazard.
71. The tulip tree was cut down some time prior to August 2022 when the font was put in its former place. The path and circular paved area were restored but with the addition of a large block of stone or concrete that was used as the base for the font when relocated.
72. No faculty or list B permission was sought for the removal of the tulip tree. If the damage to the pathway was such that the tree could properly be regarded as 'dangerous' then List B permission from the Archdeacon would have been sufficient and a full faculty not required. However, no such application was made and therefore a retrospective faculty is required. Secular local authority permission for removal of the tree was nevertheless sought in April 2022.
73. At the time of my visit the metal bench had also been removed and was stored in the south gallery of the church. This needs to be restored as soon as possible, irrespective of any decision as to what is placed in the centre of the memorial.

The use of a font as a baby memorial

74. In addition to practical questions relating to the potential for the deterioration of the font if moved outside, I wanted further consideration of the theological appropriateness of a font being used as a focus for memory of children who were still-born or who died shortly after death, many of whom would not have been baptised.
75. This arises from what I understand to be the theological position of the Church of England on the salvation of unbaptised babies as expressed in the rubrics of the Service of Emergency baptism, namely:

"[parents] should be assured that questions of ultimate salvation or of the provision of a Christian funeral for an infant who dies do not depend upon whether or not the child has been baptized."

76. I was therefore concerned that using a font as a focal point for a memorial to unbaptised babies may cause confusion as to this doctrine, or concern to individual parents worried about the ultimate salvation of their unbaptised lost child.
77. I raised these theological and pastoral concerns at the hearing and there was some enthusiasm for finding a form of words to place on or with the font to provide the reassurance to grieving parents set out in the rubric. There was also interest in using part of the fabric of the font to create a new artwork as a focal point, but without the obvious reference to baptism. Advice would also be considered on an alternative tree with deeper roots.
78. The petitioners did not have a very clear case as to what they would do with the baby memorial if moving the font into it was not permitted nor what they would do with the font in those circumstances. This was not a new question. I had previously sent written queries raising these points which were responded to in an unsatisfactory way, in effect saying that these points would be considered only if the current proposals were rejected.
79. At this point of the hearing, it was admitted by Jack Cotterill on behalf of the petitioners that they no longer have the funds to undertake the work creating the prayer room and they would welcome some more time to think about what their plans were for the font.
80. However, it remains important to note as mentioned above that the temporary placement of the font outside drew some positive comments from some people using the space. There is also upset about there being nothing there at present. This will need to be remedied if time is given for further consideration of the overall proposals.
81. The CBC also gave advice on this aspect of the proposals as follows:

The Council would strongly prefer for the church to be in the position where it had one font present and in use, following the House of Bishops guidance that there should be one place of baptism. The Council noted that the new font, for which a retrospective faculty is sought, has strong links with the local area in the use of glass and with the former pulpit from the church. The Council does not condone the method used to arrive at this solution but would not object to its legal regularisation if the Chancellor was minded to do so.

There are examples of a church seeking to use a font to create a memorial for the very young. A relatively recent example is Bentham, St John the Evangelist (Diocese of Leeds). The Chancellors determination in that matter can be

found here: St John the Baptist, Bentham - Judgment [2021] ECC Lee1_0.pdf (anglican.org)

Although the Council would not offer an 'in principle' objection to the proposal it is not content that the parish has shown that future use in the churchyard is appropriate to this font. The statement of significance implies that the font is of low significance, but does not make this conclusion plain. A proposal for future use that will place the font in conditions that it was not designed for would ideally address the impact on the font of its new location. If the font is of low significance a simple justification is sufficient. If of higher significance the parish will need to show that any loss of significance in the new location is justified by the strength of the need that will be met by the memorial.

The Council would prefer that in the longer term there was one font in the church. In the absence of a statement of significance on the 1831 font it offers no view on whether it is of sufficient significance to overturn the preference for there to be one font, or whether it would be appropriate for a new home to be found elsewhere.

82. The case referred to in this advice does include permission to relocate a font outside but does not deal with whether it was as a memorial to the very young. If there were proposals to use it as a memorial for young children these must have been considered later, and I am unable to find a report of this.

THE LEGAL TEST

83. In all cases where an application is made for permission to make changes to a building on consecrated ground, the legal test for whether such a faculty should be granted is set out in *Re St Alkmund, Duffield* [2013] 2 WLR 854 which directs the Chancellor to answer the following questions in determining the petition:
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.
 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, will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that

are consistent with its role as a place of worship and mission) outweigh the harm?

In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or 2*, where serious harm should only exceptionally be allowed.

84. In my judgement no or very limited harm to the significance of the church will be caused by the creation of the prayer room itself. The works will complement those undertaken in the northwest corner and will provide useful space for the mission of the church. The evidence as to the benefit the creation of such space will provide was strong and outweighs any limited harm to the significance of the church.
85. The removal of the Victorian font from its current location to elsewhere *within the church* will cause no harm to the significance of the church. The significance of the font itself is moderate, being a designed made by a local architect with little other of his work remaining. However, it is not part of a range of fittings at this church, having been designed independently of the major Victorian reordering of the chancel. It is also not in its original location, having been placed in its current location in 1914. However, were it to be removed entirely from the church there would be some harm to the historical significance to the church provided by the font.
86. In those circumstances the benefits of removing the font would need to be considered, both in terms of the value of the prayer room and the use to which the font will then be put or how it will be disposed of if considered entirely redundant. These benefits would then need to be balanced against the harm to the significance of the church from the removal of the font (if that is the final proposal). As set out above this case there is good evidence as to the value of the prayer room to the mission of the church. However, the decision of what to do with the 1888 font has not yet been finalised and the petitioners have indicated they want more time to consider this. Therefore, it is not clear what those benefits are being weighed against.
87. However, I will find it difficult to conclude that it would be appropriate to use the font in a space to commemorate lost babies, many of whom will have been unbaptised. If this proposal is to be further pursued, I would want to see a cogent theological justification for such use, as well as consideration of the mitigation of the potential generated for pastoral confusion and distress in respect of the salvation of unbaptised infants.
88. The removal of the pulpit from use caused harm to the significance of the church but this was considered in the context of the 1996 faculty. The pulpit therefore has already lost much of its significance when it was removed from use pursuant to that faculty. That faculty envisaged the pulpit being relocated to another church, subject to a further faculty. The current proposals cause minimal harm to any residual significance the pulpit had and can be seen to have enhanced the significance of the elements of the pulpit that were recycled into the moveable font, by their being re-

introduced into the liturgical life of the church by the use of that font. The benefit to the church in the introduction of the font (considered below) and to the bringing to an end of ongoing tensions in the worshipping community are benefits that properly outweigh the harm to the significance of the church from the complete removal of the redundant pulpit.

89. The remaining pieces are of no significance. The proposal was to retain them in storage in case wood was needed for a future project. This is sensible, and I approve it. But if plans change and storage is at a premium they may be disposed of responsibly without further faculty.
90. The moveable font itself does no harm to the significance of the building and is a worthy addition in terms of quality of design and execution of the font. However, it does cause some difficulties in that this parish now has three fonts, where the preference of the CBC and the House of Bishops is for one font to underline the singularity of baptism. This tension between the heritage value of the historic fonts and the theological / ecclesiological value of a single font will need to be properly considered by the petitioners when formulating their future proposals for the 1888 font (and if appropriate the 1831 font).
91. No change is now proposed in respect of the 1831 font.
92. The harm to the significance of the 1888 font in removing it from the church is considered in part above. If the proposal to move it outside is to be pursued in the future I would want to see:
 - a. Properly researched proposals as to how it can be preserved from further deterioration;
 - b. Clear proposals as to what will be done with the font lid; and
 - c. If the proposal remains to place it in the baby memorial, I would need a cogent theological justification as set out above as well as clear proposals to mitigate the pastoral concerns.
93. There is harm to the significance of the baby memorial by the unlawful removal of the tulip tree and continued absence of the bench and the lack of any central focal point. I will accordingly order that pending any final determination in respect of the application to relocate the 1888 font, or other proposals for the centrepiece of the baby memorial, that a suitable tree or bush be planted there to avoid the continued empty space in the interim.
94. Other proposals relating to disposing of and cutting down pews were mentioned during the hearing, but there were no clear and published proposals in this regard. On balance I do not consider I have enough information to properly consider those proposals and if it is wished to pursue them a further application should be made.

THE RETROSPECTIVE FACULTIES / ILLEGAL ACTIONS

95. The unlawful actions have been explained in evidence, if not justified. It is fair to say that Jack Cotterill appeared somewhat embarrassed by the extent of his own unlawful behaviour and his instigation of that committed by other PCC members, who also admitted their own complicity.
96. However, an explanation of the unlawful behaviour is rarely sufficient. A Chancellor usually also wants to know what steps will be taken to avoid further such illegality taking place in the future.
97. The fact of this hearing, and the costs of it, are likely to have been salutary in themselves. It is in the interests of all concerned to avoid the need for any future such hearing.
98. However, I am further reassured by the following:
- a. The current acting Rector is fully aware of the legal requirements of the faculty jurisdiction and will not condone future unlawful behaviour;
 - b. The Parish and District Wardens and other PCC members are now keenly aware of their responsibility to ensure any changes are made in a lawful manner. I was concerned that despite his knowledge and experience Jack Cotterill has taken so many unlawful steps, and that the rest of the PCC have apparently been prepared to permit this. I do not wish to criticise Jack Cotterill too harshly as using the pulpit to create the font appears to have genuinely healed some ongoing parish discord and it is a beautiful item. That said, his clear impatience with the system must be tempered so that all stakeholders are properly involved in decision making. He is clearly a strong character with many talents. Nevertheless, other PCC members need to 'step up' and insist upon taking their own share of responsibility for decisions, and ensure that decisions are made and implemented properly and lawfully.
 - c. There are already some early signs of this 'stepping up'. Parish wardens are now keen to attend diocesan training on faculty jurisdiction. Martin Berrington was able to articulate previous experience in another context of ensuring decisions were being made properly in the right places and with wide communication and consultation.
 - d. It was also volunteered by the petitioners that a reminder of the requirements of the faculty jurisdiction and the extent of matters on Lists A and B should be on the agenda of the first PCC meeting after the APCM each year.
 - e. Kay Entwistle has already taken steps to put together a Churchwardens' folder of key information for wardens at Holy Trinity and she, together with the other wardens, agreed that within this there would be added copies of Lists A and B to the Faculty Jurisdiction Rules and copies of all faculty orders

currently in effect relating to Holy Trinity and the conditions attached to them.

99. I endorse all the proposals above, and trust that the Acting Rector and Archdeacon will hold the petitioners to these commitments.

100. Finally, I raised the issue as to the costs of the hearing with the petitioners who did not wish to advance any case proposing that the cost order should be other than the usual order that the petitioners pay the costs of these proceedings. Details of those costs will be supplied by the Registry, if they have not already done so.

ORDER

1. The proposal to create the prayer room is approved subject to the following conditions:
 - a. The faculty is to remain effective for 6 years. If the work is not undertaken by the date 6 years after the date of the faculty, it will lapse and a further faculty will be required if the proposals are to be pursued at a later date. Applications for an extension will be considered if appropriate.
 - b. This faculty does not include permission to remove the 1888 font – see below for restoring that application.
 - c. No work will take place under this faculty until this court has approved a proposal for the relocation or disposal of the 1888 font (and if appropriate the 1831 font).
 - d. When the film used to partially obscure the glass room deteriorates it shall be removed, the glass cleaned and replaced by a suitable alternative as approved by the DAC (or in the event of any dispute as approved by this court).
2. Retrospective faculties shall be granted to permit the dismantling of the wooden pulpit to create the moveable font and permit the introduction of the moveable font into worship at the church on a permanent basis.
3. Permission to withdraw the proposal to relocate the 1831 font is granted. I do however also give permission (so far as is necessary) for it to be made safe in its current location in a manner approved by the DAC, such manner to be reversible in the event that further consideration of how to deal with the 1888 and 1831 fonts require the removal or relocation of the 1831 font.
4. Retrospective permission is given for the felling of the tulip tree, subject to the following conditions:
 - a. The stone or concrete plinth currently in the centre of the baby memorial is removed forthwith. It may be retained in a suitable alternative location within the churchyard pending determination as to whether it is needed for the font or other future centrepiece.

- b. A suitable tree or bush with deeper roots shall be planted at the centre of the baby memorial within 3 months of the date of this order; the species of tree or bush to be agreed with the Archdeacon, or in the event of any dispute it will be determined by this court.
 - c. The metal bench be returned to the baby memorial forthwith.
- 5. Consideration of whether the 1888 font may be relocated to the baby memorial is adjourned generally at the petitioners' request and may be restored by them, including in an amended form, at any time prior to the expiry of the faculty permitting the creation of the prayer room.
- 6. The costs of these proceedings shall be paid by the petitioners within 28 days of the date of this order (or 28 days of notification of the amount due by the Registry, if later).

JACQUELINE HUMPHREYS
CHANCELLOR OF THE DIOCESE OF WORCESTER
6 February 2024