

**IN THE CONSISTORY COURT OF BIRMINGHAM**

**IN THE MATTER OF ST. MICHAEL AND ALL ANGELS MAXSTOKE**

---

1. By Petition dated the 17 January 2018 the Rev. Nicholas Parker the Vicar of St Michael and All Angels, Maxstoke together with Mr Michael Fetherston-Dilke and Mrs Susan Lappin, the Church Wardens of St Michael's seek a Faculty for the re-ordering of the Church. St Michaels is a Grade II\* building and the Petition requests a Faculty to carry out the following work;
  - a. The removal of the "redundant" Victorian font from the back south-west corner of the Church and relocation of it in the churchyard close to the entrance. This would be placed in a position deliberately prominent in order to make a feature of it in a position that wouldn't cause obstruction for weddings or funerals.
  - b. The removal of the back loose pew from the rear of the Church on the north side.
  - c. The moving of the Parish chest from the rear of the south side to a space at the rear of the north side (created by the removal of the loose pew).
  - d. The movement of the older font (believed to be Georgian) next to the aisle walkway so that it should be used as the sole font.
  - e. The removal of half of the length of the back pew adjacent to this font so that families can gather round the font (as the liturgy demands).
  - f. The removal of the redundant heating grill and pipe at the south-west corner and the re-tiling of the floor of the back of the south-side reusing the Victorian tiles to create an area for a prayer/votive stand.
  - g. Behind where the "redundant" font is presently placed, the laying of a carpet with a corner storage bench for use by families with small children.
  - h. The repair of the cleaning cupboard accessed from this corner extending the door to reach the floor. The re-using of the large aisle tiles moved to allow for the

votive area described above and using them to replace those tiles in the main aisle that are badly eroded and green with damp.

- i. The employment of an archaeologist with a watching brief when the aisle tiles are lifted and when the cement base to the Victorian tiles is removed.
2. This Petition is supported by the DAC subject to the caveat that the Victorian font should be listed on the Church Commissioners Central Contents Register for use by another church if required. Since the DAC gave me their advice the Parish have decided that the font may be better used either by placing it in the churchyard or by placing it in Maxstoke Castle where it would be kept by Mr Fetherston-Dilke with the possibility of it being returned to the church building were that deemed appropriate at some stage in the future. The recommendation from the DAC that there should be an appointment of an archaeologist to carry out a watching brief was immediately accepted by the Parish.

### **THE POSITION OF THE INTERESTED PARTIES**

3. There have been no objections from the public to these proposals.

### **HISTORIC ENGLAND**

4. The initial submissions from Historic England concentrated on the proposal to move the Victorian font. At that stage it was unclear as to how significant the font was although they pointed out that it has a number of good carved details including decorated capitals and four carved depictions. They were troubled that as the font had been designed for use indoors, proposals to relocate the font within the church yard would encourage rapid weathering and deterioration of its detailing. As a result of this initial correspondence a site meeting was arranged and on the 30 January 2018 they indicated that they were content with the proposals of the Parish. Their letter said “having discussed the principle and methodology of relocating the Victorian font, we recognise its arguably lesser contribution to the significance of the building and understand the needs of the Parish. Some further benefit is to be found in the reuse of the churches Georgian font which is to be given a more prominent position in the space. We would advise that the DAC satisfies itself as to the relocation and long term weathering and security of the Victorian font.”

5. The Victorian Society were consulted and they point out that in Pevsner's Warwickshire edition the font is described as of "caen stone with serpentine marble shafts, 1887". The Petition describes the font as dating from 1850 but it appears that the precise dating by Pevsner may well be correct and I have certainly not seen any evidence to the contrary. It may not be without significance that in the 1966 Pevsner edition no mention was made of the font but it is mentioned in the updated 2016 edition. Whatever the position I agree however with the observation of the Society that the provenance of the font should certainly be established, regardless of its fate and that is something that I would look to the Parish to undertake. They are also concerned about the proposals in relation to the carpet of tiles which surround the font. "They are in a red and black checkerboard pattern, interspersed with a good many carrying a fleur-de-lys pattern. Four of the tiles bear the symbols of the four Evangelists. They point out that "together" (for together they must be considered) the font and its tile work are a distinguished assemblage, one which contributes to the character, appearance and general richness of the historic interior." They submit that the loss of the font and the reworking of the tiles would therefore be harmful and highly regrettable. Accordingly they enquired of the Parish as to whether there would be anywhere else that the space needed for children and for private prayer could be found. They object to the relocation of the font to the churchyard on the same basis as Historic England, namely that the font was not designed to be out of doors and there is likely to be a deterioration in its condition if that were to happen. They enquire as to whether the font could be stripped of its protruding base thus freeing up sufficient space, for the Parish's purpose and perhaps elsewhere in the church. If that was to happen they would raise no objection.
6. Because the proposed work involves the removal of the font I directed that the views of the Right Reverend David Urquhart should be sought by email to the Register dated the 24 April 2018 he replied "I am in full support of these proposals that have been considered carefully and provide an appropriate solution both to restoring an historic basin for baptism in a traditional place near the entrance, retaining the more recent font in the churchyard and creating more space for people inside."

## **RECENT DEVELOPMENTS**

7. As a result of the concerns expressed by both amenity Societies about the potential damage to the font were it to be moved to the churchyard I invited the Parish to look

to see whether there was any other way that the font could be kept, could continue to be accessible to the Parish and those visiting the church but at the same time be under cover. I am grateful to Michael Fetherston-Dilke, of Maxstoke Castle which adjoins the church, for his offer to maintain the font in an appropriate place within the castle and to allow public access to it. I anticipate that a notice to that effect with photograph of the font in its present position would be on display in the church. The advantage of this is that the font could be returned to the church were it felt to be appropriate but at the same time it would be kept safe without it being exposed to the elements. The disadvantage would be that it would obviously be less visible to those visiting the church than if it were placed in the churchyard with an appropriate plaque setting out its provenance.

### **THE SUMMARY OF THE POSITION**

8. It therefore seems that the only part of the proposals to which objections are raised relate to the position of the Victorian font, and the tiles that surround it. There does not seem to be any challenge to the Parish's desire to utilise an appropriate space for children attending the services and for a votive stand.
9. All parties have agreed that I can deal with the Petition on the basis of written representations and nobody has required either to be a party opponent or to insist upon an oral hearing

### **THE BACKGROUND**

10. Before I consider the merits of the Petition it is important that I put it into the context of the background of the church. The Parish Church was built sometime after 1333 by Sir William De Clinton who also built Maxstoke Castle. In 1342 he developed the existing Chantry into a Priory and at the reformation the Priory was dissolved and was granted to the Duke of Suffolk, one of Henry VIII's many brothers-in-law. It was then sold to a London Goldsmith for £230.00. At the reformation Maxstoke Castle was purchased by the Dilke family and has been continuously occupied. One of the church wardens is a direct descendant.
11. The church itself is considered to be a surprising building for Sir William De Clinton to have provided. The guidebook to the church suggests that it may have been a chancel to a church never built. The walls are of local red sandstone ashlar. The church is oblong, and has no division between the nave and the chancel. The side

doorway is normal, but the West Door is a perpendicular insertion. On the south wall there is a “low-side” window giving light on the Priest’s stall but the church is dominated by the original East Window with its slender tracery. There are fragments of 15<sup>th</sup> century glass in the windows and on the floor of the sanctuary there are 14<sup>th</sup> century tiles recovered from the ruins of the priory when the site was excavated. The present ceiling was put in in the 18<sup>th</sup> century as was a Gallery with fielded panels, giving the church a “Georgian” appearance. When the former box pews were done away with the oak from them was used to panel the sanctuary in the lower part of the nave. At the west end a Victorian bell tower has been built and a clergy vestry has been added on the south side. The church has some splendid memorials and adornments (one of them being to Thomas Dilke and his wife Elizabeth who died in the 17<sup>th</sup> century). There are Hatchments of the Fetherston and Dilke families attached to the North and South walls. A royal coat of arms dated 1707 at the time of Queen Anne together with an earlier but similar coat of arms hang on the West wall.

## **THE STATEMENT OF NEEDS**

12. The Statement of Needs indicates that as the church is a small essentially one roomed church (with some storage, balcony and vestry), the church lacks both the room and the discreet spaces in which to meet particular needs. The church has done its best to make the building flexible but the gift of a baby grand piano some five years ago has highlighted the need for better use of the space. The font at the southwest corner of the church is redundant because the space around it is very limited making it unsuitable for baptisms when it is desirable to gather close family as well as parents and god-parents around. The last time the Victorian font was used was many years ago and the Georgian font is presently the only font that is used when baptisms take place. The cupboard needs updating and the tiles around the font are lifting. The desire of the PCC is to see the small and discreet space used for two distinct purposes. Firstly it would be a space for families to use with pre-school children – providing some storage for children’s books and a few soft toys, some seating, and a carpeted area. This could be used during worship and at other times when people visit. The second need identified is a space for private prayers and in particular for a stand for lighting votive candles.

## **THE EFFECT OF THE PROPOSED WORK**

13. In the Statement of Significance, the Petition advocates that the church building will become more usable and that the need for change is in the opinion of the Parish much greater than the significance of the negative impact of any change. They acknowledge the negative impact of the removal of the Victorian font. This font was donated by the Black family whose family included a former Vicar and Captain Black who died in World War 1, is buried in the churchyard and whose name appears on the War Memorial. None of the Black family still live in the area but given the connection with the churchyard it was felt that the positioning of the font in the churchyard close to the grave of a member of the family and to the commemoration on the War Memorial was an appropriate positioning for a font that had not been used for many years and which was occupying the only potential space where the Parish could carry out the changes that they required. The Parish had submitted to me that the font will weather relatively well and be a churchyard feature for many years. They give as their opinion that the relocation of the Victorian tiled floor with its decorative fleur-de-lys tiles and the four tiles depicting the Evangelist will have a positive impact on the church as the tiles will be moved forward and without the font at their centre will have a new pride of place and demark the area for private prayer.

## **THE DISCUSSION**

14. As I have indicated earlier in this judgment much of what is proposed is not controversial. The issues that I have had to focus upon relate to the objections raised in respect of the Victorian font and the tiles that surround it. Having considered the matter fully and having had the benefit of an inspection of the church I make the following findings;

- i. The unusual design of the font and the tiles make them to be significant features of the church and are themselves of special architectural interest. I bear in mind however that the Parish's proposals involve the tiles themselves becoming a more prominent and visible feature and that the Georgian font which has been used for many years will continue to be used confirming the redundancy of the Victorian font as an object the purpose of which is no longer required. Whilst the Victorian font has in itself intrinsic artistic value, the Georgian font is, as I find, more harmonious to the church itself which, as I have already indicated, is of Georgian appearance. However

although I do not find that the proposed works in respect of the tiles would result in harm to the significance of the church as a building of special architectural or historic interest, I do find that the removal of the font would result in such harm although the harm is mitigated by the ongoing use of the Georgian font.

- ii. When considering how serious that harm would be much will depend upon the circumstances in which the font is kept. Were it to be placed in the churchyard and were I to be satisfied that the weathering which would inevitably occur would result in minor harm over a prolonged period of time then I believe that the Parish's original idea of placing the font in the churchyard would greatly mitigate the seriousness of the harm. If on the other hand the weathering would have a significantly adverse effect on the font then the seriousness of the harm will be much less if it was to be kept safe in Maxstoke Castle.
- iii. Either way I am satisfied that the Parish has advanced a clear and convincing case which will necessitate the removal of the font because although the Victorian Society have invited the Parish to consider whether there is anywhere else in the church that the font could be placed I am satisfied from my inspection that there is no such place and that the Parish's desire to free up space in particular for children is entirely understandable and cannot be satisfied in any way other than by the removal of the font.
- iv. I am aware that the Parish has offered the font to other churches but no interest has been expressed. I am satisfied that other options have been explored and that the only two options which remain, once I am satisfied that the mission of the church requires the space, are placement in the churchyard or placement in Maxstoke Castle.
- v. So far as the tiles are concerned as I have found that their relocation would not result in harm to the significance of the church it seems to me that although the presumption is that things should stay as they are, that presumption can readily be rebutted. In fact the tiles under the Parish's proposals will be a more noticeable feature than they presently are. I do not believe that the significance of moving the font will be great. That is all the more so the case because on either of the

two proposals before me, the font will be kept either in the church yard or in close proximity and thus will continue to be a part of the church even if not within the building itself. I bear in mind that attempts to offer the font to others has not been successful and that the font itself is, in the words of the Parish “redundant”. I do not therefore find that the removal of the font would result in serious harm to the church as a building of special architectural or historic interest.

- vi. In considering the justification for carrying out the proposals I am satisfied that the need to develop the church congregation and in particular to attract families has been hampered by the present layout. I am satisfied that the Parish have thought long and hard about how they could best use the space that they have and I am satisfied that the only area where young children could be accommodated and where a votive stand could be placed is in the South West corner and that that would effectively mean the removal of the Victorian font. I am satisfied that there is nowhere else in the church where that could be placed and I also accept the Parish’s submissions that in fact the lack of space around the font make it unusable for the purpose for which it was intended.
- vii. In the light of my findings I find that the public benefit and in particular the putting of the church to viable use that is consistent with its role as a place of worship and mission outweighs any harm caused by the removal of the font. I am further satisfied that the Petition as a whole represents a way forward for the Parish whilst at the same time paying due regard to the need to safeguard what is a fine medieval building.
- viii. My only concern relates to the positioning of the font. I can see that there are significant advantages to the font being moved into the churchyard and with appropriate signage would tie in with the Black family member buried in the churchyard. On the other hand I, like the Amenity Societies, am concerned about the potential damage of it being exposed to the weather. That can be safeguarded by the acceptance of the offer that it should be transported to Maxstoke Castle. That would be a safer option in terms of the fabric of the font but may well make it less visible and will of course remove it from the immediate vicinity of the church where it has rested for at least 130

years. If I were satisfied that the font itself would not suffer significant damage by being placed in a churchyard, that would be my preference. However if such evidence was not forthcoming then it seems to me the generous offer of the Church Warden presents an appropriate position. I also bear in mind that I have not heard the views of the Bishop of Birmingham as to the placing of the font in Maxstoke Castle and have only received his approval to the placement of the font in the churchyard. I therefore grant the Petition in all aspects save that so far as the font is concerned I provisionally authorise its removal to the churchyard as the Parish seek but I make it a condition that I receive evidence from a suitably qualified source as to the likely effect of the font being exposed to weather. In the event that that evidence indicates a significant likelihood of damage then I authorise the removal of the font to Maxstoke Castle with a condition that the Parish provide a notice containing a photograph of the font in its present position and details as to how it may be accessed by anybody who wishes to inspect it. The second alternative is made subject to the views of the Bishop of Birmingham as to the removal to Maxstoke Castle in the event that the positioning in the graveyard is likely to cause significant damage. I would wish to receive confirmation as to the position within three months whereupon I will make a final decision as to the eventual positioning of the font. However I make it clear that the Parish may proceed with the work and that the font should be placed in a safe environment pending my eventual decision as to it.

15. In the light of those findings and applying the legal criteria set out above I am satisfied that the Petition should succeed and that a Faculty should be granted but I propose to attach conditions to the Faculty in so far as it relates to the Victorian font. Those conditions are:

- i. The Victorian font may be positioned in the churchyard in accordance with the Parish's Petition but only if evidence is provided to the Chancellor that the placing of the font in the churchyard will not result in significant damage to the font as a result of the effects of weathering.

- ii. If it is not possible to place the font in the churchyard without such weathering the font shall be held at Maxstoke Castle on behalf of the Parish and thus will still be subject to the Faculty jurisdiction. Before that is done the views of the Bishop of Birmingham should be sought as to the positioning at Maxstoke Castle as although I have had the benefit of his advice concerning the positioning in the churchyard, I have not had the benefit of his advice in relation to the font being placed in Maxstoke Castle.
- iii. An appropriate notice with photograph should be exhibited close to where the Victorian font presently is and, in the event that it is placed in the churchyard, an appropriate notice be placed by it setting out the history and its connection with the Black family.

**Dated the 19 October 2018**

**Mark Powell QC**

**Chancellor for the Diocese**