

Neutral Citation Number: [2025] ECC Yor 1

IN THE CONSISTORY COURT OF THE DIOCESE OF YORK

IN THE MATTER OF HESLINGTON, ST. PAUL

PETITION NO. 2023-091862

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## JUDGMENT

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### **Introduction and background**

1. By a petition dated 15 January 2024, the petitioners (the “Petitioners”) seek to bury the remains of a Victorian font in the churchyard at St Paul’s church, Heslington.
2. Heslington is a suburban village lying south-east of the centre of York with a population that has grown significantly over time. St Paul’s is a joint Anglican and methodist church and, as well as serving the increasing local community, it also serves the University. It is used by a Cantonese speaking Chinese congregation on Saturday afternoons and a Korean congregation on Sunday afternoons. St Paul’s is grade II listed.
3. As part of a major reordering in 1973 (described in greater detail below), a bold stainless steel font (the “New Font”), surmounted by a dove, was introduced into the church. It is very much of a piece with the present bold and modern interior and is moveable by design. It sits in a niche Baptistry, lit by an overhead window, providing a striking interior focal point.
4. The New Font replaced a carved 19<sup>th</sup> century font (the “Original Font”/the “Font”) made from soft limestone which, unusually, is listed in its own right. Its listing entry reads as follows:

*“Font, approximately 2.5 metres to north of chancel of the Heslington Church GV II Font. Probably mid C19. Sandstone ashlar. Gothic style. Waterholding base, surmounted by group of 4 columns with stiff-leaf foliage supporting octagonal font with sunk quatrefoils and foliate bands. Included for group value.”*

5. It seems that, most likely as a consequence of the radical changes brought about by the 1973 reordering, with which the Original Font is stylistically out of keeping, and as a consequence of the introduction of the New Font, a decision was taken to place the Original Font outside and use it as a plant pot. Although the Registry has diligently consulted records held at the Diocese's Borthwick Institute in order to unearth details of the process and permission which led to this and to identify when the permission to do so was granted, the available materials are incomplete as regards the Original Font. The precise circumstances of its removal outside and subsequent treatment are therefore not known<sup>1</sup>.
6. In recent years, significant deterioration in the condition of the Original Font was noticed. In particular there was extensive cracking and major new areas of loss to the rim of the Font. A decision was made to bring it inside the church in order to prevent any further damage from weathering or vandalism. An interim faculty permitting this was granted in October 2022 by my predecessor. At the time, it was envisaged (and the terms of the interim faculty record this) that conservation work would be undertaken and that the Original Font might be re-located as a "museum piece". To that end, a professional stone conservator ("Rook Heritage Consulting") was consulted and a conservation report was prepared (the "Conservation Report"), dealing with the condition and options for repair of the font. Rook Heritage Consulting prepared the Conservation Report by inspecting the Original Font in situ in its outside location as the Font had not yet been moved and the pedestal was attached to two modern paving slabs using a hard mix of concrete.
7. The Conservation Report found that the Original Font had suffered badly from environmental weathering, extensive cracking, loss of a number of carved panels and complete loss of some decorative elements, blocked drainage and stone decay at the base of the font pedestal. The conservators also identified more recent impact damage to the rim, which appeared to be "*from someone attempting to climb onto the font or striking it with a stick or other object*". Immediate removal inside to prevent what was expected to be its total loss of the Font if it remained outside, due to the action of frost in the deep cracks in the font, was recommended. It was thought that it would then be possible to clean, repair and re-site the font and quotes were provided for that work.

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<sup>1</sup> Although the petition refers to the font having been placed outside during the 1973 reordering, I note that the font's listing entry dates from 1986 and refers to it being "just north of the chancel" at that time.

8. Pursuant to the interim faculty referred to above, works began in late 2022 to move the font inside. In order to do so the basin was successfully removed from the plinth and moved inside. However, when the lower section of the font was cleaned ahead of its removal it was discovered that it had been reconstructed around a stainless steel dowel rod running through the entirety of the piece and extending below ground level. Embrittled bitumen and concrete areas showed that there had been a number of attempts at repairing the lower section and the whole area was badly fractured. When the concrete mix and paving slabs securing the base were removed, the historic repairs shattered with extensive loss of original material. The conservators reported that the original lower section is no longer structurally sound enough to support the Font's basin. All salvageable parts have been brought into the church and there both sections remain (the basin and the shattered remains of the plinth and lower section), at present sitting on wooden pallets behind a pew.
9. Rook Heritage Consulting was asked back to re-assess the condition of the Original Font following its relocation indoors and the damage that had been suffered during that process. In an updated conservation report (the "Updated Report") it was concluded that whilst it would still be possible to clean and conserve the basin, the lower section was not reparable and so the future options for display would either require the basin to be set at floor level or for a brand new plinth or museum display stand to be created in order to support it.
10. Having initially considered that an attempt would be made for the Original Font to become a museum piece, its very poor condition and the expense involved in repairing the basin and manufacturing a new plinth caused the Petitioners to have to reconsider their options. A number of possibilities were explored, including: following through with repairs, construction of a new lower section and finding a location for display within the church; handing the Font over to a museum for display; preserving the Font in diocesan storage facilities; or burying the font in the churchyard.
11. Having consulted with the Archdeacon and the DAC and having explored the options above, the Petitioners concluded that burial of the font was the best outcome in all of the circumstances (their reasoning is explored further below) and the Petition is brought on that basis.

## **Consultation**

12. The proposal is recommended by the DAC, unanimously supported by the PCC and there are no objections from members of the public. A number of consultees have also been approached in relation to these proposals. Replies were received, as I describe further below, from Historic England (“HE”), the Victorian Society and the Church Buildings Council (the “CBC”).
13. Each of the consultees has raised objections, but none have elected to become a party opponent. I have, however, taken their objections into account in reaching my decision.

## **St Paul’s church: its historical and architectural significance**

14. St Paul’s church is a Grade II listed building which was substantially rebuilt as a new church in 1858. Its origins as a chapel of ease to York Minster date from much earlier. As described above, it underwent a major extension and a dramatic reordering project in the early 1970s when it became a joint Anglican and Methodist church serving both the University and the parish. The reordering followed the arresting and uncompromising design of Ron Sims, who introduced a strong, Brutalist style to the interior and removed the north wall of the nave, rotating the axis of worship north-south. Sims also introduced linked octagonal extensions with pointed rooves, representing the tents of Israel ranged around the sanctuary as they journeyed through the wilderness. The church is fully pewed with movable pews so that the space can be organised to accommodate a number of styles of worship.
15. The majority of the interior of the church is strikingly original and modern in appearance as a consequence of Sims’ radical re-design and the 1970s materials used throughout, such as forticrete walling, extensive use of breeze blocks, exposed aggregate concrete ceilings, plasterboard and sawn timber slats. The original Victorian chancel remains as it was, screened from the nave, and the nave south wall retains some Victorian tracery (although I accept the petitioner’s analysis that this “...*has been so well blended into this reordering that it is difficult not to read it as part of the reordering.*”) Although the boldness of the reordering was initially considered startling and controversial, the conversion of St Paul’s as a Victorian estate church redesigned for modern styles of worship has ultimately proven very successful. The church received a Grade II listing in 1986.

### **The proposed burial of the Original Font**

16. The Petitioners wish to bury the Original Font in the churchyard. The shining stainless steel New Font has been successfully in use since the 1973 reordering and forms an important focal point of the striking modern interior. The Original Font has been outside for many decades and is sadly extremely degraded and damaged. Whilst it is clear from their correspondence in support of their request that the Petitioners do not wish the Original Font to lose its connection with St Paul's, equally they have come to the conclusion that its current condition renders it unattractive and also that, even if repairs to bring it back to museum quality were affordable, there is no space for it and it no longer has a logical or natural place inside the reordered church.
17. The thinking behind this proposal has evolved over time, from the original idea of investigating its restoration for display as a museum piece to the current proposal of burial in the churchyard. Even once the idea of proposing the burial of the Original Font took root, the documents originally supplied by the Petitioners in support of it were somewhat scanty. In particular – and this is a matter of which all the consultees complained – the original Statement of Significance, which is extremely short, simply reproduces the Font's listing entry and states that it was moved outside in consequence of the Sims reordering. There was no assessment of the Font's heritage and significance beyond this. There was no assessment of the history, appearance or significance of the church as the setting for the Original Font. Given that the petition seeks the burial of the Original Font, I considered that these were matters which should have been addressed in the Statement of Significance. The original Statement of Need was similarly short and lacking in detail.
18. Following criticism of them by consultees, and pursuant to directions from me, the Statements of Significance and Need were helpfully amplified in due course (although it is fair to note that criticism remains from the consultees, the Victorian Society in particular, that they still do not go far enough in their analysis). It is also the case that the thought the Petitioners have given to this proposal is evidenced in documents beyond solely the Statements of Significance and Need – it includes correspondence from the Petitioners, consultations with the DAC and third parties and the Petitioners' responses to the consultees' objections.

19. Drawing together the content of the various materials before me reveals the following. The Original Font had an octagonal basin with different motifs in each quatrefoil, five of which are conventional foliage patterns but three use more specific medieval imagery of a bird in foliage, a green man and a pelican. Much of the detail has been lost by weathering and vandalism (a comprehensive list of the damage and the original design is contained the Updated Report and not recited in detail here). The Petitioners evaluate the Original Font in the updated Statement of Significance and conclude that *“Its significance lies in the group value it holds within the building as it most likely formed part of the original work by JB & W Atkinson<sup>2</sup>.”* The DAC has provided its comments on the Original Font, including a note that the historic listing description *“...is not now the accurate description for the font following the damage to its base...”* and noting *“...surprise it was listed separately in the first place...as it’s definitely on the line for significance (or not)”* and that *“...it’s not a work of great artistic merit and will create clutter inside the church”*.
20. From the various assessments of the Original Font before me, it appears that it is currently very different in appearance to that which was assessed and considered sufficiently significant to warrant its own listing in 1986. That is not to say that it could not be restored to a semblance of its previous appearance, but much of the original materials have been lost and therefore there would be an appreciable part of the Font that would be reproduction. The original plinth and base is beyond repair. If the basin were to be remounted it would be onto a totally new masonry plinth (or alternative structure).
21. In light of the points set out above, it appears to me that the damage to the Original Font has radically changed its appearance, any likely future composition and its attraction as a museum piece from that which it enjoyed when it was housed in the church at the time of its listing entry. It is evident that significant specialist conservation and repair work would be required to restore the basin and that a whole new lower section would be required to be manufactured from scratch in order to support the basin. The fact that it needs these works does not wholly obliterate its significance, which is grounded in its history and is expressly identified in its listing entry as deriving from its *“group value.”* However, the loss of historic fabric and many original features arguably diminishes the Font’s significance and

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<sup>2</sup> I.e. the architects of the church re-build in 1858.

it is no longer recognisable as the noteworthy Victorian font that it was before its disastrous period spent as a plant pot outside the church.

22. Furthermore, the quality of the Original Font's historic functional relationship between it and the church interior and its contribution as a juxtaposing piece in the newly modernised church - which features are likely, in my view, to have contributed to its interest and thus its individual listing - have been seriously eroded by its long absence from the interior, by the damage it has suffered to the quality of its appearance and its original fabric and features, and by the success of its replacement by the New Font and that item's enhancement by the feature-lit Baptistry which has contributed to it taking on such a striking and significant role as a focal point to the interior<sup>3</sup>. These are conclusions which are supported in correspondence by the conclusions of the Church Buildings Advisor and Dr Jane Greville (DAC member and HE nominee) who were asked to provide their comments on the proposals to the DAC.

23. As for the need to bury the Original Font, in the amplified Statement of Need and in various items of correspondence, the Petitioners cite insufficient funds for the required repairs, the lack of space in the interior for display of the Original Font and the dissonance between the Brutalist style of the interior and the Font's Victorian appearance. It is said that "*The church at Heslington is not wealthy and the repair of the font, for which the purpose would not be missional nor form part of our liturgy, would be beyond our means in a time when pressures are great to meet running costs and being asked to increase our Free Will Offer to the diocese.*" Whilst recognising the significance of the Font and its history as part of the original building, the Petitioners comment that even if they were able to afford the cost of repairs and the manufacturing of a new lower section "...we feel that the church has now changed so dramatically that it no longer fits within the context of the building. It is for this reason that it was originally moved outside."

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<sup>3</sup> It is noteworthy that the records of the original Sims redesign show the New Font in a different place to its current location (it is shown just north of the chancel) and there is no record of a Baptistry. The records are, as noted, incomplete and the faculty permitting the construction of the Baptistry is not available. However, it is apparent that the subsequent introduction of the Baptistry - with its overhead natural light - has greatly complimented and enhanced the shiny stainless steel New Font in a way which appears to have generated a focal role for it in the interior that was not as evident when both fonts were in situ at the time of listing.

### **The consultees' position**

24. As I have noted above, specialist consultees have been contacted in this case. The CBC, HE and the Victorian Society have all responded.
25. The position of those bodies in relation to the proposal to bury the remains of the Original Font is as follows.
26. The CBC criticised - with justification - the inadequacy of the initial Statements of Significance and Need and pointed up what appeared to be an inappropriate minimisation on the part of the parish of the significance of the Original Font, based solely on its current dilapidated state. The CBC's position is set out in a letter from Jacinta Fisher dated 27 August 2024, in the following terms:

*“Due to the font’s listed status, its removal and subsequent burial would constitute the disposal of a listed heritage asset which should not be undertaken lightly...The fact that the font has its own list entry indicates...it should not be dismissed as being of no interest. This grade II listed font should be treated similarly to other individually listed structures in a churchyard including tombs, monuments and war memorials...The condition of the font should not influence the decision for it to be kept. The removal of this listed structure may also require planning permission.*

*The Council considers that it would be premature to form a view to consider the removal and burial of the listed font based on the parish’s statements of significance and needs and the stone font condition report”*

27. As noted elsewhere, the original (scant) Statements of Significance and Need were subsequently replaced by improved and augmented versions. The CBC were provided with the revised documents in December 2024 and invited to make any further comment, if any. The CBC replied by email on 17 December 2024 stating that

*“The Council is happy for the Chancellor to take its initial correspondence to date into account in reaching a decision and does not wish to become a party opponent.”*



28. HE's reply, from Alexander Harrison dated 21 December 2023, commented helpfully on the Original Font and its contribution to the church. HE expressed concerns over the principle of burying the Font, as follows:

*“Removing fonts from churches causes some harm to their significance through erosion of the communal and historic value that fonts contribute to the church’s significance. With this font being listed in its own right and possessing its own artistic and communal significance, this harm is heightened. Whilst it would be preserved underground, its special architectural and historic interest would be entirely lost through its burial in a similar way to how a building would if it were demolished. Once the font is buried there is no guarantee of ensuring its preservation, and there would be no way of monitoring its condition. The appreciation of the asset would be gone and as generations of parishioners come through the church, the memory of the font and the communal value it contributes would diminish over time.”*

29. HE concluded that it would support the retention of the Original Font and it being exhibited within the church.

30. The Victorian Society's view was expressed in an email from James Hughes dated 5 February 2025. The Society did not accept that the updated Statements of Significance and Need had sufficiently addressed the Original Font's importance or the impact of its proposed burial. It stated:

*“The proposed burial of the font would result in the complete demolition of a Grade II listed structure causing substantial harm to the significance of this heritage asset. Substantial harm to Grade II listed structures should be exceptional, and whilst we understand the traditional theological arguments in favour of burial, options that would preserve the font and its significance should be given preference...the proposal of relocating the font within the building, where its condition could be stabilised, should be fully considered.”*

## **Consideration**

31. St. Paul's is, as I have said, a Grade II listed building. The Original Font itself has its own designation. Proposals for alterations to listed church buildings fall to be assessed in

accordance with the “*Duffield* questions”, that is to say, the guidelines set out by the Court of the Arches in *Re St. Alkmund, Duffield* [2013] Fam. 158, at [87]:

*“(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... 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 *In re St Luke the Evangelist, Maidstone* [1995] Fam 1,8), will any resulting public benefit (including matters such as liturgical freedom, pastoral wellbeing, 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 II\*, where serious harm should only exceptionally be allowed.”*

32. However, before I turn to the question of harm which the *Duffield* questions direct me to focus upon, it is appropriate to consider the appropriateness of burial of the Original Font at all and, in thinking about this, to bear in mind Canon F1 of the Font which provides that:

*“1. In every church and chapel where baptism is to be administered, there shall be provided a decent font with a cover for the keeping clean thereof.*

*2. the font shall stand as near to the principal entrance as conveniently may be, except there be a custom to the contrary of the Ordinary otherwise direct; and shall be set in as spacious and well-ordered surroundings as possible.*

*3. the font bowl shall only be used for the water at the administration of Holy Baptism and for no other purpose whatsoever.”*

33. A post on the Law & Religion UK blog entitled “*They bury fonts, don’t they?*”<sup>4</sup> reviews case law and academic writing on the topic and helpfully sets out at some length the history and trajectory of the once common, but now seemingly rare, practice of the burial of disused fonts. The article concludes that “...now, despite a chink of flexibility from some DACs, consistory courts seem very reluctant to permit the practice.”
34. Case law on the question supports the article’s conclusions. Chancellor Petchey’s judgment in *St Michael and All Angels, Blackheath Park*<sup>5</sup> contains a comprehensive review of relevant case law, noting that there appears to be a common theme indicating that the burial of fonts should be seen very much as a last resort and that a sequential approach should be adopted, involving considering the availability of the following options in turn: relocation in the church, relocation in another church, relocation to a museum, sale, storage or burial or disposition in a tip. The case law shows a number of these alternatives to burial being preferred (e.g. faculties permitting rehoming a font in another church or museum<sup>6</sup>, retention of an intact bowl but “dumping” the destroyed remains of a pedestal into a landfill site<sup>7</sup>, sale of a font<sup>8</sup> and relocation to a store<sup>9</sup>).
35. The reasons why these routes – which, I note, often carry the consequence of severing the font’s link to the church and removing the realistic possibility of reintroducing it to the church interior at a late stage in the event that there is a desire to do so - should be considered preferable to burial in the churchyard are elusive and are not articulated in the case law. In fact in *St Michael and All Angels, Blackheath Park*, although the learned Chancellor ultimately elected for storage of the font in that case, he expressed some warmth toward the idea of burial: “*I am, however, attracted by the Petitioners’ approach that the best way forward is to “decommission” the font by way of burial and thus achieve finality. If it transpired (which seems very unlikely) that the view was taken in the future that a mistake had been made, the font could be recovered...*” Elsewhere in the judgment, Chancellor Petchey also cites a 1999 decision of Cameron QC Ch, sitting as Chancellor of

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<sup>4</sup> David Pocklington, Law & Religion UK blog posted 7 April 2015

<sup>5</sup> [2016] ECC Swk 13

<sup>6</sup> *In re St Bartholomew, Kirkby Muxloe* Consistory Court of the Diocese of Leicester 24 August 2015

<sup>7</sup> *In re St Philip’s, Scholes*, 2016 ECC Lee 5

<sup>8</sup> Contemplated by the Court of Arches in *Re St Peter’s, Draycott* [2009] Fam 93

<sup>9</sup> This was the route ultimately elected for in *St Michael and All Angels, Blackheath Park*. See also *In re All Saints, Winterton* [2014] Lincoln.

London in *In re Christ Church, Cockfosters*<sup>10</sup>, where a condition of the faculty granted in that case was “*Unless within four months from the grant of this faculty another church is found willing to have the font as a gift then thereafter the font may be removed in pieces and buried in the churchyard.*” (I note that there were no more recent cases cited permitting burial, despite the comprehensive nature of the Chancellor’s review).

36. The consultees in the case before me all appear to accept the case law-supported conclusion that burial is available as an option of last resort. The consultees’ views as to the undesirability of burial appear to be premised upon the suggestion that burial is tantamount to destruction (“*The proposed burial of the font would result in the complete demolition of a Grade II listed structure...*” (the Victorian Society) and “*...its removal and subsequent burial would constitute the disposal of a listed heritage asset...*” (the CBC); “*its special architectural and historic interest would be entirely lost through its burial in a similar way to how a building would if it were demolished*” (HE)). The idea that burial is equivalent to demolition is not clearly explained, save to the extent that it is intimated that this is because burial would remove the Original Font from its intended church context and place it out of public sight, thereby depriving it of its artistic significance, communal and group value.
37. However that rationale fails to give weight to the fact that the Original Font’s communal value (also its group value, which is the only factor positively identified in the HE listing) and its contribution to the significance of the church would equally well be lost by placing it in another church, relocating it to a museum or a store or selling it to a private buyer (if indeed any of these options were available in this case). It also neglects the reality of the Font’s present appearance and condition: whilst I do not say that its significance has been lost or that it is irreparable, it is undeniable that the Original Font is in a very sorry state and that its artistic significance (in particular the detail of its original design) and historic significance (in particular the integrity of its original fabric) have been seriously diminished by damage over its years outside as a plant pot and the damage caused by its removal indoors. Furthermore, the argument that burial equals “demolition” is unreal. Burial would

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<sup>10</sup> (1999) 5 ECC LJ 490

not result in the physical destruction of the Font. To the contrary burial would be a preservative step, as HE expressly accepts<sup>11</sup>, and is a reversible process.

38. In this case (as explored further below) alternatives to burial have been investigated but are either not available, are not practical or are undesirable.
39. I agree with the line taken in case law from other dioceses that the most desirable route would be to house the Original Font in the church, if possible. Investigation of this route appears to have been the original aim when the interim faculty was contemplated and granted. However, it does not appear that any real attempt had, at that stage, been made to work out either the practicality of finding a suitable space for it within the church, nor to evaluate the aesthetic impact that its introduction would have on the Sims designed interior. These points appear only to have been given meaningful thought once the Font had been moved inside.
40. Upon that further thought being applied, the conclusion has been reached that the Original Font is not capable of being suitably housed within the church. The only area of the church that still reads as Victorian is the Chancel, which is a small space separated by a glass screen and used for small acts of worship and occasional meetings. The Original Font has never previously been placed in the Chancel (the listing designation refers to it as having originally been located “2.5 metres to the north” of it) and there is insufficient space to house it within the Chancel now. Locating it elsewhere within the church has also been investigated and, subject to it being possible to remount and display the Font<sup>12</sup>, two possibilities were identified. The first would involve removing three sets of pews, with the Font still hidden behind the remaining pews. The alternative possibility would make the Original Font more visible and prominent within the interior but would involve the removal of several more pews. I accept the evidence the Petitioners have put forward on this point, namely that the church is frequently at capacity, is widely used by the university, local

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<sup>11</sup> I note also that the history of the matter which brought a petition before the Chancellor in *St Philip's, Scholes* involved the font in that case having been buried at an earlier stage and subsequently dug up and brought inside.

<sup>12</sup> I also have before me evidence from the Petitioners that they have approached three stonemasons to obtain quotes for manufacturing a new plinth for the Original Font and all three declined to quote. The idea of attaching the basin to a museum style base has been rejected as visually “totally out of keeping”.

schools and other local communities and that removal of the movable pews would, in their words “*severely limit our ability to offer the building*” to those who currently use and worship in it. It is also the case, and I accept this point on the evidence too, that locating the Original Font in the interior would, in any event, be unsatisfactory on an aesthetic basis as (even if capable of full repair and proper display) its appearance and style would strike a jarring note within the otherwise cohesive Brutalist, breeze-block based interior that Sims designed. It is also felt to be undesirable – particularly in the sense that it may be confusing to visitors and worshippers - for the church to have two fonts, even if one is more obviously in present use<sup>13</sup>.

41. Having considered these points I am satisfied that the radical nature of the redesigned Sims interior in this church has had the consequence that housing the Original Font within the interior is no longer practical nor desirable, at least in the church’s present configuration and given its present usage. In reaching this conclusion I am highly conscious of the designation of the Font and of the fact that, although it is currently broken and in a poor state, it is nonetheless capable of being repaired and restored to something of its former appearance. Nonetheless, the highly individual modern interior means that both the lack of a suitable space and the confusion of an otherwise unbroken interior character are presently barriers to the reintroduction of the Original Font to the interior as a display item.

42. Relocation to another church has been investigated, including with the assistance of the DAC Church Buildings Advisor, but (perhaps unsurprisingly) over the period of now well over a year that this Petition has been on foot, none has been found that is willing to take the Font. In these circumstances I consider it highly unlikely that a taker is likely to be found. Offers to donate the Original Font to a museum for display have also resulted in rejection. An example of the reasons for rejection (from the Senior Curator of the York Museums Trust) states as follows:

*“...we have to be certain that donations will enhance [our] collections. In this case I’m afraid that it would not as we already have similar items within the collection and aim to avoid duplication. Furthermore, the large scale of this will make its transport, storage and*

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<sup>13</sup> I note that in *All Saints, Winterton* Bishop Ch identified a “liturgical norm” that there should only be one font in a church in which baptisms take place, but he considered that that would be addressed if the old font was not used as a font.

*any potential display difficult. Lastly, we only accept objects which are in a stable condition...*” As with the attempts made to relocate to a different church, I consider that this matter has gone on long enough to conclude that further investigation of relocation to a museum is unlikely to produce any more positive results.

43. That leaves the question of private sale, storage or burial (or disposition in a tip, which is an outcome mentioned in the sequential list of options derived from case law but which I consider wholly inappropriate in this case). Sale has been explored as an option but no buyer has been found<sup>14</sup>. In any event, I also share Petchey Ch’s reservations, expressed in his judgment in *St Michael & All Angels, Blackheath*, regarding the appropriateness of a sacramental object as important as a font ending up in a private collection especially where, as in this case, there is an acknowledged group value for the Original Font, and undoubtedly communal value too, as these aspects would be irretrievably lost by sale to a private collector.
44. The Church Buildings Advisor has confirmed that space for storage in the Diocesan Store is available. The sequence of appropriate outcomes articulated in other cases suggests that this should be opted for in preference to burial. However, after careful consideration I do not agree that that sequence leads to the right outcome in this case. Whilst I have accepted that the Original Font no longer has a place in the interior of this church for reasons both practical and aesthetic, it is nonetheless an important item with a particular significance said to be drawn from the group value it has in association with this church. Storage in the diocesan store, where it may be inadvertently chipped, bumped or knocked over, is unlikely to afford the Font any greater physical protection than burial in the ground would do. It also severs the group and communal value links, and lacks something of the symbolism, reverence and respect that burial would afford it. It is also, in my view, more likely to result in the Original Font being forgotten about and lying permanently moribund in the store than a dignified (and reversible) burial in the churchyard with appropriate record keeping would.
45. In these circumstances I consider that burial of the Font is potentially an appropriate outcome on the facts of this particular case.

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<sup>14</sup> In *Re St Peter, Draycott* [2009] 3 WLR 248 the Court of Arches rejected the CBC’s view that the sacramental nature of the font meant that it could never be sold or disposed of for another use.

46. I turn next to the *Duffield* questions, which apply both as a result of the contribution the Original Font makes to the significance of the church and, by reason of its designation, to the Font itself. I consider that the answer to question 1 is “yes”. This is a Font with its own listing and by definition it is of importance such that burial, where it can no longer be seen and appreciated, is harmful. The Original Font also contributes to the understanding of the 19<sup>th</sup> century rebuilding of the church and, by its burial, the visual connection the Font can make in this regard will be lost.
47. The answer to question 3, requires me to take account of the designation of the Font and the church, their special characters and the contribution the Font has made to the community and to the group value of aspects of the church’s fabric, as described above.
48. This leads me to consider that St Paul’s official listing entry focusses on the 19<sup>th</sup> century exterior of the church, finding several points of detail worthy of comment in the fabric of the exterior. The interior is simply recorded as “plain interior” – there is no mention of either the minimal Gothic area retained in the chancel nor of the detail of Sims’ redesign. Despite the lack of interest in the interior in the listing entry itself, it nonetheless appears to me that in terms of “special character”, this church undoubtedly stands out principally for the current strikingly modern, Brutalist design of the interior and the interesting visual tension created by the juxtaposition of that interior design against both the 19<sup>th</sup> century exterior and the limited and the discrete area of Victorian material retained inside the church.
49. The Original Font has its own designation, which highlights some limited details of its design which have variously been lost or badly degraded in its current state (for example the waterholding base, which has been irreparably broken, and the foliage and foliate bands of its decoration which, according to the Updated Report have suffered “*heavy stone decay...and erosion and loss to a number of the carved panels as well as complete loss of some decorative elements*”). Ultimately the listing entry concludes as follows “*Included for group value*”.
50. The Original Font, if restored, could potentially contribute to the interesting design tension I have noted above. However, I take realistic notice of the current condition of the Font. I



also consider it relevant that the Font has lived outside for decades as a planter without any loss of significance to the church. I take account, too, of the fact that the route that is proposed – burial – is reversible and that I consider that that plays a part in evaluating the degree of harm that would be caused by the works in this case. Assessing these factors in the round I come to the conclusion that whilst the semi-permanent disposal, out of sight, of a grade II listed object - even though it is in a poor state of repair, no longer resembles the item that warranted its designation and was listed for a “group value” which has long been greatly attenuated on the facts of this case, rather than for reasons of its own inherent design quality – is a serious matter, I do not consider that the harm that will be caused in the particular circumstances of this case can fairly be assessed at any higher than moderate.

51. Turning to the question of how clear and convincing a justification is given for carrying out the proposal, I am satisfied that, on their more detailed explanations supplied to the Court after an initially unsatisfactory Statement of Needs, a cogent and persuasive case has been made out for the burial of the Original Font. I accept the Petitioners’ explanation that there is a lack of space within the church to display the Original Font and that to create sufficient space would require a serious impact on seating within the church that would negatively impact its mission. I also accept that the unusual 1970s redesign of the church interior in this case, including the arresting stainless steel New Font, has both obviated the role of the Original Font and led to it becoming an anomalous feature which it would be very difficult to incorporate and read successfully within the interior, even if space were not an issue and the parish had the money to effect the necessary repairs and rebuilding works (which I also accept it does not). Despite efforts to pursue all of the various alternative avenues (with the exception of storage which I have explained above does not meet the needs appropriately in this case) no viable alternative home has been found for the Original Font. There is, also, a desire to respect its historic sacramental and spiritual importance and to preserve both its communal links and the potential to revive its group value in the future, if future generations wish to do so. In these circumstances I am persuaded that burial in the churchyard is the most fitting and appropriate means of answering these needs.
52. In reaching that conclusion I bear in mind that there is a strong presumption against a proposal which adversely affects the special character of a listed building and in this case an individually listed Font. However in this case the moderate harm which I have assessed will flow from the burial of the Original Font is, in my judgment, amply outweighed by the

public benefits the church will receive which include the ability for it to maintain its current seating capacity and therefore continue to successfully deliver mission and worship to its current capacity, which are aspects which would have been compromised had it been required to retain the Font on display inside. They also include the expense the parish is spared in terms of restoration and rebuilding costs and, in my view importantly, maintaining the historical, spiritual and communal links the church has with the Font by retaining it on site in a way which, ultimately, is reversible in the future should there be a desire to unearth and restore it.

### **Conclusion**

53. It follows that in all of the circumstances a faculty shall issue permitting the Original Font to be buried in the churchyard, upon the following conditions:

- 53.1. The Petitioners shall investigate whether any planning permission is required. In the event that it is, it follows that any such necessary permission must first be obtained before the commencement of works;
- 53.2. A record of the Original Font shall be produced and kept including its history and significance and the location, depth and date of its burial, together with photographs of the Font both in its present state and, where available, during its periods located inside and outside the church. Appropriate elements of this record shall be incorporated within the church's information booklet in order to inform the public of the existence and whereabouts of the Original Font;
- 53.3. Advice from the church's conservation architect shall be followed as to the appropriate depth of the burial (which must be above the water table) and as to the surrounding and covering of the Original Font by free-draining material in order to keep it well drained and protected;
- 53.4. The location of the burial of the Original Font shall be marked and protected by a slab or slabs incised with a short text (the material and wording to be agreed with the conservation architect and the DAC) recording that the Original Font is buried beneath;

- 53.5. Upon the discovery of any disarticulated remains the incumbent shall be notified and the remains collected for reburial, being treated with reverence and respect at all times. Any articulated remains shall be covered from public view and the discovery notified to the incumbent. The remains shall be cleaned in situ for recording purposes. The remains shall be recorded and, where affected by the works, removed by a competent archaeologist experienced in church archaeology, for reburial as close as possible to the point of origin.

**Lyndsey de Mestre KC**  
**Chancellor of the Diocese of York**  
**27 February 2025**