

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: ST PETER BREDHURST SOUTH GILLINGHAM (No 2)

J U D G M E N T

1. This is the second petition to come before me this year which relates to this parish. It is also the second petition about which this is a degree of controversy and ill feeling, and where the proper procedure has not been followed. It provides a good example of what can happen when the faculty jurisdiction is ignored or by-passed.
2. The parish church of St Peter Bredhurst, South Gillingham, Kent, is a 12th century Grade II listed church. Like many churches of similar age, it has a churchyard which, doubtless, has been in use as a burial ground for centuries. Unfortunately issues have arisen over its use and abuse. I have already dealt with a petition (the other petition) relating to the removal of items from the graveyard not complying with the **Churchyard Regulations 1981**; see **Re St Peter Bredhurst South Gillingham 2017 ECC ROC 9**.
3. By the petition now before me which was presented on 16th August 2017, the petitioners, the Reverend Canon Brian Senior, Team Rector, Mrs Wendy Keast, Churchwarden, and Mr Ronald Murray, Deputy Churchwarden, have applied for a confirmatory faculty for: “retrospective approval for a prayer walk in the wooded area of the churchyard, including the introduction of a

path, carved mushrooms inscribed with prayers and artwork designed following a study day.” I have seen photographs of the path.

4. There is no doubt that the path was not constructed under a faculty. Equally, there is no doubt that it should have been. Having reviewed the papers, and noting that there were objections to what was being asked for, but that no one had sought to become a formal party opponent, I indicated that I was prepared to deal with this petition on the basis of written submissions, provided that there was agreement in writing from the petitioners to my adopting such a course. I understand that such written agreement has been forthcoming. Having reconsidered the matter, I am of the view that it is expedient and appropriate to deal with the petition in this way, and I am satisfied that this is the proper course to adopt. In saying this, I take into account that with no formal party opponent there can be no cross examination of witnesses, and so credibility is not in issue. Furthermore, there are, in my judgement, no other issues of public interest that might make a full hearing appropriate.

5. The Statement of Need accompanying the petition sets out the background in some detail. In short, a deceased couple who were members of the church left a donation to the church with the intention that then Vicar’s wife, Mrs Lewis, use it for a project of her own choosing. Mrs Lewis had for some time had the idea that a prayer walk should be constructed in the churchyard. Thus it was that the donation was used to sponsor a local artist to make certain objects based on ideas coming from the congregation and local school, which would be placed along a path through the churchyard

6. Unfortunately, before the works could be commenced, Mrs Lewis died. The works were then done to complete her vision, and no doubt, to some extent, in her memory. Much of the work was done by members of the congregation, and the total cost incurred was some £3,000.00. Unfortunately the need for a faculty was overlooked. In part this was because of the emotional situation caused by the death of Mrs Lewis, and in part also because there is some doubt about the extent of the enquiries made as to the need for a faculty. Of course it goes without saying that the oversight should not have occurred, but it is easy to see how and why it did. I accept the explanations put forward by the petitioners. For the avoidance of doubt I am satisfied that the error was as I have described it, and that the petitioners throughout have acted in good faith. There is not a hint of evidence to suggest otherwise.

7. That said it is important to stress that a faculty is a permissive right to effect some alteration to a church building or its contents, or to the churchyard. Carrying out works in the absence of a faculty is illegal, even though the works can be later rendered legitimate by a confirmatory faculty, as is now sought by the petitioners. A confirmatory faculty will not be granted as of right, and if granted may be subject to conditions and may carry costs penalties; see generally; **Ecclesiastical Law Third Edition Mark Hill, paras 7.01, 7.45 and 7.83**

8. At a meeting of the P.C.C. on 23rd May 2017 there was unanimous agreement in respect of the works, and to the petition for a retrospective or confirmatory faculty.

9. The D.A.C., through their Notification of Advice dated 27th April 2017, have recommended the proposals for approval by this Court. There are no riders or provisos to the advice.

10. The Public Notice has produced objections, but, as indicated above, no formal parties opponent. However, I do have two letters of objection before me, which I have read, and have taken into account. Whilst I appreciate that no one can be compelled to become a formal party opponent, the fact is that without such a course being taken by an objector, I have no means of having the objectors' evidence heard on oath or tested in cross-examination. What, though, is clear is that arguments and feelings over the removal of items left in and around graves in the churchyard have become inextricably mixed up with those surrounding the prayer walk. In this context I note that the same individuals have objected on each occasion. This is greatly to be deprecated, and could and should have been avoided if the faculty jurisdiction had been properly invoked at the right time.

11. Mrs Cheryl Tutt in her letter of 9th September 2017 complains that the works are poorly designed and thought out, and badly constructed. She goes on to say that; "If the faculty is granted I hope that those who consented to the creation of the prayer walk without consent are severely reprimanded for their complete condescension of the very rules they claim to uphold," which implies that her main complaint is about lack of due process. She goes on to criticise the clearance of unauthorised items from graves, which tends to confirm my inference. I repeat that the DAC has made no criticism of the design or execution of the works, and the photographs before me do not show poor design or execution.

12. Mr Cross, in a somewhat splenetic email letter dated 11th September 2017, has also attacked the failure to obtain a faculty before the works were carried out.
13. As must be clear from what I have said above, there is legitimate criticism to be levelled at the petitioners for failing to obtain a faculty for the prayer walk before works were commenced. To that extent I have some sympathy with the objections raised. However, in my judgement the failure to observe the correct procedure is not unforgivable on the facts of this particular case, and most certainly not one that requires sanctions to be taken by the Court against the petitioners. Insofar as the works themselves are concerned, I take into account what I have seen in the photographs before me; the D.A.C. advice; the fact that the P.C.C. unanimously approved the works; the fact that there are no parties opponent to the petition and that Mr Cross, at any rate, is not resident in the parish or on the electoral roll.
14. Accordingly, I am persuaded that I should accept the petitioners' arguments. Thus it is that I accept that the works carried out are appropriate, and were properly wanted. In other words, and for the avoidance of doubt, I find that had the proper procedure been followed the appropriate faculty would have been ordered to issue. However all concerned should be under no misapprehension at all that further works not done under faculty are most unlikely to be tolerated. The Petitioners and P.C.C. must be in no doubt about that.
15. In the premises, I direct that that a confirmatory faculty is to issue as sought.

16. I further direct that the petitioners do pay the Court costs, including correspondence fees for the Registrar, and expenses incurred by the Court.

John Gallagher
Chancellor
15th December 2017