
IN THE MATTER OF ST OWEN, BROMHAM

Introduction

1. Damon James Watt died on 27 April 2021 and is buried in the churchyard of the grade I listed St Owen, Bromham.
2. By a petition dated 8 May 2025 (the “**Petition**”) the churchwardens, Frances Bulmer and Tessa Woodcock, and the vicar Reverend Catherine Wilson (the “**Incumbent**”) (together, the “**Petitioners**”) seek a faculty for the removal of grave decorations consisting of brick edging and loose stones within the edging (the “**Decorations**”), which have been erected in front of Damon’s memorial stone and which are not permitted under the Diocesan Churchyard Regulations¹ (the “**Regulations**”).
3. Damon’s father, Stephen Watt (“**Mr Watt**”), although he has not elected to become a party opponent in this matter, nonetheless strongly objects to the proposed removal and has written to the Court to this effect. This is clearly a matter of personal significance to Mr Watt and his family, whose grief is deeply felt and whose instincts to honour Damon are understandable.

Pastoral and procedural history:

4. This matter has endured a difficult pastoral route to this point. The Decorations were added to the plot without permission in or around 2022 and are not compliant with the Diocesan Churchyard Regulations. Mr Watt was informed by the Incumbent that the Decorations did not comply and in September 2023 Mr Watt began the process of applying for a faculty seeking permission to retain the Decorations.
5. As part of that process a PCC resolution was required. The PCC determined that it could not support the application. The minute of the PCC meeting dated 17 September 2023 read as follows:

¹ “Churchyard Regulations 2020: August 2020 Updated July 2023”. For the avoidance of doubt none of the 2023 amendments affect the regulations under consideration in this Judgment

“Application for a Faculty for the decoration of a grave that does not conform to the Churchyard Regulations

The application form asked for a certified Resolution from the PCC on their views on the application. At the PCC meeting on 12 September, there was a very thorough discussion following which the Secretary was asked to draft a Resolution reflecting the discussion to be circulated to PCC members. This had been done and agreed online. Members were now asked to formally approve the Resolution as follows:

“PCC members appreciated that there are a number of other decorated graves where no action has been taken by past custodians. However, the Regulations state that past instances should not be taken as a precedent. Also, if we allow the rules to be broken to this extent, what will be the next requests?

The inner stones, if dislodged, would be a hazard and might damage the blades of the mower. Currently, the surround doesn’t hamper mowing, but this could change in the long-term when there is no-one to maintain the structure of the grave.

The family are not churchgoers, so made a specific decision to choose the churchyard for burial and signed that they had read the Churchyard Regulations. If they had objected to the restrictions placed on the decoration of graves, there were other options for burial.

PCC members agreed that they supported the Regulations and that the churchyard should be maintained in keeping with the church’s Grade One Listed building status. They are in effect custodians of the future for the appearance of the churchyard and its maintenance.

The PCC would need a very good reason to agree to something against the Regulations and nothing in the application provided a reason to go against this.

RESOLUTION: For the reasons stated above, the PCC therefore cannot support the application for a Faculty to approve the decoration of a grave area that did not confirm to the Churchyard Regulations.”

6. The Resolution was passed unanimously.

7. Mr Watt then decided not to proceed with his application given the lack of support from the PCC. Having received confirmation of his decision, the Incumbent contacted Mr Watt again and was informed that he would remove the Decorations in the spring of 2024. However, this was not done and in July 2024 the PCC wrote to Mr Watt with a deadline of the end of September 2024 for their removal and an offer of assistance to him in the process of removal.

8. Mr Watt made no response to the PCC’s communication and its request to remove the Decorations by the end of September 2024. A further period of grace was afforded

but ultimately the PCC resolved² (by a majority of 12 of its 13 members) to proceed with the process of applying for a faculty to remove the Decorations, which is now before me via the Petition.

9. The DAC has considered the matter and recommends the removal to me. The period of public notice³ has elicited no objections to the proposals.

10. Despite the fact that the Petition is, formally-speaking, uncontested, given the significance and impact of the matter to Mr Watt and his family and indeed to the Petitioners and the wider community of users of the churchyard of St Owen, I considered it appropriate to provide a written judgment to explain the basis of my reasoning for reaching the conclusion that I have in the circumstances of this case.

11. At my direction, on 2 June 2025 Mr Watt was contacted by the Registry and given Special Notice of the Petition in order to comment on it. He did so by email on 3 June 2025. The Petitioners have also provided written comment for my consideration. The contents of both submissions are considered further below. Some time has been allowed for further exploration of a pastoral solution although none has been forthcoming. I am grateful to all concerned for the care and courtesy which has been apparent in this matter and I have given very careful consideration to all of the materials before me in reaching my conclusion.

The written representations

12. By email on 3 June 2025, Mr Watt made the following key points:

- 12.1. The unauthorised Decorations have been present for well over three years, since early 2022;
- 12.2. The grave site is very neat and presentable and Mr Watt has been the recipient of favourable comments about its appearance. He asserted that it would always be kept that way;
- 12.3. The Decorations are “*totally flush with the ground*” and therefore present no obstacle to machinery or people;
- 12.4. Over thirty other graves contravene the Regulations in various ways but nothing appears to be done about them and this appears to manifest a discriminatory approach as regards Mr Watt;
- 12.5. There is a pedantic inflexibility in an approach which seeks to enforce the Regulations by forcing removal of the Decorations in this case. The case

² 29 April 2025.

³ 18 June 2025 to 18 July 2025.

warrants a generous and more flexible approach especially where the grave is neat and attractive and has not elicited objections from others;

- 12.6. Mr Watt also refers to his and his family's ongoing grief and their upset if Damon's grave site is disturbed.

13. In response, the Petitioners have said:

- 13.1. The fact that there are many other graves which contravene the Regulations is acknowledged. But it is not correct to say that nothing has been done about them. Since the tenure of the present Incumbent began she has begun the process of contacting relatives of those interred on an individual basis, as well as seeking to develop easy to follow instructions and to take steps to attempt to pre-empt further issues in the churchyard;
- 13.2. The presence of the Decorations of the Watt memorial compounds the problem of churchyard users seeking to ignore the Regulations;
- 13.3. The Regulations specifically state that existing memorials which are in breach should not be regarded as precedent;
- 13.4. Mr Watt's assertion that the grave is at all times exemplary in appearance and would always be kept that way is not borne out by the experience of the Petitioners and PCC. A photograph supplied by the PCC, in contrast to the neat image supplied by Mr Watt, showed the grave in a less well cared-for state, with the loose stones dislodged and overspilling the edging, ending up strewn on the surrounding grass. The Petitioners pointed out that this does inhibit the mowing of the grass between the graves and creates additional work for those who maintain the churchyard. It is also said that, even if the site were to be kept in the immaculate state Mr Watt indicates is typical of his care of it, the future upkeep of the grave would depend upon having relatives or others around who would be equally attentive and assiduous in its maintenance and appearance.

The DAC's advice

14. In its Notification of Advice dated 3 October 2025 (the "**NoA**"), the DAC recommended the works sought in the Petition.

15. In explanatory comments accompanying the NoA, the DAC indicated that it considered it was difficult to recognise any merit in the present case given that Mr Watt introduced the offending features after stating that he was aware of the Churchyard Regulations which forbid them. He had subsequently acknowledged that they should be removed and stated that he would remove them but had failed to do so. In his response to the subsequent proposal by the parish to remove the offending features, he makes statements which the parish has shown to be incorrect. The DAC

therefore commended the proposal by the parish to remove the features which are not approved.

The Law

16. The introduction of the Decorations was a trespass (having been introduced without due authorisation – see further below). However, their removal from the churchyard nonetheless requires a faculty (see the principles set out by Bursell Ch. in *St Mary the Virgin, Burghfield*⁴; paragraph 9 of the judgment of Iles Ch. in *Haughton-le-Skerne, St Andrew*⁵ and my judgment in a separate matter in this Diocese in *Re St Mary the Virgin, Podington*⁶).

17. I must take into account the importance and purpose of the churchyard at this grade I listed church, and the memorials in it, and in doing so have regard to the need to uphold the Churchyard Regulations which are drafted to preserve the sanctity and appearance of churchyards for all users.

18. The Regulations are an instrument which, in essence, delegate certain powers otherwise vested in the Chancellor to incumbents and parish priests – and, in the event of a vacancy, the Rural Dean. The Regulations set out clearly at regulation 3.3 that: “*No monument shall include any ...kerbs...plain or coloured chippings... without first obtaining the requisite permission.*” Adopting a purposive interpretation of the Regulations, although the bricks appear, at present, to be almost flush with the ground I am satisfied that they are a hard edging intended to delineate the grave site and are within the meaning of a “kerb” intended by the Regulations. Similarly, the plain coloured, loose stones within the edging fall, in my judgment, within the prohibition against “chippings”.

19. The Regulations also state, relevantly, at regulation 2.7: “*Existing churchyard monuments should not be regarded as a precedent - this includes those in other dioceses and local authority cemeteries (which are subject to their own regulations).*”

20. Turning to give further consideration to the legal effect of Mr Watt having introduced the Decorations without obtaining permission to do so, the starting point is that a grave is not owned by the deceased (or that person’s heirs) or by the relatives of the deceased. There is no right to erect a memorial over a grave, or prohibited augmentations to it as in this case, without the permission of the Diocesan

⁴ [2021] P.T. S.R.

⁵ [2021] ECC Dur 2

⁶ [2021] ECC StA 1

Chancellor⁷ (see Bursell Ch in *St Mary the Virgin, Burghfield*⁸ and Iles Ch in *St Andrew, Haughton-le-Skerne*⁹). The introduction of any such features without due authorisation is a trespass and the Incumbent has a responsibility to prevent such breaches.

21. The reaction to such trespasses necessarily depends upon careful consideration of the individual circumstances of each case, including the pastoral considerations. However, it is clear that the fact of a disregard of the Regulations and resulting trespass may be sufficient in itself to order the removal of a memorial. For example:

21.1. In *St Andrew, Haughton-le-Skerne* an illegally introduced horizontal memorial ledger in memory of the Petitioner's Royal Marine Commando son was ordered to be removed. There had been a failure by the Petitioner to engage in communication in the faculty process and a consequent lack of justification for the un-permitted introduction of the ledger;

21.2. In *Foots Cray, All Saints*¹⁰ Gallagher Ch. Ordered the removal of a memorial stone placed in a churchyard contrary to the relevant churchyard rules (and which did not comply in its type with the rules). The rules had been provided to the petitioner before interment of her brother's ashes. The Chancellor accepted that there was no deliberate flouting of the rules but found that the petitioner had actual or constructive notice of their terms, meaning and effect and had made no attempt to ascertain whether what she proposed was acceptable or not or to inform or seek the permission of the rector. In these circumstances the Chancellor ordered the memorial to be removed;

21.3. In *Farningham, St Peter & St Paul*¹¹ in the context of considering a petition in respect of a memorial deviating in many significant respects from those permitted by the relevant Diocesan Regulations, Gallagher Ch. was absolutely clear that a bench/shelter that had already been introduced at the head of the grave without any prior consent "*must be removed forthwith*";

21.4. In *The Churchyard of Quarrington Hill*¹² Bursell Ch, after a very full consideration of both the individual memorial in that case - which had

⁷ In the case of a compliant memorial this authority is delegated via the relevant Diocesan Regulations as I have set out above

⁸ [2012] P.T.S.R. 593

⁹ [2021] ECC Dur 2

¹⁰ [2013] John Gallagher Ch., Rochester

¹¹ [2019] ECC Roc 3

¹² [2016] ECC Dur 1

21.5. been introduced without due authorisation – and the surrounding churchyard and other memorials concluded that “...*the fact of the petitioner’s flagrant disregard of the Churchyard Rules and the resulting trespass would in itself be sufficient grounds for ordering its removal forthwith*”. However, the Chancellor’s assessment of the pastoral context of the petition led him to exercise his discretion in favour of granting permission for the memorial to remain, subject to compliance with a number of precise conditions which reversed the most obvious of the derogations from the relevant Diocesan Regulations. I note that the particular pastoral considerations in that case included the extremely tragic and unusual circumstances of the petitioner’s son’s manslaughter the day after the funeral of the petitioner’s mother.

Discussion

22. None of the judgments I have mentioned above are binding on me and I simply have to articulate the approach that will be applied by the St Albans Consistory Court. However, these cases usefully indicate the importance of context and proportionality in the application of the principles, but also the weight which must be afforded to the fact that turning a blind eye to, or otherwise tolerating, trespasses, particularly in cases where there is knowledge of the relevant rules on the part of the trespasser and where the features in question do not comply with those, is unfair on other users of the churchyard who have accepted those rules, acted lawfully, and “*moderated their hopes or expectations accordingly*”¹³. It also generates a risk that others may feel entitled to ignore the Regulations, with a disordering and ultimately detrimental effect on the whole character of the churchyard.

23. The evidence before me indicates that Mr Watt has admitted to the trespass. He was, at all material times, aware of the Churchyard Regulations and of the prohibition in them against the Decorations that he nonetheless chose to introduce.

24. Although one of the arguments he has sought to advance in his informal reply to this Petition is that the Decorations have now been in situ for over three years, there is no question, in this case, of this being any evidence that those acting on behalf of the church had tacitly permitted them or otherwise turned a blind eye to them. Communication between Mr Watt and the Incumbent regarding the lack of permission and need for removal of the Decorations has been ongoing throughout the time the Decorations have been present. Mr Watt has previously expressly recognised the requirement under the Regulations to remove them and has indicated that he would do so. He has, however, never done so and now, informally resisting the

¹³ Illes Ch., *St Andrew, Haughton-le-Skerne*

Petition, seeks the indulgence of the Court to refuse the Petitioners' request for their removal and to allow him to maintain them.

25. It is also not a good answer to point to the fact that there are numerous other memorials in the churchyard which are non-compliant with the Regulations. I have already touched on the honest acceptance of that fact by the Petitioners and their practical answer that the Incumbent and PCC are taking steps to contact the families of those memorials in order to regularise the position as far as practicable. It is to be hoped that these matters may be resolved pastorally, but if and when the court receives faculty petitions they will be considered on their merits. However, even without those steps being undertaken, it is no defence to a breach of laws or regulations to say that others who have also breached them have not been prosecuted or otherwise proceeded against. Furthermore, the Regulations in this Diocese are clear on their face that there is no permissible precedent by reason of other breaches of the Regulations.

26. As to the further point that Mr Watt has raised regarding support for the appearance of the grave site, there is no detailed or attributed evidence of either specific objection or support in this case and therefore I place little weight on the assertions that are made as to the reactions of others to the appearance of the plot.

27. On a related issue, I am confident that Mr Watt's assertion that he maintains the site carefully and takes pride in it looking neat and attractive is true. It is demonstrated by the photograph he has supplied of the site. However, (a) neatness of appearance is insufficient to negate the conclusions as to the proper consequences of trespass and to the considerations of fairness to others that I have reached elsewhere in this judgment; and (b) the evidence supplied by the Petitioners contradicts Mr Watt's assertion that the neat appearance and lack of any obstacle to mowing and maintenance is kept up at all times. To the contrary, the photograph supplied by the Petitioners demonstrates that there plainly have been times when the site is less attractive, less well kept and has given rise to mechanical hazards to those charged with maintenance of the churchyard. That is not only unacceptable for present purposes but also adds weight to the legitimate concern that the grave site may not be as well kept as it generally is now for all time, in particular as members of the family who tend the site variously grow older, move away or die.

28. I have considered all of these foregoing matters in the round. What is clear is that the Decorations are unauthorised. Their introduction was a trespass. In considering the appropriate outcome for this Petition for their removal I bear in mind Bursell Ch's statement in *Re The Churchyard of Quarrington Hill*¹⁴ that "*The consistory court, being a Church court, has always been concerned to act pro salute animae - that is, with*

¹⁴[2016] ECC Dur 1

regard to the pastoral effect that any of its decisions may have – but that concern embraces a concern not only for the individual petitioner but also for all those who may be affected by its decisions.”

29. In terms of the pastoral elements of this case I have the deepest sympathy for Mr Watt and his family, who are grieving and have lost an evidently much-loved son in Damon. The loss is a great one and the appearance of the memorial plot has plainly been designed to seek to honour Damon.

30. These matters form an important element of the context and assessment of proportionality required in the application of the relevant principles and in reaching my conclusions I have considered them very carefully.

31. However, I am also astute to the fact that Mr Watt has, at all material times, been aware of and understood the need for authorisation and compliance with the Regulations before trespassing by the introduction of these Decorations. Furthermore, every memorial in any churchyard will have been placed by a grieving family and no doubt many will have had to inform themselves of the requirement for authorisation and to set aside personal preferences by accepting limitations on the memorial or Decorations they would like, in keeping with the Regulations.

32. Tolerance of trespasses, particularly in cases where there is knowledge of the relevant rules on the part of the trespasser and where the features in question do not comply with the Regulations is unfair on others who have complied and adds to the problem of perceived “precedent” which breaks down the authority of the Regulations and the sanctity and order which they are designed to achieve.

33. For all of the foregoing reasons I am unable to permit the continued presence of the Decorations in the churchyard of St Owen.

34. I should add that I have carefully considered the question of proportionality and whether to adopt a less impactful route, for example leaving the brick edging *in situ* and simply ordering the removal of the loose stones. However, I conclude that this would not be an appropriate way forward in this case for the following reasons:

- 34.1. It would potentially lead to a less attractive appearance of unfilled space at the site;
- 34.2. Allowing part of the Decorations to remain fails to address the unfairness to others who correctly obtain appropriate prior authority and follow the Regulations;
- 34.3. Allowing the bricks to remain would also fail to remedy the risks to long term upkeep identified elsewhere in this judgment given the need to maintain the condition of the bricks and the neat appearance of the interior of the space within them, as well as avoiding any loose or

protruding parts which may inhibit mechanical maintenance of the churchyard even after the time when Mr Watt or his immediate family are present to continue their tending of the site.

Decision

35. Accordingly, I am satisfied that it is appropriate that there be an order for removal of the Decorations. A faculty shall therefore issue in the following terms:

- 35.1. Mr Watt has permission to remove the Decorations by 4pm on 2 February 2026.
- 35.2. In default of removal, the Incumbent and churchwardens are directed to remove the Decorations (whether by themselves or by their agents) by 4pm on 23 February 2026. They must thereafter notify Mr Watt (by recorded delivery via the Diocesan Registry) of the storage location of the brick edging and loose stones and indicate when these may be retrieved by Mr Watt or on his behalf. If they are not retrieved within 2 months of the date of notification they will be deemed to have been abandoned and may thereafter be disposed of or destroyed as the Incumbent and churchwardens see fit.
- 35.3. I give permission to any person affected by this order to apply to the court for any further directions relating to the implementation of the above conditions, should any be required, such application to be in writing by 19 December 2025.

LYNDSEY DE MESTRE KC

Chancellor

19 November 2025