

18 December 2015

In the Consistory Court of the West Yorkshire and the Dales
(Diocese of Leeds)

[2015] ECC WYD 8

In the matter of St Mary's, Wath

Judgment

1. The papers in this petition have been returned to me on several occasions. St Mary's is a Grade II* listed building which dates from the thirteenth century. A faculty is sought for 'the removal of grave kerbstones in the churchyard to facilitate maintenance'.
2. The proposal affects third party rights. Kerbstones, along with all headstones and other churchyard memorials do not merge with the freehold of the churchyard but are owned by the heir-at-law of the person commemorated.
3. The petitioners, particularly Pauline Aldous, a churchwarden who has borne the major burden, sought advice from the DAC as to appropriate notices and consultations. They apparently acted upon this advice but did not attach to the petition proof of having done so and it took several resubmissions before there was sufficient material before me to be satisfied that proper notice had been given (a) in the churchyard, (b) in the parish magazine, (c) on the diocesan website and (d) elsewhere. Proof of notice and consultation is just as important as the notice and consultation itself, however frustrating this may appear for the petitioners.
4. Mindful that many of the grave stones are of an age that the next of kin cannot reasonable be traced I am of the opinion that the petitioners have done all that is reasonable to bring the proposed works to the attention of the world at large. I am also satisfied that no owner has expressed objection to the works being carried out in respect of any given set of kerbstones.
5. The case for carrying out the proposed works is overwhelming. The introduction of kerbstones into churchyards in what is now the Diocese of West Yorkshire and the Dales is unlawful unless done under authority of a faculty and I can find no evidence of a faculty having been issued in this instance, whether generic or specific. The PCC is to be praised for taking responsibility for addressing this illegality and the laxity of previous incumbents who permitted the introduction of the kerbstones. I appreciate that the PCC is largely motivated by the need to make the maintenance of the churchyard easier, but whatever the reason the fact that something is to be done is to be welcomed. I trust other parishes in the diocese will follow their example.
6. A faculty will issue subject to the following conditions:

- (1) that a notice shall be placed at every entrance to the churchyard 7 days prior to the commencement of the works explaining the works which are being undertaken, such notice to remain on display until completion of the works;
- (2) that a contact name, address and telephone number should be given in the notice in the event that anyone wishes to object to work in respect of any kerbstones;
- (3) in the event that an objection is made, all work in relation to the kerbstone(s) shall cease immediately and further directions sought from the court;
- (4) all kerbstones which are removed are to be retained in some safe and convenient place in or near the churchyard and shall not be disposed of until further order of the court;
- (5) following the removal of any kerbstones from a grave, a notice is to be placed on the headstone stating that the kerbstones have been removed into storage but that they will be disposed of after 28 days unless the owner of the kerbstone notifies the individual named on the notice.
- (6) A full and complete photographic record which shall be retained with the parochial records shall be taken of all works undertaken under authority of this faculty including recording the state of all graves, headstones and kerbstones where the kerbstones are to be removed. The photographs should show the state of grave both prior to and following the removal of the kerbstones.

The Worshipful Mark Hill QC
Chancellor

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