

IN THE CONSISTORY COURT OF THE DIOCESE OF CARLISLE

Re: Church of Bowness-on-Solway, St. Michael

JUDGMENT

Delivered on 4 September 2025

A. Introduction

1. By a petition dated 4 July 2025, Mr. Stephen Hinks, PCC Treasurer and Deputy Church Warden, applies for a faculty permitting Mrs. Mary Maxwell-Irving to hang a hatchment at St. Michael's Church, Bowness-on-Solway ("**the Church**") in memory of her late husband, Dr. Alistair M T Maxwell-Irving.
2. The petition is unopposed and has the unanimous support of the PCC. Nonetheless, I consider it appropriate to give this judgment for two reasons. First is because of the law to the effect that permission for memorials in churches ought to be sparingly granted. Second is because, by a majority, the Diocesan Advisory Committee has not recommended this proposal for approval.

B. The Church

3. The Church is a Grade II* listed building. The oldest parts of the Church date from the 12th century. It was restored in the 18th century and extended in 1891.
4. The Statement of Significance submitted in support of the petition identifies that there are already a considerable number of memorials inside the Church, on both the walls and the windows.

C. Proposal

5. Mrs. Maxwell-Irving, with the support of the PCC, wishes to hang a hatchment in memory of her late husband above the transept door, adjacent to the Irving family stained glass window
6. A hatchment is a heraldic memorial to a deceased person. It is an armorial shield, painted onto a square or lozenge-shaped frame (in heraldic terms a “lozenge” is a diamond or rhomboid shape, with four sides of equal length).
7. In this case it is intended that the hatchment, being a lozenge, each side measuring 2 feet, should show Dr. Maxwell-Irving’s coat of arms. Mrs. Maxwell-Irving has engaged Mr. Mark Dennis, a renowned heraldic artist (and, I understand, formerly Ross Herald Extraordinary in the Court of the Lord Lyon) to paint the hatchment, should it be permitted.
8. It is also proposed to mount a small brass plaque fixed at eye level, near the hatchment, reading “ARMS OF ALISTAIR M T MAXWELL-IRVING DIED 29th FEBRUARY 2024”.

D. Consultation

9. The Church Buildings Council provided a consultation response stating that it considered that the impact of the proposed hatchment on the character of the interior of the Church “*will be minimal*” and “*on the basis of the impact in the building and the statement from the PCC it [was] content with the proposal*”.

E. DAC

10. The reasons given by the DAC for (by a majority) not recommending this application for approval are:

“Whilst acknowledging the significant craftsmanship of the proposed hatchment, some DAC members found it difficult to separate commenting on its aesthetic in isolation from the appropriateness of its proposed location.

It was noted that, full details had been received on the level of permission required from the College of Arms and the location and exact size of the hatchment.

While some members commented on the craft perspective and wishing to support the introduction of items seeking to beautify church buildings and retain skills, others felt strongly that installing a hatchment could be considered distasteful and potentially anachronistic in today's world.

Therefore, while it was accepted that the item was perfectly proper and traditional in its artistic approach, heraldically accurate and in line with guidance from the Lord Lyon, with a high quality finish, the committee by majority does not recommend the introduction of the piece to the Chancellor. The majority of the committee were still not persuaded that it was an appropriate memorial for our current age and were still concerned that the individual did not have sufficient attachment to the parish to justify such a piece of long-lasting ecclesiastical furniture."

11. In essence, the objections reduce to two points. First is that the proposal is said to be distasteful and potentially anachronistic; and second that Dr. Maxwell-Irving's connection with the parish was insufficient to justify the erection of memorial to him in the Church.

F. Law

12. Faculties for memorials within churches "*cannot be freely or extensively granted*" and "*a faculty for a memorial should be regarded as a special privilege reserved for very exceptional cases*" (*Re St Margaret, Eartham* [1981] 1 WLR 1129, Ct of Arches).
13. The Dean of the Arches in that same decision stated that a chancellor considering such an application must ask the questions "*(a) is this case so exceptional that the special privilege of a faculty could properly be granted, and (b), if so, are the circumstances such that a faculty should be granted?*"
14. He continued:

"(iii) Factors which may show exceptionality are for example the character of, or outstanding service to church, country or to mankind by the person to be commemorated by the memorial, a desire to record by the memorial some important or significant aspect of local or national history and some family history or tradition of such memorials especially, but not necessarily, if any future application based on the family connection would be impossible. (iv) The burden of showing that the case is exceptional and that a faculty should be granted is on the petitioner."

15. At the same time, it seems to me that a hatchment such as that proposed in this case is rather different from a straightforward memorial tablet. Its artistry, design, and colour, at least at one level, make it akin to an addition or adornment to a church such as a stained glass window.
16. The decision of Deputy Chancellor Mark Hill (as he then was) in *Re St Mary, Longstock* [2006] 1 WLR 259 is a useful treatment of the law on this point. That was an unopposed application for a faculty to permit the installation of a stained glass window in memory of the wife of a canon who had served the parish in his retirement. After noting the law I have just stated, from the case of *In re St. Margaret's, Eartham*, he held:
- “3. However memorials, properly so styled, comprise plaques (be they of brass or stone) together with, for example, the more elaborate funerary monuments beloved of the Victorians. Objects which adorn or beautify the church and comprise part of its fabric are not memorials in this strict sense, albeit they may be erected in memory of a particular individual: see In re St Peter, Oundle (1996) 15 Consistory and Commissary Court Cases, Case 29 concerning stone likenesses of an incumbent and former bishop as label stops on nave arches.*
- 4. I take the view, in this instance, that where a petition is for the installation of a stained glass window, the test of exceptionality is inappropriate. It is therefore unnecessary for me to undertake the invidious task of ruling upon whether or not a case of exceptionality is made out in relation to the character or service of the late Jane Bown and I decline to do so. Rather, the petition is to be judged on the merits of the proposed window itself.”*
17. In support of the present application Mrs. Maxwell-Irving refers to a decision of Chancellor Rodgers in the Consistory Court of the Diocese of Gloucester, *Re St. Mary Magdalene, Adlestrop* [2017] ECC Glo 2¹. That was an opposed petition to install a hatchment. In her judgment Chancellor Rodgers referred to two earlier, unreported, decisions where faculties had been granted for the installation of hatchments (*Re St. Michael and All Angels Spennithorne (North Yorkshire)*), a decision of Chancellor Grenfell in June 2000; and *Re St. Aidan's Church, Banburgh*, a decision of Chancellor Hudson in 2011).

¹ See also the helpful analysis of that decision by David Pocklington "Heraldic memorials in churches" in *Law & Religion UK*, 22 February 2018, <https://lawandreligionuk.com/2018/02/22/heraldic-memorials-in-churches/>

18. I take *Re St. Mary Magdalene, Adlestrop* to be an instance of the application of the law from *Re St Margaret, Eartham* to the facts with which Chancellor Rodgers was concerned. She granted the faculty sought, observing that the person to be commemorated had made generous financial contributions to the church in question. At paragraph 28 of her judgment she found specifically that “*Hatchments, if displaying legally authorised Coats of Arms, can with sufficient reason be introduced by Faculty. The fact that they are now rare does not in itself preclude them being introduced.*”
19. More recently there is the decision of Chancellor Hodge KC in the matter of *Holy Trinity, Bledlow* [2020] ECC Oxf 4. That case concerned an application by Lord Carrington DL to install two heraldic banners belonging to his late father, the 6th Baron Carrington, at the west end of that church. Chancellor Hodge KC considered whether the requirement of exceptionality relating to the character or service of the person to be commemorated that would apply in the case of the erection of a monument or memorial plaque applied to the application before him.
20. Chancellor Hodge KC held that the decision in *Longstock* and in the later case of *Re St. John, Out Rawcliffe* [2017] ECC Bla 11 (Chancellor Bullimore):
- “are authority for the proposition that the Eartham test of exceptionality, which applies to the introduction of a memorial into a church, does not apply where what is sought to be introduced into a church is an object, such as a stained glass window, which should adorn and beautify the church and comprise part of its fabric, even though it may also commemorate a particular individual.”
21. He then continued (paragraph 10):
- “A heraldic banner is in something of a hybrid category. Unlike a stained glass window, it will not have been conceived as an object of beauty in itself, adorning the church building, and evoking higher thoughts in the observer. Inevitably, its design will be specific to a particular individual, and it will not have been devised with a view to being “pleasing” or “in keeping with” the interior of the church; and, for some time at least, the banner is likely to recall that individual to the mind of the observer: that, after all, was the original purpose of a heraldic banner. Because the design of a heraldic banner will be specific to the individual in question, unlike a stained glass window, it cannot be appropriate to judge it solely by reference to its own intrinsic merits (although this will inevitably fall to be considered when addressing the series

of questions identified by the Court of Arches in the leading case of Re St Alkmund, Duffield [2013] Fam 158)."

22. In my view Chancellor Hodge KC's analysis applies equally to the heraldic hatchment with which this petition is concerned: so that in my judgment a heraldic hatchment falls into the same hybrid category as a heraldic banner.

23. Chancellor Hodge KC then continued:

"For these reasons, the court considers that the appropriate test to be applied to an application to introduce a heraldic banner into a church building (as a pre-condition to addressing the Duffield questions) is whether, during their lifetime, the former holder of the banner has made an outstanding contribution to the life of the church, the local community or the nation and (if the latter) that they had enjoyed a sufficiently close connection to the church or the local community."

24. There I take Chancellor Hodge KC to be drawing on the test from *Eartham*, that I set out above. I consider that is the correct approach for me to take in this case, concerning the proposed hatchment. In considering whether this case is exceptional, therefore, I must take into account not only whether Dr. Maxwell-Irving made an outstanding contribution to the local community, the church, country or humankind. In exercising my discretion, I may also properly have regard to whether there is a family history or tradition of such memorials. That also is a permitted consideration², in my judgment, given the terms of the decision in *Eartham*.

G. Discussion

25. Against this background I turn to the question of whether the *Eartham* test of exceptionality is made out in the present case.

26. Given the DAC's doubts on the matter, I have carefully considered Dr. Maxwell-Irving's personal and family connection with the Church. From his obituary in the Herald newspaper I read that he was for the last forty years of his life resident at Blairlogie, Stirlingshire³.

² I note that this is the view expressed by Dr. Charles Mynors at paragraph 13.7.5 of his book *"Changing Churches"* (1st edn., 2016).

³ <https://www.heraldsotland.com/notice/30601305.alastair-maxwell-irving/>

27. That said, in my view, a person's connection with a Church is capable of being more than simply a question of physical proximity to it. Families and individuals can have powerful ties to a Church despite not living near it: for example, through tradition, and places of marriage and burial.
28. In Dr. Maxwell-Irving's case the Statement of Need explains:
- "Several generations of the Irving family have been very influential in recent centuries in Bowness Parish. They have also supported St Michael's Church with very significant donations and contributions. There are three large stained glass window[s] in the Transept installed in c.1900 (installed in memory of the present applicants great-great and great grandfathers). They also installed new larger replacement bells in the Bellcote at a similar time. There are also several significant memorials in the churchyard, some quite large."*
29. I also take account of the fact that the proposed position for the hatchment, and explanatory brass plaque, is close to the stained glass windows just mentioned. In my view it may fairly be said that the hatchment would complement those stained glass windows, each of which bears a heraldic device of a member of the Irving family. In other words, the hatchment would, in my view, continue the family tradition of memorials expressed through the display of a coat of arms.
30. Separately, I take account of the fact that publicly available tributes⁴ to Dr. Maxwell-Irving speak of his "*truly exceptional*" achievement of becoming a Doctor of Philosophy at the age of 85. I note that he served as an honorary assistant with the Royal Commission on the Ancient and Historical Monuments of Scotland in his spare time for more than 40 years⁵.
31. Taken together with the strong family association, I am satisfied that this is an exceptional case. The *Eartham* threshold test is therefore met, and I should go on to consider the *Duffield* questions.
32. I reach that decision despite the tentative view of the majority of the DAC that the hanging of a hatchment is "*potentially anachronistic in today's world*". In my view, that point goes to the *Duffield* analysis rather than to the *Eartham* test.

⁴ <https://www.gcu.ac.uk/aboutgcu/universitynews/tributes-paid-to-dr-alastair-maxwell-irving>

⁵ <https://news.stv.tv/west-central/exceptional-85-year-old-is-oldest-scot-to-be-awarded-phd>

33. The first of the *Duffield* questions is whether the proposals, if implemented, would result in harm to the significance of the church as a building of special architectural or historic interest.
34. In my opinion, the answer to that question, in this case, is “no”. That is the advice of the DAC, and the view of Historic England.
35. That means that the second *Duffield* question to consider is whether the petitioner has shown a sufficiently good reason for change to overcome the ordinary presumption that in the absence of a good reason change should not be permitted.
36. In my view the answer to that question in this case is “yes”. This application has the unqualified and enthusiastic support of the PCC. The hanging of this hatchment would continue a family tradition of memorials, and properly reflect the family association with, and support for, the local church.
37. I reach this view despite of the reservations of the majority of the DAC that this heraldic memorial risks appearing anachronistic in this day and age. In the first place I do so, with respect, because I agree with the reasoning of Chancellor Rodgers in *Re St. Mary Magdalene, Adlestrop*. That case, and the two earlier decisions she mentioned, show that, while the hanging of hatchments may be uncommon, that does not mean that their display in churches is precluded.
38. Furthermore, I feel I must be cautious about placing too much weight on arguments of supposed anachronism. What may strike some as anachronistic may equally be regarded by others as a faithful and authentic exposition of a living history, in which continuity with the past is a virtue, not a fault.
39. I might have reached a different conclusion had this hatchment been proposed for a church in which it would appear incongruous or jarring. In the present case, however, with due deference to the assessment of the Diocesan Advisory Committee, and recognising the weight that is ordinarily to be accorded to its advice, I must respectfully differ from the majority view it has expressed, in the light of the law and the reasoning I have set out above.

H. Direction

40. Accordingly, I direct that the faculty should issue as sought. I charge no fee for this written judgment, but the Petitioner must pay the costs of the petition, including any fees incurred by the Registry in dealing with this faculty application.

JAMES FRYER-SPEDDING

Chancellor

4 September 2025