

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

**In the matter of the Church of St James, Bulkington
Re : Joseph Whitaker, deceased.**

**Private Petition for erection of Headstone in Churchyard
C6101/2018**

Judgment

1. By a petition dated 12th September 2018, Mary Whitaker (Mrs) seeks a faculty for the introduction of a memorial into the Churchyard of St James in Bulkington. It is to mark the grave in which are interred the remains of her husband, Joseph Whitaker. The deceased was aged 81 when he died in the latter weeks of August 2017 and his funeral service was held the following month.

The proposed memorial

2. The proposed memorial is to be fabricated from dark grey granite, honed to the sides and reverse but polished on the obverse with gold lettering. The headstone would be 30” in height, atop a base of approximately 4” in height. The headstone would be 24” broad and of a reasonably conventional shape, with the base being 30” broad and 12” deep. Within the base it is proposed to place two separate flower urns.

The proposed inscription and embellishment

3. On the obverse of the upright headstone it is proposed there be inscribed the following text in gilded lettering :-

“In
Loving Memory of
JOSEPH WHITAKER
25.12.1935 ~ 20.8.2017
A Dearly Loved Husband,
Dad and Grandad
Forever in our hearts”

The text would be inscribed only in the upper half of the headstone and I am informed that Mary Whitaker intends that her mortal remains be interred in the same grave when she too dies.

Also it is proposed that to the top left of the memorial there be etched an image of a robin perched on a thin branch and facing towards the right. It is proposed that this bird be ‘in colour’.

At the base of the headstone and in the centre it is proposed that there be etched a Westie (West Highland terrier) facing offset towards the left with all four legs visible. It is proposed also that the Westie be ‘in colour’. (Further explanation has been given that it is requested that the dog be coloured in white to represent a particular family pet).

The Parochial Church Council

4. At a meeting of the Parochial Church Council on 12th September 2018 the proposed memorial was discussed by the members present. The Parochial Church Council Secretary has confirmed that unanimously the Parochial Church Council members “were unable to support [the proposed memorial] as it does not conform to Coventry Diocese Churchyard Regulations”.

Diocesan Advisory Committee advice

5. On 18th October 2018 the petition was considered by the members of the Diocesan Advisory Committee. A notification of advice was issued on 19th October 2018 whereby it was indicated that the Committee did not object to the proposed memorial. The reasons for giving a certificate of no objection were specified as follows : “the memorial could not be unqualifiedly recommended because neither the proposed symbols nor the material (polished granite) are acceptable within the regulations”.

Public Notice

6. Following receipt of the advice of the Diocesan Advisory Committee a public notice concerning the Petition was displayed at St James’ Church from 24th October to 21st November 2018. No objections have arisen following the display of that notice.

The Churchyard Memorials Regulations

7. In March 2012 the Chancellor issued regulations for Memorials in Churchyards within the Diocese of Coventry. The regulations state that a memorial should be no more than 4 feet high, no more than 3 feet wide, no more than 6 inches thick (and no less than 3 inches thick unless made of slate). The dimensions of

the proposed headstone are both smaller than the maximum height and width requirements.

8. As regards the proposed material to be used, the regulations state : *“Polished granites, marbles or synthetic stone are contrary to these regulations. Memorials of this kind have become very popular in municipal cemeteries in recent years, but unfortunately these polished stones tend to stand out in a churchyard. Such stone rarely blends well with the church itself, and looks out of place amongst memorials made from the more traditional kinds of stone. Where, through a lack of adherence to earlier diocesan rules, certain areas of graveyards have become partially dominated by such alien stones, PCCs are reminded that this is no reason to let the practice continue and are urged actively to discourage the use of such alien stones. The fact that memorials of this kind may already exist in a churchyard is no indication that another one will be permitted. However, where there is already in existence 6 (six) or more stones which are of the same material, design and colour, but do not meet these regulations at the date of publication, the incumbent may, with the Archdeacon’s consent decide, on pastoral grounds, to permit the continuation of stones of the same material, design and colour as those existing to complete a clearly defined area or row”*. It is further stated that *“gilding or silvering of lettering is not permitted . . . without a faculty”* and *“Other shapes of memorials, such as an open book or like a heart, are not permitted”*. The regulations also specifically state that no more than one flower-holder would be permitted.

9. The regulations have this to say about the wording of inscriptions :-
“An inscription should aim to be simple, reverent and commemorate accurately the existence of the person who has died. It should be informative to future readers. It should be consistent with the Christian belief in life after death and should not, therefore, simply be confined to expressions of personal loss or sorrow. The inscription should record either his or her full name or else the surname and the Christian name by which he or she was generally known (for example “Thomas Joseph Smith” or “Thomas Smith”). Today there can be no reasonable objection to including, as well, any particular term of affection or widely used nickname (“Dad” or “Tommy”), perhaps in brackets or inverted commas. However, a name on its own says little. A memorial is possibly the only place to say something publicly about the person who has died. It may, therefore, be appropriate to record what he/she did (“farmer in this village for

fifty years”) or some feature of his/her character (“a much-loved father and grandfather” or “a kind and gentle daughter”).”

Then the regulations touch upon Quotations :-

“Some may wish to add a biblical text, or an extract from a poem, or some suitable phrase from other Christian sources. Over-sentimental expressions should be discouraged, if possible. It is recognised, however, that this may not be easy. Whereas even fifty years ago many biblical or literary quotations were familiar to a broad cross-section of the population, this is probably true no longer. Nowadays, phrases picked up from popular songs (“He did it his way”), or television shows, may well be in the minds of grieving relatives – witness the deaths columns in local newspapers. So, an understanding, sensitive approach from the incumbent is to be encouraged. Careful, yet diplomatic, persuasion may be needed before agreement is reached upon an appropriate wording. In undertaking this sometimes difficult task, the incumbent should point out that memorials in churchyards are of a relatively permanent nature and, by their inscriptions, ought to reflect wherever possible the Christian approach to life and death. It should be emphasised that, simply because a grieving relative doggedly insists on a particular expression, no incumbent must feel obliged to agree to an inscription on a headstone which he or she genuinely feels is inappropriate.”

10. In a paragraph headed “General Approach” it is stated in the regulations : *“The general approach is that each churchyard should be harmonious in appearance, and it should form a worthy setting for the church in its midst (many of which are listed buildings in conservation areas). Harmony does not mean uniformity but the design and choice of material for a memorial should seek to ensure its successful integration with the established character of the churchyard. Headstones need not be restricted to a conventional rectangular shape. Attractive, well-conceived new designs by skilled and imaginative craftsmen are genuinely encouraged. Harmony does, however, mean that stones should be compatible with, and appropriate to, their surroundings and that no memorial should stick out like a sore thumb.....**A churchyard is not a private place in which anything is acceptable. It is a place where many people have a shared interest in its appearance. Nobody wants to see the appearance of a much-loved churchyard, or part of it, spoilt by the introduction of an inappropriate new headstone or other memorial. That this has happened in various places, even in recent times, cannot be denied. One of the objects now, however, is to help prevent it happening again....”***

Arguments presented by Petitioner

11. The Petitioner is clearly aware that polished dark grey granite is ordinarily contrary to the Churchyard regulations (see in particular regulation 6.2) as she sent the following ‘statement’ in support of her petition (written on her behalf by the memorial masons, J.E.Hackett and Sons) :

“The chosen memorial was selected in granite as [Mrs Whitaker] previously purchased a memorial for her son. She felt that overall it was a better quality than any other. It has not weathered and still looks as good as the day it was put in the cemetery. The same cannot be said for other memorials which are made from natural stone or marble which look aged already”

As regards the gilding of lettering the memorial masons wrote :

“The gilded letters have been requested as they stand out and are easier to read and see rather than plain cut letters or painted ones. Gilded letters also last for a long period of time whereas painted ones do not weather well. After a period of time they become hard to read and patchy where the paint starts to fade or come away.”

As regards the etched and coloured images it has been said :

“Mrs Whitaker feels strongly that the chosen designs should be in colour rather than etched. From looking at other memorials with designs the coloured ones stand out more and are easier to see what the image is whereas an etching can be harder to see. She feels that as the designs are personal to her she would prefer them to be coloured. The breed of dog for example could be in various colours but it is to represent their family pet. By having the image coloured rather than etched it will better represent the dog they had.”

As regards the multiple flower holders the memorial masons wrote :

“Mrs Whitaker has asked for two flower vases on the memorial. This is because the grave is going to be for Mrs Whitaker too when she dies. Therefore it is simply for the family to be able to place two lots of flowers, some for Mr Whitaker and some for Mrs Whitaker.”

Included with the petition were one dozen colour photographs, intended to illustrate coloured images (8 photographs, mainly of flowers) and gilded lettering (also 8 photographs), with one photograph showing that an uncoloured mechanically etched image of a pair of owls on black granite is less visible than the coloured or gilded images.

12. Given the above I asked the Registry Assistant to write to the petitioner to ask whether she wished to supply further evidence or whether he simply wanted the petition considered on the basis of the material already submitted. I also asked that the following information be passed to her for her consideration :

It occurs to me that the Petitioner should be invited to consider the following points when deciding whether to submit further evidence.

The Churchyard regulations ordinarily prohibit:

1) Polished granite (The petitioner need not address this issue - I have previous experience of the Churchyard at St James Bulkington and do not need

to be persuaded that a polished granite obverse on a memorial with honed sides and honed reverse will not look incongruous in this particular Churchyard)

2) gilt lettering

3) coloured images (and more than one image on a memorial)

The regulations also state that there should be no more than one urn/flower vase on any memorial (it is not dependent upon the number of people interred within the grave).

It is also noted that it is usually expected that inscriptions should be informative but not overly sentimental (for instance, Father is usual rather than Dad). A simple explanation why the informal 'dad' and 'grandad' are requested would be of some benefit.

It is for the Petitioner to satisfy the Court that there is a good and sufficient reason to step outside the churchyard Regulations for any one of the points raised above, let alone all of the points mentioned. It would be of note that stating 'gilded letters stand out' will be unlikely to amount to a good and sufficient reason by itself. The Petitioner should note that the Churchyard regulations state the following concerning the colouring of inscriptions : "Inscriptions may be painted black or white or in a colour that harmonises or blends in with the underlying stone.

Gilding or silvering of lettering is not permitted in churchyards without a faculty.

Regrettably there are too many examples of such lettering without faculty permission.

The fact that lettering of this kind may already exist in a churchyard is no indication that another one will be permitted".

As regards the coloured images requested the Petitioner should again be referred to the churchyard regulations where images are discussed as follows:-

"8.1 The inclusion of symbols, whether in low or high relief can often be visually delightful and a positive contribution to their setting, provide variety of interest and avoiding the repetition of standard catalogue images but it is important to maintain an acceptable standard of design of such symbols

8.2 Frequently the motif is the traditional Christian symbol of a cross. A plain cross not exceeding 6" in height may be permitted by the incumbent without a faculty.

8.3 All other symbols are only allowed by faculty and designs must be fully described on the application form. Sometimes, the engraving is flowers or reflects something of particular interest in the life of the person who has died, such as a dog, a bird, a fishing rod, a tractor, a musical instrument or a motorcycle. Provided the motif is small and well carved, there can be no intrinsic objection. After all, our churches are full of small, often irreverent,

but interesting designs, and symbols, which can be seen in gargoyles, stained-glass windows and misericords.

8.4 A faculty is unlikely to be granted for a headstone dominated by a proposed engraving such as an electric guitar, a teddy bear or a sports car, however much the object in question featured in the life of the deceased individual.

8.5 Mechanically engraved or sand blasted images are inappropriate.

8.6 Small painted engravings may be acceptable, but care should be taken to choose a colour or colours, which blend in well with the surroundings. A proposal for a bright, perhaps brash, colour is unlikely to obtain a faculty. Permission is also unlikely to be granted for large painted engravings, which would dominate a headstone."

The petitioner may well find it advisable to set out briefly in writing why each of the coloured images has been selected (I have been told only that the images are personal to the Petitioner, not to the deceased) and why in particular two coloured images are sought not one. It may also be advisable for the Petitioner to nominate which of the coloured images should be permitted in favour of the other, and why, if permission for only one carved image was granted."

"Together with the letter from the Stonemasons were several photographs of other headstones bearing gilded lettering and coloured images. It would be worthy of note by the Petitioner that the churchyard regulations recognise that breach of the regulations by the installation of non-conforming memorials may well have occurred earlier. If the Petitioner can demonstrate that at least six similar memorials appear in the same immediate area/row as the grave in question (not just showing examples from other areas of the Churchyard) it is more likely that a non-conforming memorial will be permitted."

The petitioner was directed that any additional information be submitted by 15th January 2019 (five weeks after my directions, to allow for the Christmas and New Year period) and that response should come from the Petitioner herself, rather than from the monumental masons.

13. In response to the communication with the petitioner she sent to the registry a one page letter together with four further colour photographs of other memorials in the immediate vicinity of her Husband's grave.

In her letter she stated the following :-

"I have chosen the 'polished granite' headstone as my husband's grave is close to overhanging trees. Having this type of stone it would keep clean and as you can see from the pictures I have enclosed it would be in keeping with the other headstones around it, this is also the reason for choosing Gilt lettering.

The reason for the Coloured images are as follows, my husband was know (sic) in the village for walking with his Westie called Billy, we had to have Billy put to sleep 12 months before my husband passed away, as a family we thought this a fitting tribute to his loyal friend of 15 years who he missed. The robin is a

memory to me of a robin that use (sic) to come into our garden every morning when my husband was feeding the wild birds and perch on the fence tweeting at my husband.

As you can see in the pictures enclosed there are headstones in the same area one with 3 red flowers, one with a white bird and the one next but one to my husband even has a Coventry City badge on with one further down having this badge etched into the headstone.

My sons and daughter called him 'Dad' not 'Farther' (sic) and the grandchildren called him 'Grandad' this is what he was known as and why we as a family want this on his headstone, and again if you look at the pictures enclosed it is the same on all of the headstones around my husbands.'

14. The photographs enclosed with the letter show that the majority of the surrounding headstones are in polished granite. There are several with gilded lettering, but a large number appear to have white (or possibly silvered) lettering. There is a headstone with coloured flowers at the top and what appears to be white lettering a couple of rows back and several graves to the left. Further away there is an unpolished grey stone grave with a white coloured bird (possibly a goose) and with apparently no colouring to the lettering. The grave bearing the small Coventry City FC crest appears to have white lettering to complement (and I recall that the Football Club gave specific consent in the particular circumstances for the other mentioned grave to bear the Club Crest). No headstone is depicted that bears two areas of embellishment or decoration.

Further considerations on the legal basis for headstones falling outside the Churchyard regulations.

15. In this present matter I am particularly conscious that the elected representatives of this church community do not feel able to support the proposed memorial, falling as it does in several points outside the churchyard regulations. As has been frequently observed : “The overall beauty and tranquillity of a churchyard is only as good as its constituent parts allow it to be. The rights and interests of private individuals, of the worshipping congregation, of all parishioners, of the local community, and of the Church and society at large all have to be considered in permitting a memorial, which is likely to last for ever, to be placed in a churchyard. There cannot be a *carte blanche* situation where a family of the deceased has the sole right to decide what is, and what is not, appropriate by way of memorial, not least because...the family do not own the land in which the remains are placed, or on which the memorial is meant to be placed.” (Taken from the judgment of Chancellor Holden in Re Christ Church, Harwood [2002] 1 W.L.R. 2055 at p.2056)

These words have been quoted in numerous subsequent judgment, including some relating to the churchyard at St James in Bulkington.

It is also of note that in the Diocese of Coventry generally there has recently been considerable discussion concerning the number of non-conforming memorials that have been erected even since the revised churchyard regulations were issued.

16. The starting point for considering a petition for a faculty to issue for a memorial which is contrary to the Churchyard Regulations is that permission will not ordinarily be given for such a memorial. A powerful reason must be shown before a faculty for a memorial outside the regulations will be given. In such matters I habitually have regard to the judgment of Chancellor Mynors in Re St Mary Kingswinford [2001] 1 WLR 927, wherein he summarised the circumstances in which such a faculty could (but need not necessarily) be given: “However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the diocese and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted.”

17. In the current petition points one and four of the Kingswinford judgment do not seem to apply. The presented arguments appear to represent a combination of points two and three. The main argument can be summarised as (i) there are lots of polished granite headstones in this Churchyard so another one should be permitted, (ii) gilded lettering stands out more prominently than painted lettering, and continues to stand out for longer, so a stone with gilt lettering and the two coloured images should be permitted, (iii) the grave will eventually be the resting place for two people, so we should be permitted to have two flower holders and (iv) there are lots of different designs carved or etched on headstones, including numerous coloured flowers, so we should be permitted to incorporate two engraved images relevant to the deceased person. Upon point (i) it has to be conceded that in the Churchyard of St James in Bulkington there exist so many headstones with the obverse in polished granite that no negative

impact can be likely to arise from the introduction of a further example. I shall consider the other points below.

Decision

18. I have now to turn to my decision upon the petition. It is complicated in that there are so many elements requested that are contrary to the Churchyard regulations. I remind myself that it is for the Petitioner to satisfy the Court that a 'powerful reason' exists (not merely a 'good' reason - the word used has clearly been chosen to indicate that there should be an extremely good reason for stepping outside the regulations). Simply saying 'there are a number of headstones that fall outside the regulations' is not sufficient, although I remind myself of what is said in the regulations concerning previous breaches, as outlined in paragraph 8 above. I am also mindful that all twelve of the elected representatives of the Parish present at the Parochial Church Council meeting decided that they could not support a proposed memorial [demonstrating so many breaches of the churchyard regulations].

Choice of material

I am satisfied, from the number of photographs supplied and my previous experience of petitions arising from the churchyard of Bulkington St James, that one further granite headstone would not look out of place. The choice of grey granite appears preferable to black. In the circumstances there may be a polished obverse, and the Petitioner has already accepted that the edges and reverse should be honed rather than polished.

Text detailing life and death of Joseph Whitaker

Although once it would have been considered inappropriate to use the expressions 'Dad' upon a gravestone there is nowadays unlikely to be any reasonable objection to that particular terms of affection. There is, in my judgment, nothing wrong with identifying Joseph Whitaker as Dad and Grandad. It tends to go towards identifying that the grave holds the remains of a dearly loved family member. The chosen wording will be permitted.

Additional text of love and regret at the passing of Joseph Whitaker

The single line of chosen text to go below the life information of the deceased clearly show that Joseph Whitaker was dearly loved and continues to be missed by those he left behind. The text cannot be described as "*a biblical text, or an extract from a poem, or some suitable phrase from other Christian sources*", as would be encouraged by the Churchyard regulations. However, I have seen a large number of inscriptions from the churchyard at Bulkington St James. Many of those are from no discernible Christian source and one at least would, in my judgment, be deemed 'overly sentimental' and unlikely to receive

permission if presented today for a faculty. Of course, the presence of other non-Christian messages on other headstones does not automatically mean that this text should be permitted. However, although the proposed inscription is not biblical, neither is it irreverent or likely to offend. It conveys, at it is intended, that Joseph Whitaker remains in the thoughts of those he loved. In the circumstances I see no reason to oppose the proposed wording.

Etched and coloured images

I am reminded that the regulations permit non-Christian emblems, decorations or embellishments, if the necessary permission is given (*“All other symbols are only allowed by faculty and designs must be fully described on the application form. Sometimes, the engraving is flowers or reflects something of particular interest in the life of the person who has died, such as a dog, a bird, a fishing rod, a tractor, a musical instrument or a motorcycle. Provided the motif is small and well carved, there can be no intrinsic objection.”*). There is no suggestion that multiple decorations will be permitted and, as always, the burden of establishing good and sufficient reason for permitting the requested embellishment rests with the Petitioner. In my directions the Petitioner was reminded of this fact and was asked to justify why multiple images should be permitted. She was also asked to nominate which design she favoured if only one decorative image was permitted. This she has not done. The argument she has put forward for using the image of a West Highland Terrier, coloured in white, to represent the family pet, Billy, is considerably more compelling than the argument for including an additional coloured image of a robin on a twig/branch. There is no reasonable excuse to explain why two different coloured images should be permitted on this memorial. Consequently the proposed image of the robin, in colour, will not be permitted. The representation of the West Highland terrier will be permitted as proposed, and may be coloured in white to represent the colouring of Billy, the family pet. The monumental masons are reminded that the regulations specifically state that *“Mechanically engraved or sand blasted images are inappropriate.”*

Gilding of letters

The Petitioner was specifically informed that stating ‘gilded lettering stands out’ would be unlikely to provide sufficient reason for stepping outside the regulations. The response was that gilt lettering would be in keeping with the surrounding headstones, although the original argument was indeed that gilded letters ‘stand out’. The photographs provided do show some headstones with gilded lettering in the immediate vicinity of the grave of Joseph Whitaker, but there are also a number of memorials where the lettering is - or appears - white (or possibly silvered). With a requested - and permitted - engraved image coloured in white there would be a direct contrast between that white image and the gilded lettering. It is likely that the contrast would cause this memorial in particular to ‘stand out’ among the other headstones, which is contrary to the

intentions of the regulations. In those circumstances it would seem appropriate that the permitted lettering be picked out in white, to match the coloured engraved design, rather than being gilded. The gilding of lettering will not be permitted in the particular circumstances of this memorial.

Two flower holders rather than one

The Churchyard regulations are clear that no more than one flower holder should be permitted. This is in part, but not exclusively, to guard against a profusion of dead flowers remaining on graves across the entire churchyard. The petitioner has provided no evidence to support that it would be appropriate to permit two flower holders upon a memorial in this churchyard, even one intended to hold the remains of two people. As such the Petitioner has failed to persuade me there is a ‘powerful’ reason to step outside the Churchyard regulations and permit two flower holders on this grave. Accordingly permission will be granted for only one flower holder on the memorial to Joseph Whitaker. The Petitioner will need to nominate whether this will be on the left or right side of the base or plinth (a central flower holder would interfere with the etched image of the West Highland terrier).

19. By reason of the matters set out above, the faculty as requested will not be granted. However, I have found that it would not be inappropriate to grant a faculty for a memorial to Joseph Whitaker. The headstone may be made of polished grey granite and may have white lettering. The headstone can be set upon a plinth, but may feature only one flower holder not two. The headstone may feature the text submitted in the format proposed, with the words Dad and Grandad. In the circumstances I will also grant permission for the headstone to feature a single engraved image of a West Highland terrier coloured in white.

A faculty for a memorial will be granted if it complies with the matters set out above. There is no need for a revised design to be submitted for approval as the matters that are not permitted do not alter the general design of the memorial.

20. Save for the ordinary fees required in pursuing a private petition for erection of a memorial there shall be no additional order as to costs.

Glyn Ross Samuel
Deputy Chancellor
6th January 2019.