

Neutral Citation Number:[2022] ECC Dur 5
IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM
RE THE CHURCHYARD OF ETHERLEY ST. CUTHBERT
AND RE THE PETITION OF DR. SANDRA MARSHALL & MR BARRIE KIRTON

Judgment

1. The main petitioner, Dr Marshall, seeks a faculty for the interment of the cremated remains of her mother, Mrs Freda Noreen Marshall, in the family grave where the remains of her father Mr Ronald Vincent Marshall and her grandfather Mr Johnson Marshall are buried. The family grave is in the churchyard of St Cuthbert in Etherley, which is a closed churchyard. She also seeks a faculty for the removal of the existing monument at the grave, and its replacement with a new memorial and a new inscription to include her mother. The petition states that the existing gravestone is 6 feet long (that is an error – it is 7 feet long) and is in a state of disrepair. The new memorial is to be laid flat on top of the grave and is described in the petition as being “*a new granite base monument*”. In the public notice that was displayed, the description of the new memorial was given as “*a new granite base memorial (size 500mm by 600mm) laid flat on the grave and replace turf around the remainder of the grave area*”.
2. Two photographs are attached to the petition. The first photograph is of the existing grave. This shows a flat stone spread across kerbing, which surrounds the plot. The second photograph is of the proposed new memorial which appears to be of pinkish hue with an inscription in gold lettering. It seems the petitioner commissioned the memorial to be made without first obtaining a faculty. That is most unfortunate.
3. The inscription on the proposed new memorial reads:

IN THE HANDS OF GOD

Johnson Marshall

Passed 12th April 1961

Aged 54 years

Dearly beloved husband of Irene

Much loved Father to Ronald

Ronald Vincent Marshall

Passed 2nd June 1987

Aged 55 years

Dearly beloved husband of Freda

Adored Father to Ann

Freda Noreen Marshall

Passed 12th October 2020

Aged 87 years

Cherished mother of Ann

“Your Spirits were ready, our hearts were not”

WITH LOVE UNTIL WE MEET AGAIN ON THE OTHER SIDE

In addition to the written words there are various patterns on the proposed memorial and two etchings of butterflies.

4. The existing memorial reads:

In Loving Memory
Dear Husband and Father
JOHNSON MARSHALL
Died April 12th 1961
Aged 54 years
And his son
RONALD VINCENT MARSHALL
Died June 2nd 1987
Aged 55 years.

5. The PCC supports the petition, and the churchwarden Mr Barrie Kirton is joint petitioner with Dr Marshall.
6. In response to certain enquiries from the DAC seeking clarity about the proposed memorial, Dr Marshall wrote in a letter dated 19th October 2021 that the existing memorial is made from marble but is badly discoloured by weather, wear and tear and she pointed out that the surround is broken in one corner. She said the new memorial *“is made from Corian but looks, feels and weighs as heavily as marble. It is cream coloured with slight flecks and streaks of other colours to look like marble”*. She adds *“I am the only family member left and I chose the corian because it takes very little upkeep. It wears like granite and doesn’t discolour or wear away. The corian will be placed on a black granite base. There will be no vase. The area left by the removal of the present surround will be covered by turf”*.
7. On 9th November 2021 the DAC considered the petition in respect of the proposed memorial. It did not recommend it for approval by the court. The DAC noted that *“1. The memorial did not comply with the churchyard rules in too many areas and would not be appropriate to the churchyard setting, namely in terms of the material of the memorial and its form, the colour of the memorial, the gilded inscription and in some examples of its wording. 2. There appeared to be some degree of factual discrepancy in the information submitted in the faculty petition. The public notice which had been put on display contained a proposal to replace the existing memorial ‘with a new granite base memorial (size 500mm by 600mm) laid flat on the grave and replace turf around the remainder of the grave area.’ DAC considered the description of the stone being ‘granite’ as being incorrect and also asked whether the proposed dimensions appeared in keeping with the proportions of the image. DAC questioned whether the PCC had been fully aware of these discrepancies when giving its resolution in support?”*.
8. The relevant parts of the Durham diocesan Churchyard Rules, last updated in October 2012 and to which the DAC was referring, are as follows:

- iv) *Any burial without a headstone may have a horizontal stone ledger 225mm (9 inches) square set flush with the turf and bearing a number referenced to a plan kept in the church safe.*

- vii) *Except as stated in (viii) below, monuments may be of hardwood or natural indigenous stone or slate. Stones other than those traditionally used in local buildings, or stones in conflict with the stone of the church, may not be used. The stone shall not be mirror polished in any way so as to reflect.*
- viii) *A monument shall not be of black, blue or red granite nor of all polished granite of whatever colour nor of white marble, synthetic stone or plastic.*
- xi) *Inscriptions must be simple and reverentAll inscriptions shall be inscribed or in relief; they may be painted a shade lighter or darker than the natural colour of the stone but may not be leaded or gilded. No plastic or inserted lettering may be used.*

9. Dr Marshall was notified of the DAC’s formal advice by the Diocesan Registry on 26th November 2021. She was informed that she could continue with the petition notwithstanding the DAC’s formal advice, but her attention was drawn to the discrepancy between the public notice referring to granite and her own description of the memorial as corian. She was informed that if she intended to pursue the petition, and the proposed memorial was indeed made of corian, then she would need to re-advertise the petition with an accurate description of the material to be used. She was further informed that she might, alternatively, like to consider amending the petition to seek a faculty for a memorial that would be made from material that complied with the Churchyard Rules.

10. Dr Marshall took her time to consider her options. In a letter dated 1st September 2022 she apologised for the delay in replying. She elected to pursue the petition as it stood, this time describing the material in the proposed memorial as “corian marble”. She balked at the suggestion that the colour was pink, and explained that she had chosen gold lettering because it was “more inconspicuous than using black ink”. She argued that the “*the new headstone will not stand out particularly since it will be flat and not upright. It has to be better than the broken down memorial that is currently there*”.

11. The DAC again considered the petition in the light of the further observations of Dr Marshall, and confirmed the decision not to recommend it in respect of the proposed memorial.

12. Despite being warned by the Diocesan Registry in its letter of 26th November 2021 that she would need to re-advertise the petition if she wished to pursue it in its current form, so that it correctly described the memorial as being made from corian, Dr Marshall took no steps to do so.

The relevant legal principles

13. The right of burial or interment in a churchyard does not include a right for a memorial to the deceased to be erected. Permission must be obtained beforehand, either from the incumbent in reliance upon the Churchyard Rules or by way of faculty granted by the Consistory Court. As in any case, the burden of persuading the court is on the petitioner. There is no presumption that a faculty will be refused for a memorial which does not comply with the Churchyard Rules, but the terms of the Churchyard Rules are relevant. Those Rules apply throughout the diocese, not just in the churchyard at Etherley.

14. The approach the court takes was explained by Chancellor Bursell in *Re The Churchyard of Quarrington Hill* [2016] ECC Dur 1:

“The consistory court, being a Church court, has always been concerned to act pro salute animae – that is, with 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. In this context it is worth quoting the words of Chancellor Holden in Re Christ Church, Harwood [2002] 1WLR 2055 at 2056:

“The overall beauty and tranquillity of a churchyard is only as good as its component 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.”

15. Principles of consistency and fairness are important. The court has to have regard to the overwhelming majority of cases in which family members have erected memorials that do conform with the Churchyard Rules. In such cases they have accepted the approach laid out in the Churchyard Rules, even when they would have preferred to have something different; they may well feel they have settled for a memorial that was not really what they had originally hoped for, and they would have a legitimate sense of grievance if others were by contrast able to obtain faculties for memorials that were manifestly non-compliant with the Churchyard Rules.

Decision

16. Corian is a man-made material. It is not natural, but a synthetic stone. Its primary purpose appears to be for internal use as a material from which kitchen worktops are made. It obviously does not conform with rules vii) or viii) of the Durham Diocesan Churchyard Rules.
17. Dr Marshall asserts that corian wears like granite and doesn't discolour or wear away, but she has produced no evidence to show how corian will weather over the course of time when subjected to frost, rain and sun. It is not for the court to speculate on these matters, but the assertion that it will not discolour or wear is troubling. By contrast, natural stone memorials inevitably do weather, and with time tend to continue to blend in with their surroundings and with any other stone memorials nearby that are likewise subjected to a natural weathering process. On this ground alone, namely the use of unproven man-made material, a faculty will not be granted for the proposed memorial.
18. There are, however, additional grounds upon which the memorial cannot be permitted. Although Dr Marshall takes umbrage at the suggestion that the colour of the proposed

memorial is of a pink hue, the photographs she has submitted in support of the petition do indeed appear to show the memorial to be a very light pink colour. I made an unaccompanied visit to St Cuthbert's churchyard, and even if the proposed memorial were cream with flecks and streaks of other colours as Dr Marshall contends, I am satisfied that it would not blend in with its surroundings or with other memorials. Dr Marshall's argument that "*it will not stand out particularly because it will be laid flat and not upright*", is tacit acceptance that it is quite different from every other memorial in the churchyard. I should add, that although Dr Marshall describes the existing memorial as being of white marble, on inspection it does not appear to be white but mottled grey and it is not recognisable as having been made from marble; having weathered over the years the existing memorial blends in with its surroundings.

19. Furthermore, the proposed new memorial does not comply with rule iv) of the Churchyard Rules by virtue of its size as a solitary ledger, and it falls outside the provisions of rule xi) in at least two respects with regard to the inscription, namely that the lettering is of gilt, and the inscription is too wordy and not simple enough. The existing memorial that it is intended to replace measures 3ft by 2ft, according to the measurements that I took on site. It is simple, and contains 29 words and dates that appear to be in proportion. The proposed corian memorial, however, would be smaller (about 2ft x 1ft 8 inches), and contain an inscription with 75 words and dates, plus patterns and butterflies – from the photographs supplied by Dr Marshall the inscription appears to be overcrowded and cramped. I also do not approve of the use of the term "*passed*" instead of "*died*", and nor would I permit Dr Marshall's name (Ann) to appear on the memorial – the memorial is not to her, and her name should not appear on it.
20. I therefore refuse to grant a faculty for the proposed memorial. It is unfortunate that Dr Marshall has incurred wasted expense in having the new memorial made without seeking permission beforehand, but this demonstrates the perils of going ahead without first consulting the incumbent or the diocesan registry.
21. If I had been prepared to grant a faculty I would in any event have first required the petition to be re-advertised, because the public notice was misleading in stating that it was to be a granite base memorial rather than constructed from man-made corian.
22. In respect of the uncontentious part of the petition which seeks a faculty for the interment of the cremated remains of Mrs Freda Noreen Marshall in the grave where the remains of Mr Ronald Vincent Marshall and Mr Johnson Marshall are buried, a faculty is granted.
- 23.

Adrian Iles
Chancellor
20th December 2022