

Neutral Citation Number: [2020] ECC Lin 2

IN THE CONSISTORY COURT AT LINCOLN

In the matter of St Nicholas, Great Coates

And in the matter of a memorial to Keith John Fleming deceased

Judgment

1. By a Petition dated 15 April 2019 the Petitioner seeks a faculty for the erection of a memorial stone in the churchyard of the parish church of St Nicholas, Great Coates for her late husband Keith John Fleming who died on 19 October 2017 aged 49. Additionally, the Petition is for the laying of kerb stones around the grave which are to be flush with the ground.
2. The DAC have been unable to recommend the proposal to me in their decision dated 18 December 2018. Their reasons dated 3 April 2019 are:
 - (i) the Churchyard Regulations for over 3 decades have not allowed the use of kerb stones, and
 - (ii) they were mindful of the resolution of the PCC against the proposal.

3. The background to the Petition is that on 31 July 2018 the Petitioner applied to the incumbent for permission to introduce a monument into the churchyard with accompanying diagrams and explanations of what was proposed. From the correspondence from the memorial mason accompanying this application, there must have already been discussion about the memorial and that it was unlikely to gain the incumbent's permission. The Petitioner's letter dated 30 July 2018 accompanied the application setting out the reasons for it, emphasising how much thought had gone into the design of the memorial and stating that in her judgement it complied with the Regulations because the kerb was flush with the ground. On 2 August 2018 the incumbent refused permission and on the same day the Petitioner applied for a dispensation from the Regulations so that the memorial could be permitted.
4. The proposal was to erect a memorial stone to her late husband with the base and kerbs flush with the ground. The stone proposed was honed dark grey granite with wording as set out in the application with a deep carved poppy design. In the application for a dispensation the Petitioner records that she had not seen the Churchyard Regulations before her late husband's death and it was not until later that she was aware of the restrictions on memorials in churchyards.
5. The DCC met on 5 August 2018 to consider the application and the minute records the reason for the incumbent's refusal of permission was because of the use of kerb stones outside the Regulations. She explained that the Petitioner was prepared to consider the size of the kerb stones if it was felt by the DCC that they were too close to

neighbouring graves. The members of the DCC were against the proposal for the following reasons:

- (i) this was an area of the churchyard where there were few historic kerb stones and it was felt that additional kerb stones would spoil the appearance of the area surrounding the grave.
- (ii) it would set a precedent. Other families were wanting to use green plastic edging/ wooden garden border edging to delineate graves.
- (iii) the DCC wanted to mow late each year and thus allow wildlife to thrive in the churchyard. This would not affect the visibility of graves for more than 8 weeks in the year, in their opinion. The Petitioner had been advised that she could mow around the vicinity of the grave if she wanted to do this (other families had done this).
- (iv) they were concerned about the kerb stones becoming unbalanced in the future which might cause a problem in mowing either to the mower or to the kerb stones.

6. I note that the DCC found the word 'daddad' was acceptable to them should any query be raised by the DAC about it.

7. The DCC meeting also considered an email from Mr Hodgins which I have read with photos of the area and the noticeboard taken on 8 August 2018.

8. In response to the DCC the Petitioner wrote a letter dated 15 August 2018 which I have read. She answers each of the points raised which I summarise as follows:

- (i) she had given a lot of thought to the issue of mowing/kerb stones and that was why flat kerb stones were proposed.
- (ii) they would not be visible from afar (and therefore the appearance of the churchyard would not be spoilt).
- (iii) if other bereaved families are seeking to place edging around family graves, they should not be looked at as a 'problem': the DCC represents the whole community including the bereaved families.
- (iv) the decision to leave mowing to late in the year to allow wildlife to thrive means that the DCC are condoning a situation where visitors may unknowingly stand on graves, including the grave of her late husband. She has seen footprints on and around the edges of the grave causing her and her family distress. A kerb would delineate the grave to prevent this from happening again, particularly when foliage is high.
- (v) if the kerbstones become unbalanced or damaged then this is a matter for the family to resolve. If there is no family to resolve it, then it will be like any other headstone in the churchyard that may naturally tilt or crack, and the DCC could deal with it.
- (vi) she was only aware of the Churchyard Regulations after her late husband's death and in conversation with other bereaved families. If other families are putting edging down this indicates a more general lack of

communication about the Regulations to bereaved families.

(vii) It is wrong to say (see Mr Hodgins email) that the area does not have any grave borders and that this Petition would be setting a modern precedent. In fact there is a 1950s grave with a kerb in the vicinity (Fig 1 photo) as well as one from the 19th century (Fig 2 photo). Attached to the letter are further photos showing the extent of the foliage when there is no mowing. There is also a photo (also Fig 1) which shows the style of kerb stone that is proposed. The colour, stone and headstone style in the photograph are not that which is proposed by the Petitioner.

9. This application for a dispensation was placed before me on 27 September 2018 and on the next day I ruled that if the application was to be pursued it had to be by way of a Petition for a faculty. This would require the application to be advertised in an open process so that people could have an opportunity to express any views they may have and the DAC could also advise me.

10. The Petition was advertised on 9 June 2019. Letters of objection were received in response. None of the objectors wished to become party opponents but I have considered their objections as part of my determination of the case. I note that the Petitioner states that she has opened a public petition in support of the application and this has attracted support from many people. I have visited this petition online and read the contents. I have taken all this into account.

11. The objections were from Mrs J Green, Mr and Mrs Hodgins, Mrs McElwee and Ms P Armitage. In some of the objections there is a misunderstanding about the stone that has been chosen and whether it is outside the Regulations. In fact, the stone proposed is honed (i.e. not polished) dark grey granite and the poppy design is incised into the stone which are both permitted by the Regulations. Additionally, I note no concerns have been raised by the DCC or the DAC about the wording for the memorial, and I too am content with the wording.
12. The major issue that is objected to is the use of the kerb to the grave even though it is flush with the ground. There is also an objection to the use of pots of 'shrubs' being placed on the grave. One objector emphasises that there is no individual ownership by the family of the grave. Instead the grave forms part of the churchyard for which the Regulations provide a framework for all to follow. That objector supports the approach that wants to maintain it as a country churchyard with late mowing to assist wildlife and plant growth.
13. The Petitioner does not agree with these objections. On the question of pots for 'shrubs', she points out they were plants and not 'shrubs' and they were placed on the grave to prevent people walking over or encroaching upon the grave. She emphasises that flush kerbs will enable mowing to take place. She does not agree that the churchyard is well maintained because, she points out, the foliage is not regularly mowed. She submits that photographs provided by one objector do not reflect what the churchyard looks like when foliage is permitted to grow to 6 feet causing graves to become hidden. I have seen the Petitioner's photographs of the size of the foliage. I have

considered carefully all the points made by the Petitioner in her letter dated 18 August 2019.

14. On 6 January 2020 I gave a Directions Ruling that pursuant to FJR 14(1) I considered it expedient to determine this Petition on consideration of written representations alone. I invited the Registrar to ask the Petitioner whether she would agree to this, or whether a Consistory Court hearing was required. On 9 March 2020 the Petitioner confirmed in writing that she wished to proceed with the case by way of written representations. She asks me to confirm that I have considered the online petition as well as all the documentary evidence placed before me, which I have done.

Determination

15. It is clear from the Petitioner's letters that she has studied with care the Regulations since she became aware of them. In setting out my reasoning it is important that the introduction to the Churchyard Regulations is set out in full to be incorporated into this judgment.

"Introduction

2. This document aims to clarify the legal position with regard to churchyards, and in particular, in respect of the erection of memorials in them. It also aims to ensure that the distinctive character of a churchyard is maintained, particularly in the context of its setting around the parish church.

3. Our churchyards, like our churches, form part of our heritage as a community of Christian people. We are trustees of what we have received from earlier generations. So it is our duty for the sake of generations to come, and for relatives

of those who have died and who are buried in a churchyard, to preserve the churchyard's distinctive character as a resting place for the dead of the parish, and also as the setting for the physical presence of the church in the community.

4. The land which is used for burials in a churchyard has been consecrated by a Bishop. It thus has a special significance as a place 'set apart' for sacred use forever. The churchyard is rightly known as 'God's Acre'.

5. The reason for Regulations such as these is that they represent the collective wisdom over many years of Chancellors and Diocesan Advisory Committees for the Care of Churches who have had the care of churchyards and the maintenance of the fabric of a Christian presence within our communities.

6. The Regulations differ from those which govern municipal cemeteries where the land is not consecrated and where the setting will be different (although sometimes part of a municipal cemetery may contain consecrated land). A churchyard almost always surrounds a church building. Memorial stones which may be entirely suitable for an urban cemetery may be out of place when close to an ancient parish church, especially in a rural setting.

7. All consecrated ground falls within the jurisdiction of the Chancellor of the Diocese. In granting faculties for churchyard memorials, the Chancellor has to consider not only the wishes of the bereaved family, but also the families of those who are buried in the churchyard, and the responsibilities of the church to future generations to maintain the area as an appropriate setting for a parish church.

8. The Chancellor delegates his power to grant permission for memorials in churchyards to the parish priest as long as the memorial proposed falls within these Regulations. If it does, and the parish priest agrees, no application for a faculty to the Chancellor is required. However if the proposed memorial falls outside these Regulations, or the parish priest refuses the memorial for some other reason, an application to the Chancellor for a Faculty is required. Such an

application will usually have to demonstrate that there is some exceptional reason for him to depart from the requirements of the Regulations.

9. In these Regulations the term 'parish priest' includes incumbent, priest-in-charge or other priest holding a licence in the parish.....

Erection of memorials in Churchyards

A: General points

15. The erection of any memorial in a churchyard, or the alteration of any existing memorial, or the introduction of any object in a churchyard, is a privilege and not a right. However, the parish priest and the PCC will want to do all they can to assist the process within the terms of these Regulations.

16. Those that are bereaved may sometimes be under the mistaken impression that they have bought the plot of land in which their loved one is buried, or where their ashes are interred. In fact they have simply paid for the work involved in the burial itself and for a small part of the cost of the general maintenance of the churchyard. The whole churchyard remains in the ownership of the Church.

17. Specially designed, beautiful and appropriate memorials are encouraged and applications for such memorials will always be sympathetically considered. Helpful advice can be obtained from the Churchyards Handbook obtainable from Church House Bookshop, Great Smith Street, London SW1 and from other religious bookshops. Advice on design may always be sought from the Archdeacon or the Diocesan Advisory Committee (The Secretary, DAC, Church House, The Old Palace, Lincoln, LN2 1PU). Charities such as The Memorial Arts Charity, Snape Priory, Snape, Suffolk IP17 1SA can assist bereaved people in choosing a design and commissioning an artist.

18. It is important to note that the existence of a similar memorial in the churchyard to the one for which permission is being sought will not necessarily be a reason for the Chancellor to give such permission. For example, the existence of old

kerbs around a memorial would not be a reason in itself for permitting kerbs around a new memorial. Kerbs make the tending and mowing of the churchyard by the Parochial Church Council more difficult.

19. If a memorial or other object is introduced into a churchyard without permission, the Chancellor has the power to grant a faculty for its removal and to order the person who has introduced it to pay the expenses of removal and the costs of any proceedings.

20. The Parochial Church Council has a duty to care for and maintain the churchyard and subject to the approval of the Chancellor, is encouraged with the parish priest to make rules for the benefit of the churchyard for which it is responsible.

21. It is the duty of the monumental mason to ensure that the memorial is safe when erected. Stability should be to the standard BS8415 or an equivalent safety standard.

22. The owner of the memorial, being the person who set it up and thereafter the heirs of the deceased, is responsible for its maintenance in a safe condition. Monuments which become insecure and dangerous may be dismantled and/or removed by the PCC under the authority of a faculty.

23. Permission to place a monument on a grave extends for a period of 100 years. After that time the monument may be removed under the authority of a faculty. ‘

16. This Introduction explains that what is permitted to be placed within a churchyard must always be judged against the character and needs of the churchyard as a whole, which is a place ‘set apart’ for sacred use forever. In exercising my jurisdiction over what may be permitted I must keep in mind not just the wishes of the bereaved

family concerned with the Petition under consideration but also the families of those buried in the churchyard and those yet to be buried there. I must ensure in so far as it is possible, that the character of the churchyard surrounding this Grade 1 listed church within a conservation area, is maintained.

17. The first question to be determined is whether a kerb which is flush with the ground should be permitted in this churchyard. The introduction to the Regulations make clear at paragraph 18 that the presence of kerbs around existing graves cannot be a basis for making an application for a kerb today. In this case I have seen kerbs around graves from the 1970s, the 1950s and the 19th century which are close by. These are raised kerbs. The objections to raised kerbs have been fully canvassed in the correspondence: they make mowing difficult. The fact that there are raised kerbs around graves elsewhere in the churchyard cannot be a reason for permitting a raised kerb today.

18. However, this is not an application for a raised kerb but one flush with the ground. It must be accepted that it would therefore be possible to mow over the area of the kerb, although if the kerb became sunken or cracked then this could present practical problems for the mowing operation.

19. However, in my judgement, the principal objection to kerbs around graves in a churchyard is not limited to whether they are raised or flush and the difficulties they may cause mowers. My

fundamental concern about the use of kerbs in a churchyard is that it is a tight delineation of the grave creating thereby a border between it and the rest of the churchyard. Although the erection of a stone memorial to the person buried is the way in which the bereaved memorialise their loved one, and that grave is therefore personalised to that individual buried in that place, it is important always to view the churchyard as a whole, as a place 'set apart' for sacred use in perpetuity. It is a place where the graves and the churchyard should all meld together, with the fabric of the church building around which they are all set, so that the whole becomes a place at peace with itself, where the bereaved may come to remember their loved ones, who rest in peace.

20. I am concerned that kerbs, even flush with the ground, would have the effect of creating a series of individual memorial plots, boundaried and set apart, grave by grave, from the rest of the churchyard. This would conflict with the sense that each grave and its memorial was contributing to the overall peace and tranquillity of the whole churchyard, which as a whole was a place set apart for sacred use.

21. I have considered with care the effect of the repair (and re-inscription) of the kerbs around one existing 1970s grave. Firstly, it is important to note that such a grave would not be permitted by the current Regulations. I note that the kerbs were removed to have an additional inscription placed upon them and at the same time as the kerbs were removed the grave was renewed with chippings placed in

the centre of the grave. The existing foundation was cracked and had to be re-fixed.

22. Work is always permitted to restore an existing memorial even though the memorial would not be permitted under current Regulations. Therefore, I am satisfied that notwithstanding this repair work on the existing raised kerb, it does not make it wrong to refuse the Petitioner's application for a flush kerb around her late husband's grave. It is my judgement that new graves should not be surrounded by kerbs either raised or flush for the reasons that I have set out at paragraphs 19 and 20 above. No precedent should therefore be set by granting this Petition. Additionally, the effect on mowers of cracked or sunken flush kerbs is a practical objection to which I give some weight.

23. I note that the Petitioner has concerns that when foliage is permitted to grow that there is significant risk that her late husband's grave could be walked upon unknowingly by persons visiting other graves in the churchyard. She has seen footprints which have caused her and her family distress. I note that at the DCC meeting on 5 August 2018 it was agreed that families who were concerned about this could cut the grass in the immediate vicinity of the grave they visited. This is a sensible proposal and I hope will allay some of the Petitioner's concerns about this issue. However, I must emphasise that the policy of not mowing in this country churchyard to support wildlife and foliage growth is a matter for the DCC and the incumbent, and so the area of permitted mowing around graves will

remain a matter for them to determine. I hope that the Petitioner and the DCC can reach an agreement about this as it would appear other families have done.

24. I note that with the area in the vicinity of the graves being mowed, it will no longer be necessary for any pots to be placed on top of the grave to identify the presence of the grave.

25. I am grateful to the Petitioner for the careful submissions that she has made which I have considered with care. I recognise that my decision will disappoint her in respect of the kerb she seeks. However, I grant her the other aspects of her Petition in respect of the memorial headstone with the proposed design and wording. I hope that once the memorial is in place she and her family will be able to find in their continued visits to the grave of her late husband in this country churchyard some peace in their bereavement.

26. I waive my fee in the circumstances.

The Revd HH Judge Mark Bishop

Chancellor

30 April 2020