

Neutral Citation Number: [2021] EACY 1

**IN THE CHANCERY COURT OF YORK**

**APPLICATION FOR PERMISSION TO APPEAL**

**FROM THE CONSISTORY COURT OF THE DIOCESE OF DURHAM  
(CHANCELLOR ADRIAN ILES)  
[2021] ECC DUR 3**

In the Matter of a Petition for a Faculty for a Memorial in the Churchyard of St Andrew, Haughton-le-Skerne

Carol Martin and Paul Martin

Applicants

On consideration of the Chancellor's Judgment, his reasons for refusing permission to appeal and the Applicants' renewed application for permission to appeal.

ORDER OF THE RIGHT WORSHIPFUL MORAG ELLIS QC, Auditor

Permission to appeal is refused:

Reasons:

1. The proposed Appeal does not have "*real prospects of success*" (within the meaning of the Faculty Jurisdiction Rules 2015 (as amended)) in that the renewed application discloses no grounds of law upon which to base any argument that the Chancellor erred in law. The Chancery Court cannot overturn the lawful exercise of a chancellor's discretion.
2. The Chancellor properly held that the Faculty of 30<sup>th</sup> September 2010, which authorised the establishment of areas of the churchyard for the interment of cremated remains, did not authorise the proposed memorial, for which Mrs Martin had applied in 2017.
3. The Chancellor properly held that the incumbent had no power to grant permission for the proposed memorial since it did not accord with the conditions on the Faculty of 2010 or the diocesan Churchyard Regulations.
4. Having fully considered the merits of the memorial in the judgments [2018] ECC DUR 2 and [2021] DUR 2, and the points made by the Applicants in [2021] DUR 3 as to whether or not the order for removal should be set aside, the Chancellor lawfully exercised his discretion in declining to set aside the order for removal.
5. The Chancery Court does not have jurisdiction to "*review*" the lawful exercise of a chancellor's discretion (as requested at point 4 of the "*concise statement of reasons relied on in support of the application*"). It is unclear whether the photographs submitted with the Application were before the Consistory Court; no application has been made to admit them but the Auditor has looked at them in any event. They do not disclose any basis for arguing that the Chancellor erred in law in exercising his discretion. The Auditor notes that the Chancellor visited the churchyard in order to aid his consideration of the Appellants' suggestions to the effect that her son's memorial was being unfairly singled out for enforcement action. (Judgment paragraph [6]). The Chancellor had regard to relevant principles of law and provided adequate reasons for his conclusion that his order for removal ought not to be set aside.
6. The Auditor recognises the Applicant's naturally strong feelings about this matter, but the statutory threshold for granting permission to appeal has not been crossed.

MORAG ELLIS QC  
Auditor

1 October 2021