

**IN THE CONSISTORY COURT  
OF THE DIOCESE OF MANCHESTER**

**RE ST MARY PRESTWICH**

**JUDGMENT  
delivered on 12 February 2016**

*Introduction*

1. By his Petition dated 18 June 2015 Michael Atherton [‘the Petitioner’] sought a faculty to add slate kerbstones to an existing slate memorial on the grave of Olive Atherton, the Petitioner’s mother, who died on 16 April 2014 and was interred in the churchyard at St Mary Prestwich. He also wished the centre of the kerbs to be filled with slate chippings. The reason therefor seems to be that the new memorial was surrounded by kerbstones on other nearby graves.

2. The memorial had been erected in December 2014 pursuant to the incumbent’s delegated authority.

3. This application was precipitated by Alec Bingham of A B Memorials & Signs contacting the incumbent on 27 February 2015 who advised him, correctly, that a faculty was required for such works because an incumbent did not have delegated authority to permit the same.

4. In April 2015 it was stated that the Petitioner was severely disabled and had a serious [possibly terminal] health condition and had requested that the works be undertaken prior to his condition further deteriorating.

5. On 22 April 2015 I gave the following direction:

‘I am satisfied that a faculty for the installation of kerbstones is required ... . This will require a Public Notice and consideration of the matter by both the PCC and the DAC. I regret that I do not think that it is possible to treat this as an emergency application.’

*The Diocesan Advisory Committee*

6. On 2 May 2015 Mr Bingham made an application for advice from the Diocesan Advisory Committee [‘the DAC’]. Such application indicated that Mr Bingham wished to remove the existing memorial from its present foundation, lay a rectangular concrete picture frame foundation, refix the memorial with new kerbstones to the foundation and fill the centre of the kerbstones with slate chippings.

7. The DAC considered the application on 11 May 2015 and by its Notification of Advice dated 29 May 2015 Mr Bingham was informed that the DAC did not object to the proposed works. As hereinafter appears, there is a difference between recommending the proposed works and not objecting to the same.

*The Parochial Church Council*

8. At a meeting of the Parochial Church Council [‘PCC’] on 12 May 2015 the PCC was asked by the incumbent to consider the issue of kerbstones on graves and it agreed unanimously that:

‘kerbstones would not be allowed in St Mary’s graveyard unless there are exceptional pastoral circumstances’.

9. At its meeting on 14 July 2015 the incumbent mistakenly informed the PCC that I was minded to grant the application to install kerbstones on the Atherton grave ‘despite the PCC’s position as agreed at the last meeting’ whereupon it was agreed unanimously that:

‘The PCC note that the Diocese have lodged no objections to the installation of kerbstones on the Atherton grave and in the light of the pastoral circumstances the PCC does not object.’

10. By letter dated 29 July 2015 the Diocesan Registry informed the incumbent that the PCC’s decision at its meeting on 14 July 2015 was based on a misunderstanding because I had never given any indication that I was minded to grant the Petitioner’s application and was ignorant of the decision which the PCC had made at its earlier meeting. In such circumstances I sought and obtained disclosure of the minutes of the PCC previous meeting on 12 May 2015.

11. The minutes of the PCC meeting on 14 July 2015 were approved at its next meeting in an amended form to correct such misunderstanding, to record that the matter was due to be referred to me and that I would need an indication of the PCC’s views and it repeated its stance of not objecting in the light of the pastoral circumstances.

12. However, I am bound to observe that it appears that the PCC's initial decision was that kerbstones should not be permitted in the churchyard save in exceptional pastoral circumstances and that their subsequent decision not to object to such kerbstones in the light of the pastoral circumstances may have been prompted by a belief that I was minded to grant the Petitioner's application notwithstanding such initial decision.

*The Petitioner*

13. By letter dated 29 July 2015 the Diocesan Registry informed Mr Bingham that no information had been supplied as to why the Petitioner wished to have kerbs and chippings at the foot of the memorial, asked for the Petitioner's reasons and stated that, without pre-judging the application in any way, I would require some persuasion that kerbs and chippings are appropriate even though the photograph of the existing memorial shows some existing kerbs.

14. By letter dated 30 July 2015 Mr Bingham replied. He stated that the Atherton grave was on an embankment outside the actual churchyard and out of sight of those attending the Church. There was seemingly no grave maintenance by the Church and it was the Petitioner's wish that his mother's grave should be kept neat and tidy at all times and that the proposed addition of kerbs and chippings to the existing memorial would require no more than a clean down at the end of each winter season and would require no maintenance from the Church. He enclosed two photographs of the area of the Atherton grave which seem to show that whilst some graves may have kerbstones, the majority do not.

*The Public Notice*

15. The Public Notice was displayed between 25 October 2015 and 21 November 2015 inclusive.

16. There were no objections in response to the Public Notice.

*Determination of this application on written representations*

17. On 28 October 2015 I made the following directions:

[a] that, pursuant to Rule 13.1 of the Faculty Jurisdiction Rules 2013, I considered that the determination of the petition on consideration of written representations was expedient and I asked whether the Petitioner would agree in writing to such a course; and

[b] that if the Petitioner, or Mr Bingham on his behalf, wished to make any further representations he should do so in the next 14 days.

18. Such directions were communicated to Mr Bingham by the Diocesan Registry both by email sent on 29 October 2015 and letter dated 29 October 2015.

19. There was no response to [a]. As to [b] Mr Bingham referred to `the vast amounts of comments on social media regarding the churchyard and its upkeep.`

20. Upon re-reading the papers I realised that the Petitioner had not consented to my determining his application of the basis of such representations. Mr Bingham has now confirmed in writing that the Petitioner consents to such a determination.

*Determination of this application*

21. The Diocesan Churchyard Regulations provide that:

7. Things prohibited except by faculty

a. Kerbs, railings, fencing, chippings, statues or any stone in the shape of a heart.

22. I need to make three preliminary observations.

23. Firstly, it is important to emphasise the significance of an application for a faculty for a memorial which does not conform the diocesan churchyard regulations.

24. In fact almost all diocesan churchyard regulations prohibit the introduction of kerbs. This is because churchyards have to be maintained by the parish for centuries to come and that memorials should be designed to allow for their maintenance to be as simple as possible and kerbed surroundings, railings, chains and chippings are all inconsistent with such simple maintenance and may be liable to damage grass cutting equipment. Moreover kerbstones are likely to be the cause of tripping and may be unsafe or impede access to another grave.

25. So it was that in *St Andrew Sutton* [Gage Ch : Ely Diocese : 12 January 2010] a faculty for kerbstones and chippings was refused even though the Petitioner stated that her deceased mother particularly wanted kerbstones, that it was contended that such would not constitute a tripping hazard as the grave was not near a path and there were many graves nearby which contravened the churchyard regulations.

26. Similarly a faculty to introduce kerbstones was refused in *St John Whitchurch Hill* [Bursell Ch : Oxford Diocese : 14 April 2004] because such caused difficulties with maintenance.

27. Most recently in *Holy Trinity Eccleshall* [Eyre Ch : Lichfield Diocese : 20 December 2014] a faculty for kerbstones was refused. The following points may be noted:

[a] Eyre Ch repeated and applied dicta of his own in *St James Newchapel* [Lichfield Diocese : April 2012] that, where a faculty is sought for a memorial which is contrary to the churchyard regulations and where the churchyard already contains other non-conforming memorials, permission for such a memorial `will not be given lightly` and `a powerful reason must be shown before a faculty for such a memorial will be given.`

[b] In so stating Eyre Ch referred to dicta of Mynors Ch in *Re St Mary Kingswinford* [2001] 1 WLR 927 in which Mynors Ch identified that there were at least four reasons why non-standard memorials would be approved, namely [i] where the memorial is specially designed and is a fine work of art in its own right; [ii] where the memorial sought might be suitable in some churchyards but not others so that it would be inappropriate to issue a general authorisation; [iii] where there are so many examples of a non-standard memorial in the churchyard that it would be unconscionable to refuse consent for one more; and [iv] where, although the proposed memorial is unsatisfactory, there are compelling personal or other circumstances suggesting that it is appropriate to grant a faculty.

[c] Mynors Ch had himself justified the need for a `powerful reason` inter alia:

[i] as a matter of justice and fairness to those who have erected memorials which complied with the churchyard regulations;

[ii] because those who have buried their relatives in the churchyard or have reserved grave spaces had a legitimate expectation that the appearance of the churchyard would be maintained in accordance with the churchyard regulations; and

[iii] because the existence of non-conforming memorials which may have been allowed in the past or erected without a faculty was not per se a justification for a further inappropriate memorial although he conceded that the position might be such that the number of non-conforming memorials made it unconscionable to refuse a faculty.

- [d] Whilst Eyre Ch recognised that he should take into account the petitioner's belief that what she proposed was the most seemly way of commemorating her deceased husband, he decided not to attach much weight to it because, adopting dicta of Holden Ch in *Re Christ Church Harwood* [2002] 1 WLR 2055, at 2056:

‘The overall beauty and tranquillity of a churchyard is only as good as its component elements 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 the family of the deceased has sole right to decide what is, and what is not, appropriate by way of memorial, not least because ... that family does not own the land in which the remains are placed, or on which the memorial is meant to be placed.’

- [e] On the facts Eyre Ch concluded that the petitioner's personal preference and the presence of a number of other kerbed memorials in the vicinity of the grave were not a sufficient reason to grant a faculty in the light of ‘the prominence of memorials in the form up upright stones and the PCC's legitimate desires to minimise exacerbation of the crowded appearance of the churchyard and to resist the introduction of memorials which increase the difficulties of maintenance in this churchyard.’

**28.** Secondly, I have been the Chancellor of this Diocese for almost 12 years and during that time can only recollect one application to re-introduce kerbstones to a family grave : see a *Petition by Joan Foster* [27 November 2004]. The facts were unusual, as hereinafter appears.

**29.** The Petitioner's grandfather had been buried in a grave in 1952 and shortly thereafter a memorial was erected with kerbstones along the side of the grave. In 1966 the Petitioner's grandmother was buried in the same grave and the kerbstones were removed to facilitate such burial and then replaced. In 2003 the Petitioner's mother was buried in the same grave but when the Petitioner wished to reinstate the kerbstones she was advised, correctly, that she required a faculty to do so. The incumbent objected to the re-introduction of the kerbstones because the policy of the group which managed the churchyard under the auspices of the PCC was that kerbs should be removed from the churchyard wherever possible so as to facilitate its improvement and maintenance.

**30.** On the particular facts of that case I allowed the kerbstones, which had been in place since 1952 to be re-introduced but I expressly stated that I was not thereby setting a precedent for the introduction of kerbstones into the churchyard and that the

Petitioner appreciated that it was likely that in the near future the PCC would apply for a faculty to remove all kerbstones from all or part of the churchyard and that my determination of such application might necessitate the removal of the kerbstones which I had permitted to be introduced.

**31.** I thus do not believe that such decision cannot thus offer any support for the Petitioner`s application.

**32.** Thirdly, I have no doubt that in recent years applicants who may have wished to erect kerbstones around a grave, after discovering that such would be contrary to the Diocesan Churchyard Regulations, have amended their proposals to not include the same. I agree that such is a relevant matter for me to take into account in deciding whether to grant the faculty sought.

**33.** I now turn to the facts of this application

**34.** I accept and adopt the test set out by Mynors Ch and Eyre Ch, namely that there should be a powerful reason to grant a faculty for kerbstones when such are not permitted by the Diocesan Churchyard Regulations.

**35.** I have carefully considered the photographs of the churchyard. On such photographs I can only see one, or perhaps two, examples of graves with kerbstones but the majority of graves do not have kerbstones. In such circumstances I cannot conclude that there are so many examples of kerbstones that it would be unconscionable for me to refuse to grant the faculty sought.

**36.** I have expressly asked Mr Bingham on behalf of the Petitioner precisely why the kerbstones are desired to be installed. The only answer I received was contained in Mr Bingham`s letter dated 30 July 2015 which I have summarised above. I can well understand that the Petitioner`s wish was for his mother`s grave to be kept neat and tidy and that she believed that the proposed addition of kerbstones and chippings might assist in maintaining her grave but I do not believe that such personal preference is a sufficient reason for me to permit such kerbstones and chippings when I believe that such are likely to have an adverse effect on the ability of the Church to maintain the churchyard and when in my judgment it is likely to exacerbate the crowded appearance of the churchyard and is contrary to the general policy set out in the Diocesan Churchyard Regulations to discourage the installation of kerbstones.

**37.** I note that the DAC did not recommend the proposed works but elected to not object to the same. At the very least such indicates that the DAC had reservations about the introduction of kerbstones.

**38.** I further note that the PCC's initial decision in respect of the proposed works was that kerbstones should not be permitted in the churchyard save in exceptional pastoral circumstances and that they did not indicate that they believed that there were exceptional pastoral circumstances. Moreover, the PCC's subsequent decision not to object to such kerbstones in the light of the pastoral circumstances may have been prompted by a mistaken belief that I was minded to grant the Petitioner's application notwithstanding its initial decision.

**39.** For all these reasons I am satisfied that I should dismiss the Petitioner's application to introduce kerbstones to the Atherton grave. Although I have not expressly referred to the application to introduce slate chippings, in my judgment, that must fail too for the same reasons.

**40.** Although I have already noted that the Petitioner is severely disabled and has a serious health condition, such matters cannot in my judgment persuade me to reach a contrary conclusion to that which I have reached.

*Conclusion*

**41.** It thus follows that I dismiss the Petitioner's application. In accordance with the practice of the court the Petitioners must pay the costs of determining the application.

GEOFFREY TATTERSALL

Chancellor of the Diocese of Manchester