

## Re St Margaret of Antioch, Thorpe Market

### Judgment

1. This is the determination of a petition by the Team Vicar and churchwardens dated 13 May 2013 seeking a confirmatory faculty for the removal of kerbstones and cornerstones from around certain graves in the churchyard of this Grade II\* listed church.

#### **Background**

2. For many years the church at Thorpe Market has been well known for its conservation churchyard. This has been managed by leaving areas of the churchyard uncut through spring and early summer to encourage the growth of wildflowers and support a biodiversity which might otherwise not exist within the churchyard. This aspect of church life is managed by a team of volunteers. There is no doubt that this creates a beautiful aspect within the churchyard and is consonant with principles of Christian stewardship of God's creation.
3. Over a period of years concerns have intermittently been raised about the risks to people and equipment from the kerbstones and cornerstones on graves when the time comes to cut the grass in the conservation area in late summer. Those conversations have included seeking advice from previous incumbents of the position of Archdeacon of Lynn and Bishop of Lynn. In early 2012 the group of volunteers responsible for maintaining the churchyard had dwindled in number and once again the risks posed by existing graves were raised. In May 2012 the PCC passed a unanimous resolution to "seek permission to remove the kerbstones and cornerstones to the rear of the church" with a view to improving the safety and facility of maintaining the churchyard.
4. Sometime prior to September 2012 notices were displayed on three church noticeboards giving notice of the intention to remove the stones. Those noticeboards are located at the back of the church, in the church porch and on the roadside respectively. The content of the notices are set out below:

"After a review of health and safety in the church yard it has been decided to remove some of the kerbs around

graves especially in the conservation areas where the length of grass and the use of mowers, makes them a hazard.

There is a map of the graves affected on the notice board at the back of the church.

If your relative's grave is affected by this and you wish to comment on these plans, please contact:

Rev David Bartlett  
[contact details supplied]

It is hoped to begin this work after the 2/9/2012. So please let us have your comments by then."

In addition, family members whose contact details were known were contacted directly. Also, the churchwarden and team of volunteers responsible for churchyard maintenance approached anyone seen visiting graves during the summer and early autumn of 2012 and informed them of the proposed works. These efforts at notifying the families of the affected graves are said to be in accordance with the advice of the Archdeacon of Lynn. Enquiries have shown that that advice was proffered by the previous Archdeacon of Lynn, the Venerable Martin Gray. It has not been possible to confirm the exact detail of the advice given but, in any event, that advice must have preceded the installation of the current archdeacon in May 2009.

5. Ultimately, the works were not undertaken until the middle of October 2012, when kerbstones and cornerstones from approximately 18 graves were removed and placed in, at times rather unsightly, piles around the churchyard. Any stones which had legible inscriptions on them were left on the relevant grave. The intention to secure these stones in place has been put on hold pending determination of this petition. The graves in question date from between 1917 and 1978.
6. At this point it must be made clear that these works were undertaken without faculty permission and therefore illegally. This is extremely unfortunate, especially given that advice on such matters is readily available to parishes through their archdeacons or, if needs be, the Registrar. I appreciate that advice of some sort was sought from the archdeacon at an earlier stage but that must have been at least three and a half years prior to the works being undertaken. At the very least it would have been prudent to check the situation with the current archdeacon. A simple telephone call would have clarified the situation. Churchyards are places of remembrance and reflection. They must be treated with sensitivity. This must be particularly important where, as here, memorials are to be disturbed which are of comparatively recent date with the consequently foreseeable risk of causing offence and upset to surviving relatives of the deceased. It is important for parishes

to remember that the faculty jurisdiction exists for good reason. A parish which undertakes works without the proper consent risks incurring additional costs if work is required to be made good, re-done or indeed undone.

7. After the works had been completed complaints were raised by a number of parishioners and family members concerned with the affected graves. Articles were published in the local press about the removal of the stones and several letters were received at the Diocesan Registry raising concerns. It is clear that a huge amount of upset has been caused. In November 2012 the matter was drawn to the attention of the previous chancellor who directed that the petitioners should apply for a confirmatory faculty in relation to the works in order that any objections could properly be heard. On 14 December 2012 the DAC issued a certificate recommending the proposed works but subject to stringent provisos, namely that:

“Where families request reinstatement, this should be done with the top of the kerb flush with the ground.

Where kerbs have been left because they contain inscriptions, these should be set into the ground with the writing facing upwards.”

Public Notices were displayed in February 2013. Given the pastoral difficulties which this situation has caused, it is unfortunate that there was a lapse of five months between the date of the DAC certificate and the filing of the faculty petition at the Diocesan Registry. This can only have served to intensify the sense of hurt felt by those concerned.

### **The objections**

8. Eight people have written to the Registry objecting to the works undertaken in this churchyard. Six of those are relatives of those whose graves have been affected. All of those objectors request the reinstatement of the graves of their relatives. A further objector is a parishioner who, until three years ago, had been involved in the maintenance of the churchyard for many years. The final objector is a former churchwarden of the church who no longer lives in the parish.
9. Each objector was given the opportunity to submit formal particulars of objection and thereupon become a party to the proceedings. Each objector (whether expressly or by implication) has chosen, instead, to leave me to take their written representations into account in determining this petition. I am satisfied that this case should be determined upon consideration of written representation and I order that it shall be so determined. In making my determination I take full account of the representations made by both the objectors and the petitioners. Most of the objectors have chosen to write more than one

letter to the Registry in this matter and the strength of feeling is clearly evident from the tone and content of those letters. I hope that I do their objections no disservice in summarizing them thus:

- a. The removal of the stones was done without proper authority or consultation;
- b. The works undertaken were disrespectful and insensitive (words such as “vandalism” and “desecration” are used more than once) and have changed the character of the churchyard to its detriment;
- c. The works undertaken were unnecessary in that proper maintenance of the churchyard could adequately have been undertaken without the works taking place;
- d. The stones which have been removed and retained within the churchyard are an eyesore and possibly a health and safety risk;

All of the objectors seek either the reinstatement of all of the removed stones or at least the reinstatement of the stones from the particular graves with which they are individually concerned.

### **The petitioners’ response**

10. In response the petitioners have stated that the works were undertaken with the best of intentions and that at no point was it their intention to cause offence or upset to the families of those whose graves were affected, or indeed anyone else. They acted as they did in the mistaken understanding that they had fulfilled all formal requirements as to consultation and notice after advice (albeit clearly somewhat historic advice) had been sought from the then archdeacon. They clearly approached at least some of the affected families before the work was undertaken and only undertook works to those graves which they believed to be untended. They state that any stones with decipherable inscriptions on them have been left in situ with a view to them being properly secured. They state that they face a dwindling group of volunteers to maintain the churchyard and that the changes were necessary to ensure that the churchyard could be properly and easily maintained with the minimum risk to both volunteers and visitors. The petitioners have agreed to work with any affected families to whom upset has been caused to ensure that their relatives’ graves are reinstated as appropriate.

### **Decision**

11. The stones removed from the churchyard at Thorpe Market, as part of the memorials erected to the memory of the deceased, are owned by those who erected the memorials or, where they have died, to the heir-at-law of the person commemorated (see *Re Welford Road Cemetery*,

*Leicester* [2007] 2 WLR 506). Had the petitioners applied for faculty permission prior to undertaking the works as they should, I would have required, in addition to the usual public notice, that a notice be placed in a local newspaper in an attempt to identify the owners of the affected memorials. Nevertheless, the problems at Thorpe Market church have been the subject of plenty of local press attention, including an article in the Eastern Daily Press and the North Norfolk News. The publicity and, no doubt, efforts by some objectors and the petitioners themselves have disclosed owners, or at least concerned family members, of twelve of the eighteen affected memorials who have either been spoken to directly by the petitioners or are objectors in this case. I am satisfied that further efforts are unlikely to identify the owners of the other memorials.

12. In addressing the objectors' objections (set out in paragraph 9 above), as already made clear, I find that the removal of the stones was indeed undertaken without proper authority or consultation. A faculty was required to undertake the works and that process would have required the display of a formal public notice (which has since taken place) as well as, in all likelihood, the publication of a notice in a local newspaper. Nevertheless, I am satisfied that the notices and publicity which has taken place since the stones were removed has ensured that all interested parties have been given a proper opportunity to have their representations taken into account in determining what is now a petition for a confirmatory faculty. Through this petition the petitioners are now seeking the proper authority for the works undertaken.
13. As to the suggestion that the works were undertaken in a disrespectful and insensitive manner, it is clear from the, at times emotive, language used by the objectors that great upset has been caused. It is my view that there probably was a degree of insensitivity in undertaking the works without making all reasonable efforts to ensure the consent of the affected families had first been obtained. This is particularly so where the graves concerned are of such relatively recent date. The fact that subsequent events have managed to produce family members for two-thirds of the affected graves indicates that this could perhaps have been achieved prior to the works being undertaken. Nevertheless, I am satisfied that any insensitivity was entirely inadvertent and that the allegation of "unbridled arrogance" made by one objector is unfair. The petitioners did not undertake the works with a disregard for the affected families. They did make efforts (albeit inadequate ones) to contact families and give notice of their intentions. Where contact was made with families, their wishes have been honoured.
14. It is suggested that the removal of the stones has changed the character of the churchyard to its detriment. I have seen photographs of the churchyard and it is also clear that any headstones have been left untouched. To say that the petitioners have been attempting to

transform this churchyard into “a closely mown suburban park” as has been suggested is unfair. The photographs I have seen show, subject to some disturbance of the turf which will recover, a rather lovely country churchyard which will continue to serve both parishioners and visitors alike as a place of peaceful reflection and remembrance.

15. It has been said that the works were unnecessary to the maintenance of the churchyard and that the churchyard had been adequately maintained for many years without the kerbstones causing too much difficulty. The evidence I have seen makes clear that the health and safety issues raised by the presence of the kerbstones has been the subject of active discussion within the church community on and off for at least 5 or 6 years. One of the objectors confirms this. Given the declining number of volunteers willing and able to give their time and energy to maintain the churchyard, it seems sensible for the petitioners to take steps to ensure that the churchyard can be maintained in as simple and efficient a manner as is reasonably practicable.
16. I note that the current Diocesan Churchyard Regulations do not permit the inclusion in any monument of kerbs, railings, fencing or chippings of any kind (paragraph 18). In addition, paragraphs 14.5 and 16.1 require any horizontal ledger stone or memorial plaque or tablet to be set flush with the adjoining ground. These requirements are in place specifically to ensure simplicity of maintenance of churchyards which otherwise might be left untended or at least under-tended. In light of all of the above, I find that the intention to remove the stones was not unreasonable or unnecessary.
17. Despite my comments above, it is clear that matters cannot be left as they stand. Families have suffered distress at the unauthorized removal of parts of their memorials and steps must be taken to rectify the situation. It is my intention to grant the confirmatory faculty sought but subject to stringent conditions.
18. Firstly, in any case where the family of the deceased has requested reinstatement of the kerbstones, those kerbstones must be reinstated by the petitioners. In so doing, the petitioners should sink the kerbstones such that they sit flush with the surrounding turf. Secondly, where kerbstones have been left on graves because they contain decipherable inscriptions, those kerbs shall also be reinstated at the grave, but should also be set flush with the surrounding turf with the inscriptions facing upwards. Thirdly, those parts of the memorials which have been placed in unsightly and potentially dangerous piles around the churchyard must be cleared. The petitioners must notify those identified affected family members whose graves are not reinstated in their entirety that they may, within three months of the date of the notice, recover any part of their kerbstones or cornerstones from the churchyard. I would expect one of the petitioners or a representative to facilitate any such recovery so that it takes place in a

safe manner. After the expiry of that notice period any remaining stones must be placed in a secure and appropriate place within the churchyard or disposed of as the incumbent thinks appropriate. All of these conditions must be fulfilled at the expense of the petitioners. They must be fulfilled under the direction of the incumbent and within a period of six months (or such extended time as may be allowed).

19. It is my earnest hope that this decision will provide a turning point for all those affected by these proceedings. The events in this churchyard have been the source of great distress both within the parish and outside. I endorse the sentiments of one of the objectors who expressed the hope that the conclusion of this matter would ensure that “the congregation [would] be able to unite and encourage individuals of all ages to join in”. The church should be a place of healing and reconciliation and I trust that all those concerned will move forward in a spirit of Christian fellowship to ensure that this church continues to fulfil God’s purpose in this parish.

Ruth Arlow  
Chancellor

27 September 2013