Neutral Citation Number: [2025] ECC StA 1

IN THE CONSISTORY COURT OF THE DIOCESE OF St ALBANS

IN THE MATTER OF WOOLMER GREEN, ST. MICHAEL AND ALL ANGELS

PETITION NO. 1516

JUDGMENT

Introduction

1. This is the petition of Priscilla Brinkley ("Priscilla") seeking a faculty for the erection of a memorial over the grave of her mother, Sally Violet Brinkley ("Sally") and her father, John Edward Brinkley ("John") in the churchyard of St Michael's and All Angels ("St Michael's"), Woolmer Green.

2. I will not take up time unnecessarily in setting out the full history and the procedural toing and froing of this case (which is reflected in the filed correspondence and procedural documents). It is sufficient for the purposes of these written reasons to note that the matter was initiated by the petition, dated 31 July 2023, which was originally brought on behalf of John by Priscilla, in order to commemorate Sally. The Brinkley family are members of the Travelling Community. John was terminally unwell at the time that the petition was brought and Priscilla acted as facilitator and conduit for his instructions. Subsequently John himself sadly died (in December 2023) and his remains are interred in the plot with Sally's. Since that point the petition has, at the behest of John on his deathbed, been progressed principally by Priscilla's sister Elizabeth (known as "Eliza") and the petition has been amended to include John in the inscription.

3. Limited literacy and/or non-literacy has affected aspects of procedure in this case and I proposed an oral hearing to ensure understanding. However, this was declined by the family. In lieu of that, I have sought assurance that Eliza and Priscilla are of one mind about the petition and that Eliza's recent conduct of it is with Priscilla's knowledge and consent. I have received that assurance. Matters have also been facilitated by the assistance of Hayley Prutton, director of Offley Memorials Ltd, who has acted (with their full authority) as amenuensis and, more generally, as the representative of Priscilla and, latterly, Eliza in written correspondence and has worked assiduously on behalf of both sisters to represent them articulately and with balance throughout the course of this matter.

4. The DAC "does not recommend" the memorial and the Team Rector and PCC object to it, although they have elected not to become parties opponent (nor have any other opponents

come forward). I have, however, carefully taken their objections into account in my consideration of this matter.

5. As well as many complex procedural points which have had to be dealt with, this case has raised challenging pastoral questions and has involved a series of interventions (including those directed by this court as a preliminary requirement to this matter progressing further), negotiations, and compromises. The combination of these factors, as well as inevitable points along the way when some correspondence or required response has proven complicated to deal with, has meant that the outcome in this case has taken a very long time to reach. I would like to extend my thanks to all involved for their patience and for the detailed, balanced and helpful responses provided throughout the process.

6. A number of modifications to the original memorial design have been proposed over time, partly as a result of negotiation and compromises in recognition of the opposition to the original design (which, in several respects, fell well outside what is permitted by the scope of the Churchyard Regulations). On 22 April 2024 all of the proposed modifications were drawn together into a revised request, submitted via a CR1 form (used for applications under the Diocesan Churchyard Regulations) which detailed the design modifications which have now been settled upon (detailed further below) and accompanied a revised drawing which clearly illustrated the new proposal[1]. The revised design in this form has been treated by all as a formally proposed amendment to the original petition design. The CR1 amendment has been reviewed, commented upon and fresh public notice of it provided[2] as if it were a revised design submitted on a faculty form. For the avoidance of doubt, pursuant to my case management powers contained in rule 18.1(2)(b) and/or (o) of the Faculty Jurisdiction Rules 2015 (as amended), I accept the revised design on a CR1 form as if it were a revised design on a Faculty form, noting that there has been no prejudice caused by the incorrect use of the forms in this case.

7. As noted above the PCC opposed the originally proposed design and, despite the modifications, also opposes the revised design. The DAC also did not recommend the original proposal and has maintained that stance in its Notification of Advice in respect of the revised design, albeit including commentary which articulated the difficulty it felt during its consideration of the matter. Both bodies have been kept informed throughout the process, have supplied comments from time to time as matters have progressed and have taken a fair and balanced approach in the pastoral interventions and negotiations which have taken place to date. The DAC has also been involved in providing information to the family which has assisted in significant concessions being made in order to achieve the revised design.

[1] Annex 1
[2] 07.11.24 – 05.12.24 (no objections received).

Details (and context) of the proposed memorial

8. The position in this case is that the memorial as originally proposed fell outside the scope of designs permitted by the Churchyard Regulations. It had the following particularly notable features: a headstone 3 feet 3 inches high and 3 feet wide in polished blue pearl granite, set on a base with a matching cover slab, some 6 feet by 3 feet in dimension in the same fabric with rounded steps and built in vases in its design and gilded, incised lettering on the inscription on the headstone. A carved angel was to be draped over one side of the stone, giving an asymmetrical shape to the memorial, and 3 dimensional carved climbing roses were to extend in a wing-like way from either side of the stone. An inlaid photographs of Sally (and latterly also John) were proposed. It was based on a design that Sally and John had created for one of their children (buried elsewhere) and her family were hopeful that they themselves might have a memorial stone of the same design. The original petition design was opposed by the Team Rector and PCC in the following terms: "*We would not support the introduction of such a memorial, on both aesthetic and practical maintenance grounds. It is unsuitable*."

9. A point of background to this matter is that Sally's remains had originally been buried in the London Road Cemetery in St Albans but a disagreement with another family who had a relative buried nearby had sprung up. After matters had escalated to the point where threats of violence had been made, the Brinkley family were permitted to exhume Sally's remains and had, in 2022, approached the curate of St Michael's for reburial in the churchyard there, which was permitted and where Sally's (and John's) remains now lie.

10. It is also relevant, by way of background, to note that in recognition of the number of members of the Travelling Community buried there and the design preferences for memorial stones which are typically requested, a nearby churchyard - St Luke's, Hatfield - has been permitted its own modified churchyard regulations. That this nearby church permits memorials outside the scope of those permitted by the narrower Diocesan Churchyard Regulations appears to have been the source of some misunderstanding for the Brinkley family and the memorial masons advising them in respect of their application to St Michael's. It has led to a repeated motif in correspondence along the lines that "[a similar memorial was approved] *in another churchyard within the Diocese…in a fairly nearby location…only four years ago*." The position as regards the special regulations at St Luke's has been explained and it has been emphasised that this does not create a precedent for similar memorials in St Michael's churchyard. It might also be asked why the family requested Sally's reburial in St Michael's churchyard, rather than nearby St Luke's, if they were anticipating asking for an unusual memorial stone of a type which had plainly been permitted many times at St Luke's, but were not in evidence in St Michael's. The answer appears to be that the choice of St Michael's for Sally's reburial related to the fact that the family believed that other family members had been buried in the churchyard in the past. The curate checked records at the time of the family's request but was unable to locate the burial sites of those family members. Nonetheless the evidence from her is that she was happy to have Sally buried there in any event and the family went ahead.

11. Against this background, when the matter first came before this Court, I directed that there should be a period of pastoral liaison with the family, both to explore their requests and to ensure that they understood the risks of proceeding with a petition which lacked important support and which may cut across principles governing decision-making regarding the appearance of the churchyard.

12. Throughout the course of the remainder of 2023 through to the date of John's death in late December 2023, pastoral contact – which gradually encompassed negotiations for the modification of the proposed design - followed between the family, the memorial masons supporting them, the Archdeacon, the DAC and representatives from St Michael's. Following John's death, negotiations continued and revised designs were, in due course, crystallised into the revised plans now before me.

13. The revised design includes the following key modifications: the headstone has been reduced in width by the omission of the 3D climbing rose side wings (these are replaced by more discreet climbing roses lower down on the headstone) so that it is now proposed to be 3 feet 4 inches by 2 feet 11 inches (base remains the same size); the asymmetric shape initially proposed has been changed to incorporate a more traditional ogee line; the built in urns have been omitted; inlaid photographs of John and Sally have been omitted; it is now proposed that the headstone and the slab will be made of honed dark grey granite; the draped angel has been replaced by a simpler angel placed centrally and overlooking the stone below.

14. These are, in my view, significant concessions. Whilst the revised designs retain the essence and stylistic flavour of the original proposal and are true to Sally's design, they have been scaled back and simplified in a way which, this Court recognises, has shown notable restraint and concession on the part of the family.

15. In response to the revised proposals, the PCC minutes record as follows: "*Whilst not unsympathetic with the Brinkley family the memorial was unanimously rejected as the style proposed would be inappropriate, out of character with the churchyard and would set a precedent if allowed.*"

16. The DAC ultimately concluded, in its Notification of Advice, that it was unable to recommend the revised proposals. However in the "comments" section, the DAC recorded the difficulty it had in wrestling with the decision before it both because there was sympathy for the Traveller traditions which the Committee recognised were being honoured in the proposed design and also because the Committee recognised the lengths that the petitioner and her family had gone to in order to modify their proposals in order to try to fit in with the limits of the designs permitted by the Churchyard Regulations.

Further relevant context: the churchyard setting at St Michael's and information regarding Traveller Community beliefs and traditions

17. In seeking to understand the tensions that have affected this matter, I have drawn assistance from the explanations as to the beliefs and traditions informing the proposed design received from Hayley Prutton (on behalf of Eliza and Priscilla). I have also had regard to a report prepared by Gemma Challenger for the group Friends, Families and Travellers ("FFT") and an academic paper written by Pauline Lane of Anglia Ruskin University entitled "The Last Journey: The Funeral Rites and Cultural Needs of Gypsies and Travellers".

18. The submissions on behalf of the Brinkley family and the papers I have referred to have been helpful in illuminating a number of key beliefs and traditions relevant to features of the proposed design in this case. The importance and comfort the family will attach to and derive from both imagery and the inscription on the memorial comes through clearly from these sources, indicating that these are matters of importance which communicate aspects of belonging, such as ethnicity and kinship. The incorporation of the angel is viewed as highly important in this design as it is an illustration of guidance of the deceased through to the afterlife. Ms Prutton, on Eliza's behalf, has also strongly emphasised the significance attached to including a cover slab. It marks the grave site as a sacred space and creates protection against people, animals or machinery from passing over the grave. To this end, children in Travelling Communities are taught from a young age that it is highly disrespectful to walk over someone's grave.

19. Those sources have been helpful, too, in assisting my comprehension of the personal impact of some of the concessions made by the family during negotiations in this case. An important example of this is the reduction in size, and changes of material and finish of the proposed memorial given that the size of the headstone, and the impact of its stone and finish, can be felt to reflect the status of the deceased to the family and wider community. In the same way, I recognise the depth of the concession the family has made by no longer proposing the incorporation of inlaid photographs of Sally and John, given that their inclusion may have provided an additional means of enabling the family to feel connection with the spirit of their loved ones and also provided the wider community, some of whom may be non-literate, with a way of identifying the graves of people from the community that they knew.

20. I have considered the Court of Arches' decision in *Re St Giles, Exhall*[3] and drawn assistance from decisions from other dioceses, including the sensitive and thoughtful reasoning in the cases of *Re St John the Evangelist, Nursling with Rownhams*[4] and *Re St Peter, Terwick*[5].

[3] [2021] EACC1
[4] [2024] ECC Win 4
[5] [2023] ECC Chi 3

21. I also commissioned detailed photographs of the churchyard[6] (I was not in a position to undertake an in-person site visit in this case) and have benefitted from excellent and comprehensive images, including interactive 360 degree photographs showing the surroundings of the proposed memorial location and an overview of the whole churchyard, combined with a pop up map to help show key locations. These interactive photographs have allowed me to 'travel' virtually through the churchyard, zooming in on particular features and contextualising the proposed site of this memorial accordingly. I have been able to note the following features from a study of those photographs and the other information before me:

21.1. The churchyard at St Michael's is divided into two, namely the area directly surrounding the grade II listed, red brick church and an extension area (the "Extension Area"), separated from the main churchyard and accessed through a gap in a hedge. Sally and John's remains are buried in the Extension Area;

21.2. The Extension Area contains relatively few memorials and there is plenty of space remaining;

21.3. In the Extension Area there are memorials with prominent raised kerbs. The interior of one of the kerbed areas is covered with grey slate chippings. The others are filled with grass and covered with flowers and memorabilia. One of the kerbed memorials is next to the proposed site of the memorial to Sally and John. The other is directly behind it;

21.4. The stone used throughout the Extension Area is predominantly grey granite, although other stone has been used, including a white marble. The size of each stone is fairly uniform, although there are notable anomalies. There are a variety of shapes and of etched details on the face of many of the memorials in the Extension Area, some of which are striking;

21.5. In the "main" churchyard area, back through the hedge and adjacent to the church, most of the memorials have acquired a patina of age. That has lent a degree of harmonious uniformity to the appearance of that part of the churchyard, especially when taken together with the fact that the majority of stone used is grey granite. However, looking past that, it can be seen that there is, even within this area, notable diversity amongst the memorials. There is a variety of shapes, including several crosses and Celtic crosses of varying heights. There is one eye-catchingly tall memorial and another tall memorial in a light coloured stone which appears to be a scroll design. There appears to be a majority of kerbed memorials in this area. There is one low to the ground stone wrought in a striking black or dark grey stone incorporating a scroll and an urn.

[6] With thanks to Richard Jackson, the Local Church Income Support Officer, for providing those

Discussion

22. In considering the principles applicable to memorials outside the scope of the Churchyard Regulations I have had regard to *Re St Giles, Exhall* where the Court of Arches concluded at paragraph 11.8 of its judgment that:

"*…the right approach is the merits-based one. Clearly, any Regulations in place for the parish or diocese concerned will be part of a matrix of relevant considerations, but we do not think that consideration of a faculty petition should start with a presumption against allowing a memorial outside the parameters of the Regulations."*

23. This is a case where the concerns of those who object to the proposed memorial are principally related to the appearance of the memorial (as opposed to, say, safety or stability). The concerns have been framed in rather general terms, namely that it is objected to on "*aesthetic*" grounds, or on the basis that it would be "*inappropriate*" or "*out of character with the churchyard*" and, despite having been provided with the opportunity to do so, no further elaboration of these points has been put forward.

24. I start my consideration by noting that aspects of these concerns raise subjective considerations. I note in this regard Ch Ormondroyd's observation in *Re St John the Evangelist, Nursling with Rownhams* at paragraph 17: "*The mere fact that the memorial is different to the norm does not make harmful or objectionable... An objection based on the fact that it falls outside the terms of the churchyard regulations cannot be sustained. That is the inevitable consequence of the decision in the Court of Arches in Re St Giles, Exhall. A more nuanced consideration is required."* Whilst in many cases there may be clear aesthetic and historical imperatives which legitimately shape the permissible appearance and features of newly introduced memorials, in churchyards with a less uniform appearance, such as St Michael's - and in particular the Extension Area - questions about the designs of headstones should not be allowed to devolve into questions of taste, given that that approach can become narrow and may fail to ensure proper representation of the society that the churchyard functions to serve. The Churchyard Regulations, the church and churchyard context and the aims of providing a setting of tranquillity for peaceful reflection must, of course, guide the approach to be taken, but it ought to be possible to achieve that whilst still creating an "*inclusive environment for the bereaved*"[7].

25. It is true that the design proposed in this case is more elaborate than the majority of the surrounding memorials which tend, in both the original and Extension Areas of the churchyard, towards plainness. They do not, for example, commonly feature angels and roses in the way that this design features those elements prominently (although several memorials feature engravings of various degrees of detail).

[7] Pauline Lane: "The Last Journey: The Funeral Rites and Cultural Needs of Gypsies and Travellers".

26. However, despite the general tendency towards plainness, one of the first features to strike a viewer looking at this churchyard as a whole (or even when looking at either the original or Extended Areas separately) is a lack of homogeneity in the stones that are there. This is to be expected in a churchyard that has been in use for a long time and the variety lends it charm as it speaks of the generations of community it has served. Specifically, there are a multiplicity of sizes, shapes and features in evidence which, although generally fairly simple, show no cohesion within the grouping as a whole. There is no place in either area of the churchyard where the eye alights upon uniformity.

Detailed design features: angel, roses, gilded lettering

27. In this context I do not consider that the introduction of the more embellished design, which in its revised formulation is nonetheless fairly restrained, nor of the gilding of the lettering which is also proposed here, will strike a jarring note. To the contrary, these features are likely to add interest whilst remaining sufficiently cohesive as a result of the family's design concessions as to the stone to be used (now a honed grey granite, which is in keeping with the majority of other memorials throughout the churchyard), the change to use a traditional ogee top line for the stone and the scaling back of the size and prominence of the angel and roses (which are, in any event, elements commonly seen in churchyard memorials). Putting this another way, sometimes the question is asked whether particular features would "stick out like a sore thumb" and I do not consider that, in the setting of the Extension Area in this particular churchyard, the modified angel and rose, or any other elements of the design, will do so.

28. I also consider it relevant that the memorial is to be placed into the Extension Area, rather than the main churchyard adjacent to the church. The listed church building has a plain red brick exterior and the relatively unadorned stones that are nearest to it feel and look right in its immediate vicinity. However, the Extension Area is separated from the church by a high hedge with a small gap through which to enter and leave. The memorials in this area are less cohesive in appearance than the older area and already encompass some embellishments (greater kerbing, more etchings and other details). There is scope to accept some elaboration in the case of the proposed memorial, in my judgment, without it appearing incongruous. To the extent that there may be visitors to the churchyard who may nevertheless find the design of the proposed memorial out of keeping, I find that its situation in the Extension Area would amount to only a minimal infringement upon their enjoyment and, further, that it will have a negligible impact on the nearby listed church building given its screened and concealed location in the Extension Area.

Cover slab

29. As to the proposed cover slab, whilst it is true that there are no other examples of cover slabs that I could see located in either area of the churchyard, there are nearby memorials in the Extension Area with filled, raised kerbs and edging. Obvious, raised kerbing also

appears to be a norm within the main churchyard area adjacent to the church. Whether a grave has a raised slab or merely an unfilled, raised kerb may not be immediately obvious to a visitor surveying the churchyard as a whole and whilst the difference is apparent once the grave site is approached more closely, I consider that the modification to using honed grey granite rather than the polished blue stone originally contemplated will render the slab much less obtrusive in the context of the surrounding memorials worked in the same stone.

30. It is clear from the detail of the pastoral conversations concerning this matter that including the cover slab has proven to be a non-negotiable for the family in terms of honouring their beliefs and customs. The particular degree of importance the family affords to this feature informs the factual matrix before me, as do the concessions that the family has made in other respects, along with my conclusions as to the way in which the slab will fit into the churchyard landscape. Placed into this context, I consider that the slab is neither harmful nor objectionable and that it shall be permitted.

31. It is also right to note, particularly in the context of considering the cover slab, that the PCC's objections also touched on "*practical maintenance grounds"*, a point echoed by the DAC in some of its earlier correspondence and which appears to relate principally to concern about potential mowing or more general ground maintenance issues which may be caused by a raised slab. I do not find that there is a legitimate cause for concern on this ground. The churchyard, both the original and Extension Areas, already contain many raised kerbs and edgings. It is difficult to see how the proposed design of the cover slab would amount to any greater impediment to mowing or churchyard maintenance than the existing structures do.

"Setting a precedent"

32. The objections from the PCC also raised the concern that the memorial would "…*set a precedent if allowed…"*. This is a proper concern to the extent that there is currently an appreciable amount of space remaining in the extension area and recognising the reality that it may be difficult to differentiate, rationally, future requests for other similar memorials in the same churchyard.

33. However, it is important to reiterate that this decision does not set a precedent in any real sense, as each case is fact-sensitive and must be considered on its own merits. This churchyard remains governed by the Churchyard Regulations. That this modified design may be permitted on the particular facts of this case is not a green light to more elaborate designs generally. I would emphasise that the tone and spirit of this churchyard remains anchored in plainness and simplicity and the design modifications required in this case have been directed towards reflecting that.

34. The risk of a flood of similar applications must also be seen in the context of the time this matter has taken to resolve, the extent and complexity of discussions and negotiations that

have taken place and the degree of concession and modification that have taken place. These have involved a move away from the original design in order to bring the memorial more closely in line with the Regulations and the overall appearance of the churchyard.

35. It is also relevant, in the context of the "precedent" argument, to note the practical point that the extension is screened from the church which minimises the scope for harm from any future applications, even if considered cumulatively.

Inscription

36. Before concluding, I should add that I have also benefitted from the advice of the Archdeacon of Hertford in relation to part of the proposed inscription which contains an original poem directed to the love the family feel for their departed. The Archdeacon has given me her view that the proposed inscription is acceptable, noting, in so concluding, the Traveller Community's traditions of visiting the grave and talking to the deceased there and the background that the poem provides for that tradition. In my own consideration of this question, I have had regard to the fact that one of the aims of inscriptions is to "comfort the living", as set out in the Churchyard Regulations. The poem, in my judgment, gives expression to that aim by providing comfort in the particular case of this family. Accordingly, I will also permit the wording proposed in the design of the memorial.

Conclusion

37. It follows that I consider that an appropriate balance has been struck in this case between allowing expression of cultural traditions and beliefs of the Travelling Community and taking into consideration the needs of the settled community. The petitioner has satisfied me on the balance of probabilities that this memorial should be permitted and has established that there is clear justification, on the grounds of inclusivity, for any limited harm that the proposed revised design may cause in its particular setting in this case. Accordingly, a faculty shall issue, permitting the revised design.

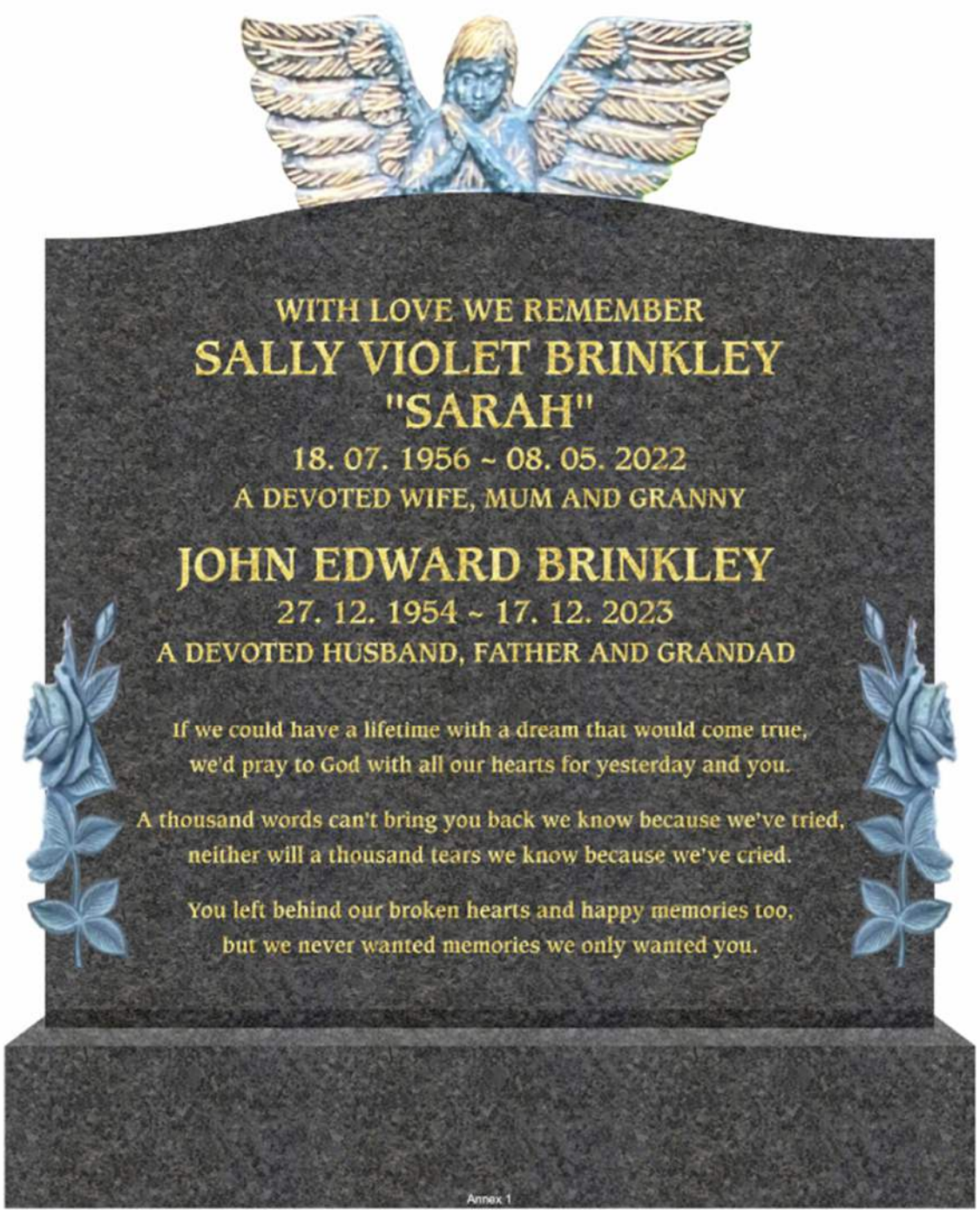
38. I would like to conclude by reiterating my thanks to all those involved in this matter for the patience and sensitivity with which it has been approached.

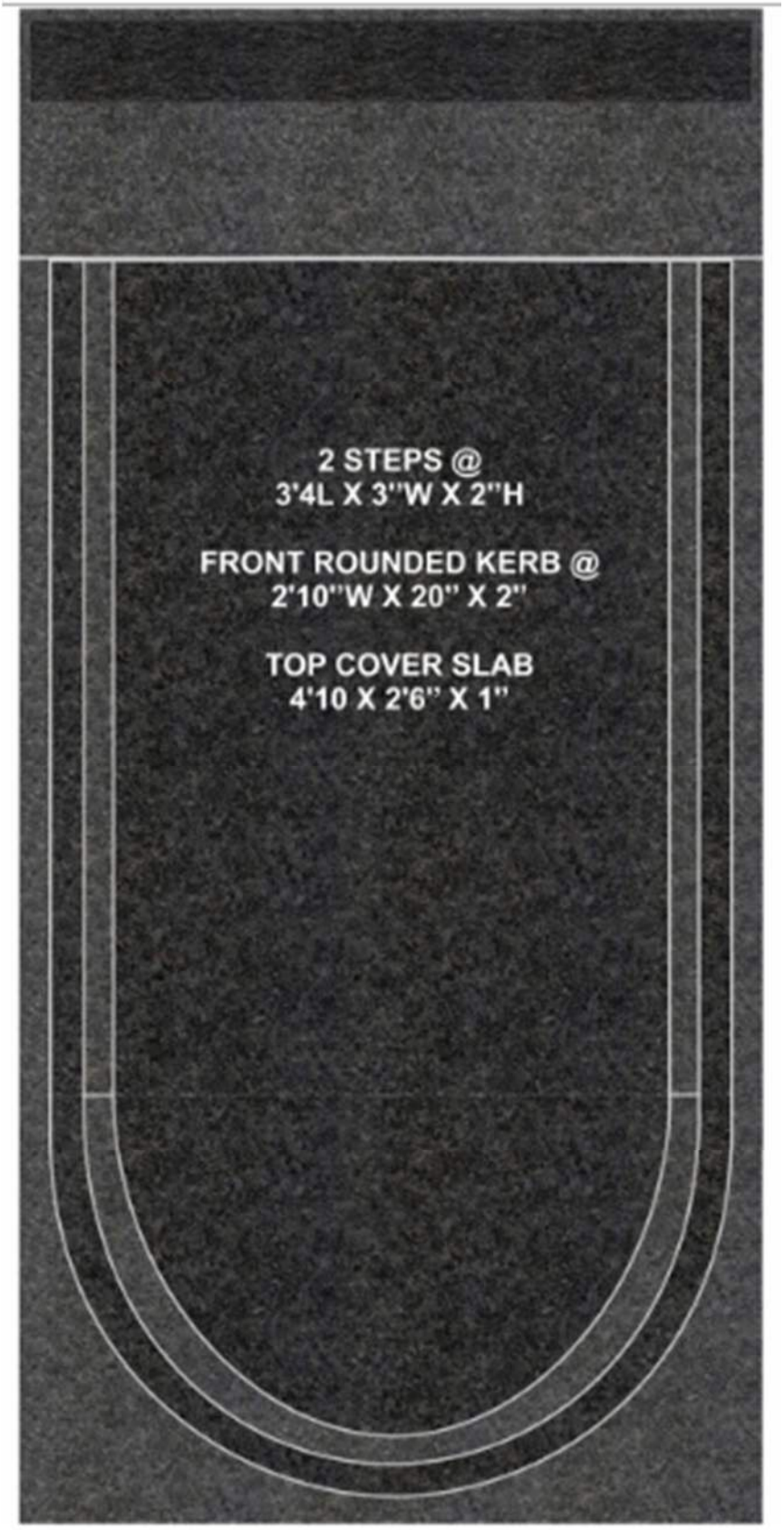
Lyndsey de Mestre KC

Chancellor of the Diocese of St Albans

18 March 2025

HEADSTONE approx 3'4''H x 2'11"W x 4''T
BASE 3'0''W x 1'0''D x 6"T

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3'4L X 3''W X 2''H
FRONT ROUNDED KERB @
2'10''W X 20'' X 2''
TOP COVER SLAB
4'10 X 2'6'' X 1''