

Neutral Citation Number: [2019] ECC Lei 2

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

IN THE MATTER OF WORTHINGTON, ST MATTHEW'S GRAVEYARD

(PETITION FOR FACULTY TO INSTALL A HEADSTONE)

1. This is a petition by Mrs Anne-Marie Hollings for a faculty to install a headstone above the grave of her late husband Brian Gordon Hollings who very sadly died on 11 August 2017 at the age of 49 years. Mr Hollings is buried in the graveyard of St Matthew's, Worthington, Leicestershire. The graveyard is not at the church, but is in open country just outside the village of Worthington.

2. The parish of Worthington forms part of the Flagstaff Family of Churches, served by the Ashby and Breedon Team Ministry. The Team Rector of the Flagstaff Family of Churches is Rev Canon Mary Gregory. The Team Vicar and incumbent of St Matthew's, Worthington is the Rev Tim Phillips.

The Petition

3. The petition is dated 21 May 2018. Mrs Hollings is seeking a faculty to install a headstone to her late husband in the form of a double heart. It is proposed that the stone should be made of polished blue granite. At the top of the stone would be the words:

To The Beautiful Memory Of

The left heart would be inscribed with the words:

**An Adored
Husband and Daddy**

BRIAN GORDON HOLLINGS

18.4. 1968 - 11.8. 2017

Aged 49 Years

**You and I Will Meet Again
And You'll Be Here In
My Arms Just Sleeping**

xxx

These final words are taken from the song "*Into the West*" by Annie Lennox.

4. The right heart would be left blank, with the intention that eventually Mrs Hollings will be buried in the same plot and a suitable inscription added at that time. It is also proposed that a double vase (also in polished blue granite) should be fixed to the base of the stone, which would bear the separate inscription

**Night, Night
God Bless Daddy**

xxx

At the base of the stone would be the further inscription

Remembered With a Smile

All of the lettering would be engraved and gilded.

5. The photograph of the proposed design that accompanied the public petition also shows engraved pictures of lilies on each side of the hearts. These engravings would be coloured green and white.
6. The dimensions of the finished stone would be height of 34" (86.4cm), width of 37" (94 cm) and depth of 3" (7.6 cm) for the stone itself and 12" (30.5 cm) for the base.

The Churchyard Regulations

7. The Diocese of Leicester, in common with other dioceses of the Church of England, has Churchyard Regulations (“the Diocesan Regulations”). The current version of the Regulations were promulgated by the Chancellor on 26 June 2014 following consultation with the Diocesan Advisory Committee (“DAC”). The Diocesan Regulations delegate to the incumbent of the parish the granting of permission for the installation of headstones and memorials that accord with the other provisions of the Diocesan Regulations. Where, however, the design of a proposed headstone or memorial is not permitted by the Diocesan Regulations, then a faculty is required.

8. The introduction to the Diocesan Regulations explains their purpose as follows:

A new memorial should not overshadow or outshine its neighbours, nor be flashier or larger than them. In death we are all equal, and it is pleasing to see an equivalence between the memorials, and between the stone (or other) old and new memorials in a Churchyard.

9. The following provisions of the Diocesan Regulations are of particular relevance in the present case:

11. Upright headstones should be:

- (a) no more than 1200 mm high (measured from the surface of the ground), or less than 750 mm high (measured from the surface of the ground);*
- (b) no more than 900 mm wide, or less than 500 mm wide;*
- (c) no more than 150 mm thick, or less than 75 mm thick, except in*

the case of slate memorials which may be no less than 40 mm thick...

13. *Headstones may be of three types:*

- (a) so shaped that they can be inserted directly into the ground at sufficient depth to ensure stability;*
- (b) on a stone base, provided that it is an integral part of the design, no more than 225 mm high, 900 mm wide or projecting 100 mm on either side; the base being no more than 360 mm front to back;*
- (c) on a vase base, no more than 100 mm on either side; the base being no more than 375 mm front to back.*

15. *Materials should be of natural stone or a colour, type and texture traditionally used within the locality of the Churchyard. Where local stones are no longer available the substitution of matching natural stone of a similar geological nature or of similar appearance is acceptable. "Stone" means natural stone, not a reconstituted or synthetic material.*

16. *Polished granites, marbles or unusual stone is not allowed, nor memorial in the form of a natural boulder, or of a cross of stone or wood including a Celtic cross...*

17. *The following designs or features are not permitted:*

- (a) other shapes of memorials, such as an open book or in the form of a heart;*

- (b) *kerbs, chippings, railings and chains;*
- (c) *the incorporation of a photograph or ceramic portrait of the deceased;*
- (d) *stone, concrete, metal, glass, plaster or plastic objects, such as model people, animals or toys, and windmills and jangling trinkets designed to make a noise when the wind blows.*

18. *Other than the traditional Christian plain cross, no symbols, insignia or motifs such as flowers or things of interest in the life of the person who has died, such as a dog, a bird, a fishing rod, a tractor, a musical instrument or a motorcycle, are permitted.*
19. *The inscription should be simple and consistent with the Christian belief of life after death. It should not be confined to expressions of personal loss or sorrow. It may record what the deceased did or some feature of his or her character (“a skilled tailor”, or “a much-loved father and grandfather” or “a kind and gentle daughter”). It may include a biblical text, or extract from a poem, or a suitable phrase with Christian connotations. Sentimental expressions should be discouraged...*
10. In May 2018 the Chancellor published further guidance indicating his concern that the Diocesan Regulations were often flouted. The guidance stated:
- “The remedy is simple: the Regulations should be enforced. If any particular parish regards the Diocesan Regulations as too strict or in some other way unsuitable for the churchyard in question, for instance if*

the churchyard is already half full with memorials of the prohibited type and the parish likes them, then the parish can ask for parish regulations of its own to cater for this. But what cannot be right is that the existing regulations are simply ignored."

11. The headstone that Mrs Hollings wishes to install falls outside the Diocesan Regulations in a number of respects:
- (1) It is wider than the maximum permitted by the Diocesan Regulations (Reg 11(b)).;
 - (2) Its shape is not permitted (Reg 17(a));
 - (3) The pictures of flowers are not permitted (Reg 18);

In addition the proposed inscription on the falls arguably falls outside the terms of Regulation 19. I should make the point that Mrs Hollings recognises that the proposed memorial to her late husband falls outside the Diocesan Regulations and has (quite properly) applied for a faculty to authorise it. This is not a case (of the type identified by the Chancellor in his guidance of May 2018) of the Diocesan Regulations being ignored.

Worthington Graveyard Rules

12. The Diocesan Regulations also provide the opportunity for parishes to prepare their own regulations and submit them to the Chancellor for approval. Where such parochial regulations have been approved by the Chancellor, they replace the Diocesan Regulations, so that the incumbent is authorised to approve a memorial that accord with their terms. However the introduction of parochial regulations does not affect the overall jurisdiction of the Chancellor.

13. An Annexe to the Diocesan Regulations sets out a number of matters which any proposed parochial regulations should cover. These include matters such as the maximum dimensions of a proposed memorial, permitted shapes and types etc.

14. I have been provided by Worthington PCC with a copy of their “local cemetery rules” which on their face apply to all the parishes within the Flagstaff Family of Churches. I am told that these have been on display for more than ten years and have been published in the Parish Magazine several times. However, they do not appear to have been formally approved by the Chancellor or his predecessors. The PCC have told me that these rules:

“... alone have no mandate and are not intended to replace or usurp any authority from the Archdeacon or Chancellor”.

15. The local cemetery rules are less detailed than the Diocesan Regulations, and contain no guidance about the dimensions or shape of any headstone or memorial. They do however contain the following guidance:

2. *Permission in writing must be obtained from the Team Rector before any monument is erected...*

3. *A charge is made to accommodate the headstone which may be polished or unpolished or of slate. White marble is **not** permitted. Photographs on headstones are **not** permitted.*

4. *To make the mowing of grass easier, mounds, raised kerbs, railings and the like are not permitted.*

16. These rules have given me some cause for concern. Paragraph 3, which purports to permit the introduction of polished stone memorials, runs contrary to paragraph 16 of the Diocesan Regulations. The PCC has no power to set rules which derogate from the Diocesan Regulations in this way without the approval of the Chancellor. I deal with the implications of this point at the end of this judgment.

The Graveyard

17. As I have already mentioned, Worthington Graveyard does not adjoin the parish church, but is in open country just outside the village. The existing graveyard is nearly full, Mr Hollings has been buried in the last available row. I understand that there are plans for part of an adjoining field to be consecrated and added to the graveyard.
18. I have not visited Worthington, but at my request, Mrs Hollings has provided me with a number of photographs of the graveyard. These show the graveyard as a whole, and also provide more detailed photographs of the site of her late husband's grave and other headstones that have been installed. I am extremely grateful to her for these photographs.
19. The photographs make clear that very few of the headstones that have been installed in Worthington graveyard in recent years have fully complied with the Diocesan Regulations. Most are of polished stone. Many incorporated symbols or motifs beyond those permitted by the Diocesan Regulations. Some have multiple colours used to fill in designs. The photographs also show that at least

two heart shaped stones have been installed in graveyard. One of those lies over the grave of Mrs Hollings' sister who sadly died in 2015. This was installed without a faculty, but with the permission of the previous incumbent (although I note that he had no authority to give such permission). The current incumbent has estimated that perhaps 80% of the memorials within the graveyard fall outside the Diocesan Regulations.

Procedural History

20. The petition is dated 21 May 2018. On 27 May 2018 Worthington PCC considered a request by Mrs Hollings to support her petition. The PCC unanimously concluded that they could not support a memorial that fell outside the current guidelines. However as a compassionate gesture they determined that they would pay the costs of the application should it be unsuccessful.

21. On 14 June 2018 the petition was dismissed by the Chancellor on a summary basis. However, the Chancellor subsequently concluded that it was not appropriate for the matter to have been dealt with on a summary basis without Mrs Hollings being given an opportunity to consider whether she was prepared to consent to the matter being determined without an oral hearing. The Chancellor accordingly set aside his order under rule 20.3 of the Faculty Jurisdiction Rules 2015¹, and transferred the petition to me for determination.

22. I gave directions in this matter on 23 July 2018, seeking further information from

¹ “(1) If it appears to the court just and expedient to do so, it may order that any faculty judgment, order or decree -
(a) be set aside (either in whole or in part)..”

Mrs Hollings about the proposed headstone and the situation of her late husband's grave within the graveyard. I gave directions for the giving of public notice of the petition, and provided an opportunity for the incumbent and PCC to provide me with any further information or submissions that they wished. I sought the advice of the DAC in relation to the petition and I also asked Mrs Hollings to confirm whether she consented to the petition being determined by me without an oral hearing, pursuant to rule 14.1 of the Faculty Jurisdiction Rules 2015.

23. In response to my directions Mrs Hollings provided me with the further information about the dimensions of the memorial that I requested, as well as the photographs of graveyard. She made the following points in support of her application:

(1) The graveyard is about a quarter of mile away from the church itself. The proposed memorial will therefore not have any impact on the historic setting of the church.

(2) She had been permitted a similar memorial in 2016 for her sister. She stated:

"I cannot understand why I need to apply for a Faculty for a headstone for my husband when I didn't have to for my sister. The two graves are only feet apart."

(3) There are a number of other headstones in the graveyard which fall outside the Diocesan Regulations.

(4) Her daughters (both of whom are still at primary school) helped to choose the design of their father's headstone.

"They can't understand why they may not be able to have the design they have chosen and are very upset about it. On compassionate grounds, I hope that this Faculty can be granted."

24. The Rev Mary Gregory, the Team Rector for the Fairfield Family of Churches and the Archdeacon Claire Wood have provided me with some comments. They have suggested that as a pragmatic solution the petition should be allowed, and that a similar relaxation of the Diocesan Regulations should (if desired) be permitted in relation to the remaining five plots in the final row of the graveyard, and that new parochial churchyard regulations should then be formulated which (if approved by the Chancellor) could then be applied to the new extension to the graveyard. The DAC's advice dated 6th September 2018 also accords with that proposal.
25. However, the PCC have sought to oppose this course of action. In two responses dated 16 and 31 October 2018 they make a number of points:
- (1) The PCC and parish clergy have invested time, energy and cost in bringing other applications in line with the Regulations. If this application were granted, there would be a substantial increase in the amount of clergy time that would need to be devoted to managing churchyards and cemeteries. By this I understand them to mean that it would encourage other applications for headstones outside the scope of the Diocesan Regulations.
 - (2) If the application were granted it would put the PCC at odds with grieving members of the community. The PCC are concerned that their attempts to "hold the line" against applications that fall outside the Diocesan Regulations would negatively impact their relationship within the local community.
 - (3) The proposed headstone for Mr Hollings would be the first in the new row

of graves and provide the opportunity for a visible fresh start with headstones all of which should be compliant with the Diocesan Regulations.

26. Both Mrs Hollings and the PCC have consented to me determining the petition on the basis of written representations.

The Law

27. The circumstances in which a consistory court should grant a faculty for a memorial falling outside Diocesan Regulations has been the subject of consideration in a number of recent judgments. These were usefully summarised by Geoffrey Tattersall QC, Chancellor of the Diocese of Manchester in *Re Saviour Ringley Stoneclough* [2018] ECC Man 3 at [27] to [39], and I have had careful regard to that summary in the preparation of this judgment. I draw the following points from that summary:

- (1) Diocesan Regulations should not be seen as laying down the sole standard of good taste but nonetheless (where they have been the subject of appropriate consultation) can be seen as representing a considered collective understanding of what is generally acceptable and appropriate (*Re Saviour Ringley Stoneclough* at [35] citing *St Leonard Birdingbury* [2018] ECC Cov 1 at [53]).
- (2) In those circumstances, a “good or substantial reason” should be required before a memorial falling outside the scope of such regulations (*Re Saviour Ringley Stoneclough* at [35] citing *St Leonard Birdingbury* [2018] ECC Cov 1 at [53]).

- (3) This is a matter of justice and fairness to other families who have put aside their personal preferences and accepted a memorial which conforms with the Diocesan Regulations (*Re St James Newchapel* (Lichfield) (2012))
- (4) Circumstances which might provide a sufficient reason for authorising a memorial falling outside the Diocesan Regulations might include:
- (i) A proposed memorial that is in its own right a fine work of art;
 - (ii) A memorial that is suitable for a particular churchyard, although not perhaps for other covered by the Diocesan Regulations;
 - (iii) A memorial of which there are already so many examples in the churchyard “it would be unconscionable to refuse consent for one more”; or
 - (iv) Compelling personal circumstances suggesting a faculty should nevertheless be granted.
- (*Re St Mary Kingswinford* [2001] 1 WLR 927 at [38])
- (5) However, it is not possible to definitively identify in advance all matters which are capable of constituting a sufficiently exceptional reason to justify the granting of a faculty (*Re Christ Church Harwood* [2002] 1 WLR 2055).
- (6) There may be circumstances falling within the examples set out at (4) above where it will nevertheless be appropriate to refuse a faculty and there will be circumstances falling outside those examples where there will be exceptional reasons for granting a faculty. The above examples are not to be regarded as a judicial straightjacket (*Re Saviour Ringley Stoneclough* at [29] and [30]).

Discussion

28. I have concluded that Mrs Hollings has not established a good or substantial reason why the proposed memorial should be permitted and I am therefore not prepared to grant a faculty in the form sought.

29. Although I accept that very few of the existing memorials in Worthington Churchyard comply fully with the Diocesan Regulations, for the most part they are of a broadly similar size and shape. The principal reasons why most of the existing memorials fail to meet the Diocesan Regulations are that they are made of polished stone and / or they contain insignia or motifs outside the relatively narrow category permitted. From the pictures I have been shown, Worthington Churchyard, whilst clearly not fully compliant with the Diocesan Regulations, nonetheless presents a relatively harmonious scene.

30. In my judgment the proposed memorial for Mr Hollings would represent a far more substantial departure from the Diocesan Regulations than anything that has been placed in the churchyard to date. From the pictures that I have studied, there are no other double heart shaped memorials within the churchyard. Whilst there are two or three single heart shaped stones, even these are very distinctive and in my judgment they disrupt an otherwise generally harmonious set of memorials. There are very few (perhaps four or five) memorials where multiple colours have been applied to engraved designs, and again, in my judgment the introduction of further examples would detract from the general uniformity of the Churchyard. In my judgment the proposed memorial is sufficiently far in design from the Diocesan Regulations that it would

look very much out of place in Worthington Churchyard, and both by its size, shape and use of multiple colours would be likely to overshadow its neighbours.

31. In reaching this conclusion I have considered very carefully the pastoral reasons put forward by Canon Gregory and the Archdeacon (and recognised also by the DAC). Mrs Hollings has been widowed at a young age and her two daughters have been involved in the choice of their father's headstone. I recognise fully that my decision to refuse a faculty for their chosen design is likely to cause significant upset and pain to Mrs Hollings and her family. Nonetheless, every headstone in any churchyard will have been placed by a grieving family, and I have no doubt that many will have had to set aside their personal preferences and accept a memorial broadly in keeping with the spirit of the Diocesan Regulations. Whilst I have every sympathy for Mrs Hollings' circumstances, I do not consider these to amount to a sufficient reason to permit the introduction of the proposed headstone.
32. Nonetheless, whilst I am not willing to permit the introduction of the memorial currently proposed, I consider that in two respects the Diocesan Regulations have been sufficiently widely ignored at Worthington that it would be unfair and unconscionable to require Mrs Hollings to instal a memorial to her late husband that complied with the Diocesan Regulations in every degree. Having regard to the existing (unapproved) churchyard rules and the pictures that I have seen of the Churchyard, should Mrs Hollings wish to submit an revised design, I would be minded to permit Mrs Hollings to install a memorial which departed from the Diocesan Regulations in the following respects (and no further):

- (1) The use of polished stone (other than white marble) would be permitted;
and
- (2) The inclusion of an appropriate motif or insignia (which could be a flower) of modest size having regard to the size of the headstone as a whole would be permitted. However, the use of multiple colours, or any single colour other than white or gold would not be permitted.

For the avoidance of doubt, I am not persuaded that a good reason has been shown to permit any departure from the Diocesan Regulations insofar as they apply to the size and shape of the headstone.

33. I must also deal with the proposed inscription. As set out above the Diocesan Regulations seek to avoid overly sentimental inscriptions. A thoughtful summary of the purpose of an inscription can be found in the current diocesan regulations of the Diocese of Chichester:

“Epitaphs should honour the dead, comfort the living and inform posterity. They will be read long after the bereaved have themselves passed away. A memorial stone is not the right place for a statement about how members of the family feel about the deceased nor how they would address him or her were they still alive. Passages of scripture, which have a timeless quality, are to be preferred.”

Whilst I appreciate that the use of the word “Daddy” in the proposed inscription has been chosen by Mr Hollings’ children, this is a memorial that will stand long after they have become adults, indeed it will stand long after they themselves have died, and I have had concern as to whether I should permit the proposed wording. I would ask Mrs Hollings when formulating an inscription for a revised memorial, to consider what I have said above regarding the fact that the memorial will stand long after her children have grown up. I am sure that the local clergy will be able to provide her with sensitive advice in this regard.

34. That said, I am acutely conscious that my decision to refuse their choice of headstone will be extremely upsetting for Mrs Hollings and her family. I also accept, as Mynors Ch recognised in *St Mary Kingswinford* [2001] 1 WLR 927 at [38], that compelling personal circumstances may sometime justify the grant of a faculty for a memorial falling outside the Diocesan Regulations. Moreover, the choice of inscription does not have the same visual impact on the graveyard as a whole, that the proposed shape of stone would have.
35. Taking all of the circumstances of this case into account, and in particular the fact that I have denied Mrs Hollings her preferred design, I would be willing to permit Mrs Hollings her chosen inscription, albeit on an alternative headstone which accords with the guidance I have given above. I make clear that this decision is based on the particular circumstances that have arisen in this case and should not be seen as a general authority for the introduction of similar wording in other cases in the Diocese of Leicester.
36. However, I am not willing to permit the inscription that is currently proposed for the double vase that is to be built into the base of the memorial. It is intended that Mrs Hollings herself will also be buried in the same plot in the fullness of time and I do not consider it appropriate that the vase attached to such a memorial should bear an inscription plainly directed at only one of those interred below (see *Re Bulkington, St James* [2018] ECC Cov 2 at [20]).
37. In conclusion, whilst I am not willing to grant a faculty in the form sought, I will adjourn the petition to give Mrs Hollings an opportunity to submit an alternative

design in accordance with the guidance that I have set out above. By no later than 31 May 2019 she should send to the Registrar, for my consideration, a revised design consistent with the guidance that I have given. The PCC should be given an opportunity to comment on that revised design and once I have received those comments I will give a further ruling. If no revised design is received from Mrs Hollings by 31 May 2019, the petition will stand dismissed.

38. Alternatively, should Mrs Hollings wish to submit a revised design which was within the scope of the Diocesan Regulations (as extended by para [40] below), the petition could be withdrawn and the memorial could be authorised by the incumbent without the need for any further reference to me.

Postscript - New Parochial Regulations for Worthington

39. As indicated above, virtually every headstone in Worthington graveyard fails to comply with the Diocesan Regulations for some reason or other. In particular it is clear that the use of polished stone within the graveyard is widespread, and that it is ostensibly permitted by the local cemetery rules (although as set out above, these have not been approved by the Chancellor and as such have no official status).
40. Given this state of affairs, in my judgment, there is a clear need for Worthington PCC to draw up, in consultation with local parishioners, a set of parochial churchyard rules as envisaged by the Diocesan Regulations, which can then be placed before the Chancellor for approval. I would encourage the incumbent and PCC to embark upon this process as soon as possible, with a view to the

regulations being in place before the new graveyard extension is consecrated.

41. In the meantime, and with a view to avoiding the need for faculty petitions in straightforward cases, I will by way of derogation from the Diocesan Regulations, authorise the incumbent of Worthington to permit memorials made out of polished stone (other than white marble) to be introduced into the existing graveyard at Worthington, provided that such memorials otherwise comply in all respects with the Diocesan Regulations. This derogation will apply for a period of 12 months and will cease to apply on 3 February 2020 (although any memorial authorised by the incumbent prior to that date can be erected in accordance with that permission). Any memorial that falls outside the scope of this derogation will need to be authorised by way of faculty in the usual way.

42. It should further be noted that the derogation set out above will not apply to the proposed extension to Worthington graveyard. Subject to the approval of any new parochial regulations or the grant of a faculty in a specific case, any memorial erected in the extended graveyard must comply fully with the Diocesan Regulations.

David Rees QC

Deputy Chancellor of the Diocese of Leicester

3 February 2019