

**Neutral Citation Number: [2017] ECC Der 2**

**In the Consistory Court of the Diocese of Derby**

**In the matter of Coton in the Elms, St Mary**

**Petition of Nicola Smith for the erection of a gravestone**

### **JUDGMENT**

1. By a petition dated 25 August, the petitioner seeks permission to erect a headstone in memory of her late father, James Francis McKay, who died on 26<sup>th</sup> November 2015, aged 67. The design is helpfully shown on the public notice. The headstone is a tapered four-sided stone, surmounted by a Celtic cross, set immediately onto the top part of the stone, that is, without any upright. Overall it will be 43" in height, and 21" wide, and stands on a base 24" wide. It will be in light grey granite. Mrs Smith says her father was a Catholic of Irish descent, and the family felt this design was a suitable mark of his heritage.
2. The PCC had met on 9<sup>th</sup> August and discussed the design.. They considered it was contrary to the Churchyard Regulations, that it would not be in keeping with the rest of the churchyard, and would be larger than those memorials around it, which were subsequently determined to be all below 36" in height, save one on the other side of the graveyard. Permission was therefore not given by the Rev Janet Turville, the parish priest, for erection of the family's choice of memorial.
3. It is not sufficiently recognised that all memorials require permission before they can lawfully be erected. In most cases that is done by the parish priest, who has delegated authority to give permission in respect of memorials complying with the Churchyard Regulations, which apply to the whole diocese. Any design not complying, requires permission from myself as Chancellor. The chief purpose of the Churchyard Regulations is to provide a simple and straightforward means of granting the necessary permission. If it is not given, then a faculty (permission) needs to be sought, which involves the submission of a petition form, getting the views of the Diocesan Advisory Committee, who advise on nearly all applications relating to churches and churchyards, and the placing of Public Notices to alert people to what is proposed. Those who wish to object, can register their objection, and become a party opponent, or, if they choose not to do that, then their objection will be taken into account when the decision is made. The biggest drawback to having to proceed by petition, is that fees become payable, at a rate authorised by Parliament, there will inevitably be some delay, and there is no certainty that the Chancellor will approve the application.
4. In this case, the Archdeacon of Derby, the Venerable Christopher Cunliffe, acting on behalf of the DAC, has visited the churchyard and provided advice. He points out that the 43" is well within the maximum set by the Regulations at 48". The parish priest and churchwarden repeated to him their concerns about the comparative height, and also the '*visual effect*', which they wanted to ameliorate, either by making the overall memorial smaller, or by having the Celtic cross on

the headstone itself. The petitioners are not willing to make changes, and want approval for the stone described.

5. Although clergy are authorised to approve applications within the Regulations, the decision as to whether a proposal is within them initially involves an exercise of judgment by the priest concerned. Sometimes the answer is totally obvious, and sometimes less so. Even if an application does fall within the letter of the Regulations, there may be something about it that causes some doubt or unease, so the priest may decide not to approve it but leave the applicants to take it to the Chancellor. The Regulations for the Derby diocese date from 1990, and are a lot shorter than many Regulations from more recent dates that are currently in force in other dioceses of the Church of England. Brevity is usually a virtue in itself, of course, but there is much less helpful comment and explanation than is usual in current Regulations from other dioceses, which may provide greater context within which individuals are assisted to an understanding of their purpose and intent.
6. The parish have mentioned their concerns about the height of the proposed memorial, having regard particularly to the height of other memorials in the vicinity, but it seems to me, as the Applicant and Archdeacon point out, that that simply indicates other families have not chosen headstones nearing, but not over the maximum height in the Regulations. The PCC minute of 9<sup>th</sup> August records the view the proposed design is '*contrary to Regulations subject to a faculty*', which I take to mean, is contrary to the Diocesan Churchyard Regulation, and therefore will require authorisation by faculty. However, as I have said, apart from the question of height, all they said is that it would not be in keeping with the rest of the churchyard and would appear to be larger than those memorials surrounding it. The PCC was not against the use of the Celtic Cross, but suggested it be on the stone itself. That of course is a very different design from the one proposed.
7. No other objections were raised on the putting up of the Public Notices.
8. The applicant and the PCC are happy for this to be resolved on paper.
9. Having gone through the Regulations, I do not myself see in what way this design departs from them. There is nothing in the height point, and the other two general criticisms set out above, seem to me simply to raise the same issue in different ways. The design differs from the simple headstones most families have gone for, but uniformity is not to be sought in itself, as it is in military cemeteries. Families should be allowed some degree of choice in how they wish to remember the deceased. It is not for the PCC to dictate the design.
10. If however, I am mistaken in that regard, and I should treat this application as lying outside the limits laid down, then I approach the matter on the basis, the applicant must demonstrate only that the design is *suitable* in all the circumstances. There is no particular higher standard that she must achieve, as some other chancellors have held. In my view there is no presumption that any application for something outside the Regulations is unsuitable, so that the

applicant has to work harder to demonstrate to the Chancellor that nonetheless the proposed design should be allowed. The Regulations are primarily to make clear the limits within which the parish priest may authorise an application. To that end, the Regulations have to be clear and simple; it would be no good giving authority along the lines '*you may authorise a headstone that is not too big or too unwieldy*'. That would be a recipe for dispute and unfairly differing views being given by different clergy.

11. The tightly drawn boundary lines in the Regulations are for that purpose only. They are not to lay down what is and what is not in good taste, save to the extent that when the Chancellor is delegating authority to others, s/he will be concerned to ensure that what can be authorised by those others must obviously not be damaging to the appearance and setting of the church building, or be likely to cause difficulty or offense to families with graves nearby. The limits laid down go no further than that. They do not suggest, or should not be taken as suggesting, anything outside the Regulations is automatically suspect and likely to be unacceptable as lacking good taste in some way. A memorial 50 inches high is not inherently less acceptable than one of 48 inches.
12. Although I apply the test of '*suitability*', when considering the total design of a memorial not within the Regulations, I ought to make clear that where an application is to add on say, kerbs or gravel chips, which are specifically forbidden in the Regulations, (to assist maintenance of the churchyard, or for reasons of health and safety), an applicant would indeed have to go much further before I would be persuaded to allow such features on a memorial. *That was not made sufficiently clear in my recent decision in the Blackburn diocese in dealing with an application for a memorial outside the Regulations.* I there set out at even greater length why I took the view '*suitability*' was the proper test. The decision is reported at *Re St Mary the Virgin Eccleston* [2017] ECC Bla 4.
13. Applying that test, I have no doubt I should approve this design.

**Order accordingly.**

John W. Bullimore  
Chancellor  
26<sup>th</sup> April 2017