

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**ST MICHAEL & ALL ANGELS: HORTON**

**RE: THE PETITION OF CHRISTINE WARRILOW**

**JUDGMENT**

- 1) The late Ernest Warrilow died in January 2000 and his remains were interred in the churchyard of St Michael & All Angels, Horton. Mr. Warrilow and his wife, Florence Mary (“Molly”) had contributed greatly to the life of Horton village. They had restored Horton Hall and had supported the church and other aspects of village life.
- 2) Mrs. Warrilow died in July 2017 aged 98 and her body was cremated. During her widowhood Mrs. Warrilow had expressed the wish that kerbs be placed around her husband’s grave; that the enclosed space created be filled with gravel; and that her cremated remains be scattered on that gravel. The Petitioner is the daughter of Mr. and Mrs. Warrilow. She is loyally seeking to carry out her mother’s wishes and seeks a faculty authorising the installation of kerbs and of gravel with a view to scattering her mother’s remains thereon. In addition it is proposed to add wording commemorating Mrs. Warrilow in wholly appropriate and unexceptionable terms to the existing headstone.

**The Procedural History.**

- 3) The Lichfield Churchyard Regulations set out those memorials which an incumbent is authorised to permit without faculty. They provide that such authority does not extend to permitting memorials which include kerbs or chippings. In any event the Parochial Church Council of St Michael and All Angels has expressed its opposition to the memorial proposed by the Petitioner. That Council has explained that it has “for some years” resisted the introduction of kerbs around memorials and has done so to preserve the future quality of the churchyard and to facilitate grass mowing.
- 4) The Diocesan Advisory Committee has not recommended approval of this petition. That committee had the benefit of photographs taken by the Archdeacon

of Stoke. These show that although there are kerbs around other memorials in the churchyard there are none round any of the memorials in the row which contains Mr. Warrilow's grave. In giving its advice the Committee referred to the impact of kerbs on maintenance of the churchyard and potentially on the safety of those carrying out maintenance tasks.

- 5) There have been seven letters of objection. These are each in the same form with each objector having signed a typed note in identical terms. These refer to the Church Council's support for the approach taken in the Churchyard Regulations and express the view that the proposed memorial would be out of keeping with the rest of the churchyard. Mr. Sillito has made a manuscript addition to his letter of objection expressing the view that the placing of kerbs around the memorial would hinder the tasks of mowing the grass and keeping the churchyard tidy. The Petitioner has expressed some disappointment that such objections were made given the service which her parents had given to the village of Horton. I understand Miss. Warrilow's reaction but I have no reason to doubt that each objector was motivated other than by a genuine concern for this churchyard and was expressing his or her honest views. None of the objectors chose to become parties opponent and nor did the Parochial Church Council.
- 6) I concluded that it was expedient to determine this matter on the basis of written representations and the Petitioner consented to that course.

#### **The Petitioner's Submissions.**

- 7) Miss. Warrilow has explained that the proposed memorial combined with the scattering of the remains was what her mother had wanted and that she felt duty bound to do all she could to achieve that. Miss. Warrilow explains that she has deliberately sought permission only for low kerbs with a height of 4" to minimise the impact on the maintenance of the churchyard.

#### **The Proposed Kerbs and Gravel.**

- 8) I have already said that the Churchyard Regulations provide that incumbents may not authorise memorials with kerbs or chippings. Those Regulations also provide that those seeking a faculty for a memorial outside the scope of the Regulations will need to establish a "good case" for permitting the proposed memorial.

- 9) I have explained at some length in *St Leonard, Birdingbury* [2018] Ecc Cov 1 my understanding of the principles to be applied when a faculty is sought for a memorial falling outside the range authorised without faculty by diocesan Churchyard Regulations. In short a good reason is needed to justify the grant of such a faculty. However, where there are already such a number of memorials outside the scope of the Regulations in a particular churchyard that it can be seen as unfair to a petitioner to prohibit a further memorial of the same kind then that unfairness can itself be a good reason for the grant of a faculty.
- 10) There are repeated instances of consistory court decisions in which chancellors have taken a firm line against applications for the introduction of kerbs around graves and where they have upheld the stance of Church Councils who have sought to resist such proposals. This is because of a general understanding that the presence of kerbs around graves can impede the maintenance of a churchyard. In short terms the presence of kerbs tends to restrict the ease with which mowers and strimmers can be used. Such a restriction affects the maintenance of a churchyard as a whole either by making it more difficult to mow or trim the grassed areas or by making the mowing exercise more expensive. This can result in the mowing being less effective or in it being more infrequent or can mean that maintenance of the churchyard imposes a greater burden (either financially or in terms of time spent) on those responsible for maintaining it than would otherwise have been the case. In that way the presence of kerbs around a grave has an impact on the other graves in the churchyard and on the appearance of the churchyard as a whole. In those circumstances a family's preference for the appearance of a grave with kerbs around it cannot prevail against the effect on other memorials and on the general appearance of the churchyard.
- 11) There are a number of other memorials with kerbs in the churchyard of St Michael and All Angels but there are none in the row containing the grave of Ernest Warrilow. The photographs show that there is a completed row spanning the width of a portion of the churchyard and containing at least twenty memorials (it may be rather more). Mr. Warrilow's memorial is immediately next to the footpath which is at one end of that row.

12) I accept that the Petitioner has sought to minimise the impact of the proposed kerbs on the maintenance of the churchyard by seeking kerbs of what she regards as being a reduced height. However, in my judgement she underestimates the impact of what is proposed on the maintenance of the churchyard. The kerbs and the gravel will impact on the mowing and maintenance of this part of the churchyard to a real extent. Indeed, the fact that Mr. Warrilow's grave is at the end of the row immediately next to the footpath means that the impact will be greater because kerbs and gravel on this particular memorial have the potential to hinder the entry of a mower on to this row of memorials. The fact that there are kerbed memorials in other parts of the churchyard cannot justify the creation of a further hindrance to maintenance in this part of the churchyard. In that regard considerable weight is to be given to the views of the Parochial Church Council as the body which bears the burden of the maintenance of the churchyard. In those circumstances the fact that the late Molly Warrilow wished to have kerbs round the memorial does not constitute a good reason for the grant of the faculty. In refusing the application for kerbs and gravel I am also influenced by the fact that these are in part intended to facilitate the scattering of Mrs. Warrilow's cremated remains on that grave. As I will explain below that is not an acceptable course and it follows that facilitation of such a course is not a good reason for authorising a memorial outside the scope of the Regulations.

### **The Scattering of Mrs. Warrilow's Cremated Remains.**

13) The Churchyard Regulations state that "cremated remains must not be scattered or strewn in a churchyard". Canon B 38 (4)(a) provides that "the ashes of a cremated body should be reverently disposed of by a minister in a churchyard or other burial ground in accordance with Section 3 of the Church of England (Miscellaneous Provisions) Measure 1992 or on an area of land designated by the bishop ... or at sea". Section 3 of the Measure refers to the "burial" of cremated remains.

14) I need not for the purposes of this petition determine whether the scattering of cremated remains is contrary to the canon although there is considerable force in the view that such scattering is not permissible in a churchyard. It suffices for

present purposes to note that the Churchyard Regulations prohibit that practice. The Regulations although issued by me were the fruit of extensive consultation in the Lichfield diocese and in this regard represent the collective view of the bishops, clergy, and laity of the diocese. There is no good reason put forward as to why Mrs. Warrilow's remains should be disposed of by scattering on this grave. Mrs. Warrilow's wishes in that regard cannot be seen as a good reason without more. There are a number of powerful considerations which operate against the scattering of the remains in this location. There are questions of seemliness and account has to be taken of the fact that the churchyard is used and frequented by others visiting the church or the graves of their departed family members. I note that the effect of the proposal would be that the ashes should remain on the plot mixed in with the gravel until dispersed throughout the churchyard and beyond by the actions of wind and rain. Even if I have power to authorise such scattering by way of faculty (which is doubtful given the wording of the Canon and the Measure) that is not a power which I would exercise in this case for the reasons just stated.

- 15) It follows that the petition is dismissed to the extent that it proposes the introduction of kerbs and gravel with the intention of scattering Mrs. Warrilow's cremated remains on that gravel. The wording proposed to be added to the headstone is wholly appropriate. If Miss. Warrilow wishes to proceed on the basis of the interment of her mother's remains in the existing grave following the procedure laid down in paragraphs [62] and [63] of the Churchyard Regulations then that will be permissible and a faculty authorising the proposed additional wording can issue without further reference to me in those circumstances.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
8<sup>th</sup> June 2018