

Re St Mary Magdalene, Mulbarton

Judgment

1. The Rector and churchwardens of this medieval church have petitioned for a faculty permitting the incumbent to be allowed to authorize modest uncoloured pictures on memorials within the new churchyard extension at Mulbarton church. The advice of the DAC has been sought. The minute of their meeting on 27 April 2015 sets out their views:

“...if the pictures reflected the life, work and interests of the deceased then they were already allowed, and...there is probably enough flexibility within the existing rules. Members felt that there should be no photographic reproductions.”

It will become apparent below that, in my view, the DAC has taken a wider interpretation of the current Churchyard Regulations than is warranted. However, I take their advice to mean that there is no objection to pictures which reflect the life, work and interests of the deceased. No objections have been received arising from the public notices displayed.

2. The churchyard extension was gifted to the church by the parish council in approximately 1993. A substantial majority of the memorials erected since that time have pictures engraved on them. One estimate provided was that 90% of the memorials have pictures, although, when I visited the churchyard, it was my impression that it was a lesser proportion than that. Nevertheless, it is clear that most memorials include a picture. I pause here to note that, although there are clear limitations in the May 2010 Diocesan Churchyard Regulations on when pictures can be permitted on memorials, it is my understanding that prior to 2010 the regulations were silent on the question of pictures. The majority of the memorials in this extension pre-date the 2010 regulations.
3. In February of last year a new incumbent, the Reverend Adrian Miller, arrived in the parish. In the first year of his incumbency, six of the seven memorials Revd Miller has been asked to authorize have included requests for engraved pictures. Mindful of the strong ‘precedent’ (I do not use that word in the legal sense) for pictures on

memorials within the churchyard extension Revd Miller has found himself in an increasingly difficult pastoral position in having to refuse such requests and refer grieving families to myself should they wish to pursue the inclusion of the desired pictures. Anxious to avoid an understandable sense of injustice which hampers his ability to offer appropriate pastoral support, whilst remaining within the law, he now asks for a general faculty allowing him to give permission for modest uncoloured pictures on memorials. Aware as I am of instances within the diocese where a certain level of disregard for the Churchyard Regulations has created and augmented a sense of injustice within a parish rather than avoiding it (for example, see my decision in the case of *Re St Margaret, Lowestoft*, 26 November 2013), I can only commend the sensible and sensitive approach of Revd Miller in this case.

4. The petition is limited to the churchyard extension which is separated from the old churchyard by a substantial blackthorn hedge. At the time of acquiring the land a covenant was imposed for the planting of that hedge and as such it is a physical boundary which will remain. Having visited the churchyard this week I have been able fully to appreciate the separate nature of the extension. The height and depth of the boundary hedge means that, apart from when one stands at the break in the hedge through which the main path passes, the old churchyard cannot be seen from the extension, and *vice versa*. The extension is screened on all sides and is entirely separate from the old churchyard. Its aspect does not impinge upon or affect the old churchyard at all and the screening of the extension is further emphasized by a number of other substantial trees within the churchyard.
5. What, in effect, is sought by this petition is a modest expansion of the authority delegated to the incumbent under the current Churchyard Regulations. Those regulations limit the circumstances in which pictures may be included in memorials. Regulation 20 states:

Pictures of any kind are not normally permitted on churchyard memorials, but may be permitted in the following circumstances:

20.1 Interment in a churchyard reflects the Christian theology and hope of resurrection. The creation of "shrines" to the deceased could conflict with the view that the souls of the faithful are in the hands of God. The Chancellor may be prepared in his discretion to consider carving with a clear Christian or traditional funerary symbolism or reference or which reflect the work of the deceased.

20.2 Where the deceased had served in the Armed Forces, a crest from their ship, regiment, squadron or other unit may be included, subject to the prior written approval of the Ministry of Defence being produced to the Incumbent.

20.3 Pictures should not occupy more than one third of the face of the stone and must be uncoloured.

20.4 Portraits of individual people and pets are expressly prohibited.

6. Under the current regulations, in terms of their subject matter, pictures are essentially only permitted which either have clear Christian or funerary symbolism or reflect the work of the deceased. This is narrower than the apparent interpretation of the DAC noted at paragraph 1 above. I note that regulation 20 is more restrictive than regulation 19 about inscriptions which may “reflect *the life and work of the deceased*” (this is similar to the DAC’s interpretation and may be the source of it). In terms of their form, the pictures anticipated by this petition (being uncoloured) fall within the regulations, save that there is no reference to the size of the pictures to be authorized. In the interests of fairness and consistency, if the faculty is granted I would impose the same limitation as to size as exists in the regulations (one third of the face of the stone) as no argument has been raised (and I can conceive of none) which suggests that larger pictures would be warranted.

7. In *Re St Mary, Fawkham* [1981] 1 WLR 1171 the Court of Arches made the following observations about the chancellor’s exercise of discretion in relation to memorials in churchyards:

“In deciding whether to grant a faculty for the erection of a memorial a chancellor has to consider two interests, which may well conflict; on the one hand, the interest of the individual petitioner and, on the other, the interests of the whole Church and the public generally. Individuals no doubt think that they should be allowed to do what they believe to be right but...there must be some controls. Memorials which for example would be blasphemous or otherwise grossly offensive could not be permitted. There must also be some control based on aesthetic evaluations...”

8. Thus I must balance the interests of those who, in this case, are potential applicants and the interests of the wider community, including that community which this churchyard serves. In this case the decision I am being asked to make is of application to all applicants for memorials in this extension. It is perhaps in certain respects easier to undertake the balancing exercise when the interests of individual applicants must necessarily be seen in the abstract. Nevertheless, I remind myself that the decision I make here relates to the delegation of a wider discretion which I hold about the form of memorials in churchyards. The Churchyard Regulations are created for the purposes of administrative efficiency. They are not a set of rules intended to fix and constrain the type of memorials which may be placed within churchyards; rather they are the limited delegation of what is a wide discretion. They are intended to create fairness and a consistency of treatment and to promote peace and good order within churchyards, which exist for the benefit of all. They are not intended to promote drab homogeneity. Memorials outside the scope of the regulations can be permitted by faculty and when they are high

quality, attractive, carefully conceived designs created by skilled craftsmen then they should be encouraged.

9. In balancing these potentially competing interests I must consider the nature and purpose of a churchyard. In *Re Holy Trinity, Eccleshall* (Lichfield Consistory Court, 1 June 2013) Chancellor Eyre described them thus:

“Churchyards are consecrated to God, Father, Son, and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards can also fulfil important spiritual rôles and can be a powerful part of the Church’s witness to the world. They provide appropriate settings for Christian places of worship and as such send out a message of the Church’s commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church’s continuing love for them and its belief in the communion of saints. The circumstances of interment and the memorials in a churchyard can be powerful evidence of the Church’s love for the local community. Churchyards are places of solace and relief for those who mourn. In addition many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved. Churchyards are also an important part of our national and local heritage. Our care for them is part of the Church’s work of stewardship of our environment and heritage. Thus the Consistory Court must ensure that what is placed in our churchyards is fitting and appropriate against the light of those foregoing considerations. Moreover, the memorials placed in churchyards must be fitting and appropriate not just for today but also for the future.”

10. Churchyards are places of peaceful remembrance and reflection. They must be treated with sensitivity. That sensitivity includes a careful consideration of the setting of the particular churchyard. What would be appropriate in a relatively modern, urban churchyard might not be appropriate in a more ancient and rural churchyard. The aesthetic impact of memorials is of real significance. It is entirely possible to conceive of memorials, the incongruous nature of which would disrupt their peaceful setting. This is particularly so where permission for the introduction of one such memorial would give rise to an arguably legitimate expectation that other similar memorials should then be permitted. To use the words of Chancellor Eyre in *Eccleshall* once again:

“...individuality cannot be permitted where the proposed memorial would be inappropriate in the particular setting. A memorial which stands out and to which attention is drawn may well be appropriate but regard must be had to the overall appearance of the churchyard and the proposed memorial must not strike a jarring or discordant note in the churchyard nor may it detract from the overall appearance and setting of the churchyard. Uniformity simply for the sake of uniformity is to be discouraged but difference solely for the sake of being different is equally to be discouraged.”

11. Memorials themselves are for the purpose of commemorating the deceased. However, they are not just for the benefit of the bereaved. The memorials can be expected to remain in place for many decades and will, in many cases, remain long after the bereaved have themselves departed this life. With that in mind they should remain relevant and speak meaningfully to future generations about the life of the deceased.
12. With all of these considerations in mind it falls to me to decide whether a general permission for the engraving of uncoloured pictures in this churchyard extension should be permitted. When making this decision I bear in mind that even if the faculty is not granted there is nothing to prevent individual petitioners seeking a faculty for particular memorials with pictures. That said, I am mindful of the fact that requiring a petition for an individual faculty brings with it delay, a cost and, more importantly, the pastoral problems described by Revd Miller when a sense of rejection is felt by those to whom he seeks to offer comfort. Whereas these things may be the unavoidable consequences of maintaining good order and preserving the harmony of a churchyard, they should be avoided where they are unnecessary.
13. I have come to the conclusion that a faculty should issue in this case, subject to certain conditions. In determining this petition I have particular regard to the fact that this churchyard extension is both physically and visually separate from the old churchyard. I do not give great weight to the fact that most of the existing memorials already have pictures on them. It is likely that at least some of those memorials are illegal and as such cannot create a precedent which requires further pictures to be permitted. That said, it does create a context to which I have some regard given the pastoral problems it appears to have created.
14. Dealing first with the form of the pictures which will be permitted, as mentioned above, I impose a condition that the pictures should not occupy more than one third of the face of the stone. I can see no reason to make an exception to the Churchyard Regulations in this respect, especially given the sense of fairness which is engendered by as great a consistency as possible within the Diocese. In order to avoid memorials which “strike a jarring or discordant note” within the extension the pictures must also be uncoloured engravings. Such modest and uncoloured engravings are unlikely to impose themselves in an intrusive way on the consciousness of those enjoying moment of peaceful remembrance and reflection.
15. In terms of the subject matter of the pictures, I believe that there must be some limitation here as well. Inappropriate pictures are to be avoided. Given the stated purpose of commemorating the deceased, the pictures must reflect the life of the deceased in some way. To use a

current existing request as an example, it would include the engraving of a fish on the memorial of a keen amateur angler, even though this does not reflect his work as required by the current regulations. Given the consecrated nature of the churchyard, the pictures must be in no way inconsistent with Christian theology and doctrine. Further, subject matter of the pictures must not be transitory in nature, so as to speak meaningfully to future generations. For example, the logo for a favoured pop band would be inappropriate.

16. Subject to those limitations, I grant the faculty sought. Of course, it remains open for individual faculty applications to be made in respect of memorials outside these limitations.

I direct that a faculty shall pass the seal, on the following conditions:

- a) The pictures authorized:
 - i. must not occupy more than one third of the face of the stone and must be uncoloured;
 - ii. must reflect the life of the deceased;
 - iii. must not be inconsistent with Christian theology and doctrine; and
 - iv. must not be of a subject matter which is transitory in nature.

The Worshipful Ruth Arlow
Chancellor of the Diocese of Norwich

15 May 2015