

Neutral Citation No. [2018] ECC SEI 2

IN THE CONSISTORY COURT

DIOCESE OF ST. EDMUNDSBURY & IPSWICH

In the matter of

OFTON ST. MARY

-and-

In the matter of

A PROPOSED HEADSTONE FOR THE LATE JAMES PATRICK

-and-

In the Matter of

A PETITION OF MRS ANNA BYE

Judgment of the Chancellor

May 4, 2018

JUDGMENT

1. By the petition of Mrs Anna Bye, a Faculty is sought for the erecting of a headstone in the churchyard of Ofton St. Mary on the grave of her son the late James Patrick. Originally, there were also two further petitioners, a churchwarden of St Mary's (Ian Alistair Dickson) and the Priest-in-Charge (the Reverend David Daniel Harrison). These two petitioners have since requested the permission of the court to be removed as petitioners (without this representing any opposition to the petition) and I have granted this application leaving Mrs Bye as the sole petitioner. In my view, in these petitions the important petitioner(s) will usually be she or he (or those) most nearly concerned with the death of the deceased (family, spouse, partner etc). Paragraphs 1 to 6 are concerned with preliminary observations. Paragraphs 7 to 21 set out the

general issues that surround any application for inscriptions on both sides of a memorial in this diocese. Paragraphs 22 to 34 review the materials and issues before me on the facts of this particular case and paragraphs 35 to 39 give my decision.

2. This is a proposal for a headstone that, in one particular, falls outside the Churchyard Rules 2009 (as amended in 2013) [hereinafter “the Rules”]. I am always willing to give guidance to those considering the erection of such a memorial before plans become too advanced. I am aware that headstones are invariably important and often sensitive items for families already suffering grief and the earlier guidance can be given, the better it usually is for the family and friends concerned. However, I will always consider with an open mind (but bearing in mind the Rules) any application that falls outside of the Rules if it is pursued notwithstanding the guidance.
3. The proposal which conflicts with the Rules is one to have inscriptions on both sides of the headstone. This is expressly prohibited by Rule 6: “...Designs of a simple nature and/or words may be incised *on one side only*” [my italics].
4. The effect of prohibition (express or implied) under the Rules is that the authority delegated to the incumbent or Priest-in-Charge to permit, if approved, headstones within the Rules will not apply and permission to do the thing prohibited by the Rules will need to be sought by a petition for a Faculty from the Chancellor.
5. The petitioner seeks my permission by way of Faculty to permit inscription on both sides of the headstone.
6. Some of the issues involved in consideration of this petition are of general importance and application and some are specific to the facts of this application. I will deal with the general considerations first.
7. The purpose of a headstone. I can do no better than to quote some of the observations of the Chancellor of Chichester, the Worshipful Mark Hill QC, in the guidance given to that diocese, which I adopt: “A headstone is a public statement about the person who is being commemorated. Making the right choice of stone, design and inscription is important not only to the relatives or friends who are going to provide the memorial, but also to the wider community because of the effect which the headstone may have upon the appearance of the churchyard.”
8. Whilst this diocese and the diocese of Exeter are unusual in specifically prohibiting without permission inscriptions on both sides of the headstone, it is my view that the restriction of inscriptions to one side of the headstone (other than Mason’s Marks) unless permitted by the Chancellor (or in some cases the Archdeacon) can readily be inferred from the rules in other dioceses. However that may be, it is with the Rules of this Diocese that I am concerned.
9. The purpose of the Rules. Churchyard rules are essential in my judgment to the proper maintenance of churchyards. Churchyards are for a community not just for individuals and are for future generations as well as past and present ones. As the Rules make clear: “the erection of a headstone is a privilege and not a right”. This is in distinction to the right to be buried in the churchyard if on the electoral roll or having died within the parish: that is a right and not a privilege. Whilst I will look at the general appearance of the churchyard as one feature of any application, bad practice in the past cannot dictate good practice in the present and future. If that were the case the Rules would be pointless. Therefore, when Jeremy Gooding in his written submissions in support of the petitioner says there are several examples in the churchyard of headstones with drawings and writings on the back and therefore this proposed headstone would not be out of place, I fear that he falls into that trap. However, Mr Gooding’s comments on the aesthetic merits of this particular memorial are relevant and I have considered them.

10. Likewise, James Nainby-Luxmore has written two letters in support of the petitioner's application. I have considered his specific observations carefully, but, on the general aspect he comments that I appear to him to have made clear that I wish for "strict uniformity" in the churchyard which he modifies to a "certain degree of uniformity" in later correspondence. It is certainly incorrect and a mis-reading to say I am insisting on strict uniformity. The Rules provide for wide variation in headstones and memorials in the diocese, which, of course is essential. However, the default position is that where the Rules specify that something shall or shall not be done, then that is the Rule, subject to an exception being made. Therefore, it is right to say that the Court will normally insist on conformity with the Rules, which is an entirely different concept.
11. Conformity with the Rules will not entail the churchyard looking like a war cemetery and an argument that it will or does is heavily exaggerated in my judgment. Likewise, I again stress that the general character of a churchyard is, of course, a relevant feature of any petition but when Rules have been introduced intended to bring about good practice in churchyards in the diocese, they are unlikely to succeed if the former practice prevailing before the Rules is given as a reason for breaching them. The reason Chancellor Blofeld issued these rules in 2009 was, in common with most other dioceses, to set minimum standards of conformity and good practice for the benefit of this generation and those who will follow. In my nine years as Chancellor very few issues have arisen as a result of these Rules.
12. There is good reason why this position should prevail. First, if the Rules are not to be followed simply because a petitioner wishes it, then the Rules might as well not be there at all.
13. Second, every time the Rule is not observed with the Court's permission, then that provides a precedent for the next petitioner to ask for the same thing and for that petitioner to say with force that the Court allowed it on a previous occasion, so "why not on this one?" Again, it would not take long for the Rule in question to have little meaning.
14. Third, I have to give consideration to all those who have abided by the Rule in issue here, doubtless on the basis that it applied to everyone seeking to erect a headstone or memorial in any churchyard within this diocese under the jurisdiction of the Court.
15. That does not mean that there can never be an exception to an express (or implied) Rule. In the case of "*In re All Saints, Honington*" (Const Ct) [2017] PTSR 664, I made clear that "the function of the doctrine of exceptionality is to provide for circumstances which cannot sensibly be envisaged by any rule or regulation, however carefully drafted."
16. The rationale of the Rule. A number of those submitting letters on behalf of the petitioner, Mrs Bye, pose the question in differing ways as to why the Court cannot permit the inscription sought on the reverse of the memorial and I shall come to that issue shortly, but, in general terms it is my judgment that the real question is why a petitioner should require an inscription on the reverse of the headstone when the vast majority of families and relatives, including those who have lost children, have the inscription(s) on the conventional front side of the headstone.
17. There are good reasons in general why the inscription(s) should be on the front of the headstone.
18. First, the purpose of the headstone is to bear designs of a simple nature with words recording the name and dates of the deceased with words reflecting the life of that person if desired. There can be an understandable desire by families or relatives to incorporate too much material, doubtless reflecting the currents of feeling that come

with grief. This can be particularly acute in the case of children, whose deaths are peculiarly terrible.

19. Second, the headstone is within the churchyard and thought has to be given to the general appearance of the churchyard that the Rules are designed to enhance and protect.
20. Third, there is simply no reason in general why the inscription should need to be on both sides of the headstone.
21. Accordingly, I am satisfied that the Rule against inscriptions on both sides of the headstone is both reasonable and proportionate as indeed are all of the Rules issued by Blofeld, Ch. in 2009 and amended by my direction (although not in respect of this particular Rule) in 2013. Therefore, I reject the argument that the prohibition on double-sided inscriptions is inappropriate or unreasonable. It has been applied in this diocese for the past nine years and will continue to be enforced until such time it is amended or repealed.
22. I now turn from the general principles to the specific facts of this application. I made it clear that at the outset, as I would in the case of any petition for a proposal that did not conform to the Churchyard Rules, that it would face something of a struggle. In the final analysis, it comes to whether there is sufficient reason for excepting this proposal from the rule against double-sided inscriptions. I also made and make clear that there was and is no issue as to the verse itself which is short and moving and which I had already said could be inscribed on the usual front side of the headstone without objection, until I learned something new in correspondence from the Reverend David Daniel Harrison which is referred to later on in this decision.
23. This is a petition that can be decided on the papers in my judgment. There would be no benefit from or need for a full hearing which would involve the petitioner in considerable and unnecessary expense. However, to do so the Court required the formal written consent of Mrs Bye which she has given in appropriate form recently.
24. Advice, submissions, representations and correspondence have been received from a number of people and I have received further submissions from the petitioner.
25. The Diocesan Advisory Committee in its advice recommended the proposal to me but the advice does not explain its reasoning as to why the Rule should be disregarded and, in my view, there must be good reason why that is the case. Therefore, I will need to draw my own conclusion.
26. The petitioner, Mrs Anna Bye, in the application itself says that the inscription on the reverse is very important to the family and explains its significance which is particularly personal and which I do not need to repeat here. I do not quarrel with that. The question is not why there has to be a verse, but why it has to be on the reverse of the headstone. The Parochial Church Council (hereinafter "PCC") points out that there is precedent for the proposal and gives me two examples of headstones with inscriptions on the reverse. This, in fact, illustrates to me how precedent will be used to support proposals outside of the Rules although, as I think is now acknowledged, these are not actually precedents because they pre-date the Rules (2009). However, I am conscious that any decision of the Court in this faculty application will potentially be a precedent under the Rules for the future. The petition itself therefore provides a justification for the verse itself but not for its location on the reverse of the headstone.
27. This was the reason I was not prepared simply to grant a Faculty *nisi*, and required the matter to be put before the court for a judgment, either on the papers or after an oral hearing. It has been said, or at least intimated, that this showed I had closed my mind to the petition. This is completely incorrect, however many times it is said, and I have always said and meant that my mind would be open. I believe it is better for the

Chancellor to be open and transparent in his or her approach as to how a decision like this will be considered. I have never yet felt able to date to approve an inscription on both sides of a headstone and it is right that the petitioners should know that. Having said this, I should also observe that there have been under five such applications in nine years and each has had its own particular facts.

28. The former petitioners, the Reverend David Daniel Harrison and Mr Ian Dickson, in a very helpful letter of March 30, 2018 explain that there is a change in circumstances relating to the grave itself. It has been discovered that the grave is double-depth and intended for another burial in due time. This means that either there would be insufficient space both for the details of another occupant and for the verse proposed for the rear of the headstone but which I had said could be placed on the front. They say that this might not be an exceptional circumstance but that they feel it adds weight to the argument for the petition. I agree with them that is an important and material consideration and one I was not aware of before. Whilst of itself it would not justify an inscription on the both sides of the headstone it is nevertheless an important matter to be judged in combination with other arguments.
29. They also regard Mrs Bye's strength of feeling and passion for her son, unencountered previously in their experience, as potentially being an exceptional circumstance and fear the relationship between the Church and Mrs Bye could be damaged by a refusal. Mr Dickson gives context to the moving reason for the poem, sets out his own personal experience and then points to the variety of tombstones that the old churchyard has and asks me to permit this "deviation from prescription" to "allow James' contemporaries to benefit from his headstone and his belief in a universal hope".
30. I both agree with and am moved by Mr Dickson's sentiments. Many of us do not reach middle or older age without having had personal experience of great tragedy and it has always been my judgment from the first time I saw this petition that the verse was both moving and perfectly acceptable for a memorial stone in any churchyard. However, the issue is the placement of the inscription, not its form or content. However, combined with the Reverend David Daniel Harrison's information about the double-depth nature of the gravestone and the practical inability to place the verse anywhere else, I agree that both of their observations are important and will be considered. Intense feeling by a petitioner is always a matter I take into consideration within limits.
31. Mr Nainby-Luxmore's observations have already been referred to in my general observations. I now turn to his observations on the petition itself. I have read all that he said but, in particular, I note that he explains the very sad circumstances of Mrs Bye's loss, the very young age of her son, and the depth of feeling she has. He stresses that a record of dates and facts does not convey anything or give a clue to the personality of this young life. I do not disagree with this.
32. Finally, I turn to Mrs Bye's own submissions to me. She explains to me that her desire to have an inscription on the reverse of the headstone relates to the fact that a young person or child who dies before his or her time has had little time to make an impact on the world and she wishes to give an impression of him and express something of his short life. She feels that the inclusion of all the material on one side will make it look busy and untidy.
33. She explains that the headstone will be beautifully carved by a master craftsman upon long-lasting Welsh slate. She expresses her surprise as to how adverse the Court appears to be to her wish, but I have already explained the way in which the Court will approach petitions that seek to go outside of the Rules and the reasons why this is

done. She asserts that the PCC, the Priest-in-Charge and the local community support her petition and that most of the local community would be surprised at the stance the Court has taken. I have looked at the photographs she has submitted and I agree that they are bolder than the ones she has herself had designed. Likewise, I have looked at the examples of double-sided inscriptions in churchyards prior to the 2009 Rules.

34. She explains her connections to the village and the distress caused to her by the stance taken by the church. I perhaps need to point that the decision is made by the Consistory Court which is part of the English legal system. The Consistory Court's jurisdiction covers a number of matters (including maintenance of churchyards) pertaining to Anglican churchyards in this diocese. She makes some further points about "precedent" which I hope has been explained in the earlier part of my judgment. I am not bound by past practice before the 2009 Rules (otherwise there would not be any point in having the Rules) but any decision I make under the 2009 Rules is certainly capable of creating a precedent. I am sorry if that was not clear before.
35. The Decision. I have had to examine with great care the reasons being given for what would be in direct conflict with the 2009 Rules and whether I am able to allow the petition.
36. My judgment on the significance of the features raised as being, singly or in combination, exceptional (or akin to exceptional) will be reviewed in ascending order of significance to the decision I have to make:
 - i. The degree of intensity of the feeling of a petitioner, whilst something that is worthy of note and respect, is not of itself a matter I can give much, if any, weight to. A person with intense feelings about wanting a particular memorial may have a good or bad case; someone else with less intense feelings may likewise have a good or bad case. Although if any decision by the Consistory Court pushed someone away from the church, that would be very sad but ultimately it would be the decision of the individual concerned. The issue of intensity of feeling or desire to have one's wishes followed as a general matter is different from special consideration for headstones in the case of children and young people whose deaths will always be peculiarly tragic for parents, family and friends, to which I will turn separately.
 - ii. The general appearance of the churchyard is always a matter for consideration. However, it of itself does not justify ignoring or moving from the Rules. It is really the other way around. If a memorial is completely out of character with the existing churchyard, this may be a ground for the Incumbent refusing it even if it is within the Rules. However, there is potential for considerable variety within the churchyard under the Rules.
 - iii. The quality of this particular proposed memorial will clearly be high. This does not in my judgment justify departing from the Rules. Again, it is the other way around. If the quality were very poor, this would tell against the headstone, either under the Rules or outside them.
 - iv. The particular sensitivity of a memorial for a child or young person is a matter I am bearing in mind. I disagree with Mrs Bye that grief for the death of an older person is *necessarily* less intense or less difficult for the bereaved if that is what she was saying. First, death does not just occur either at a young age or at an old age. Death sadly occurs at all ages of life. I agree with Mrs Bye that the death of a child or younger person will always be tragic and painful and as life goes on some people may become more reconciled to the death of older people, but some of the most difficult decisions faced by the Consistory Court in this diocese have actually involved the deaths of older (and sometimes

much older) people. However, I agree absolutely with Mrs Bye that the death of children and young people in particular should involve a degree of latitude in the Rules, particularly over size of the memorial, the content of inscriptions and some of the decorative features of a headstone and the Rules themselves acknowledge that. However, I am not persuaded that this should extend in general to permitting inscriptions on both sides of the memorial and it would be particularly bad, in my judgment, if a fashion for doing this developed - putting pressure upon bereaved parents to feel they had not done enough for their deceased child if they had not placed inscriptions on both sides of the headstone.

- v. Mrs Bye asks me to consider the modesty of the quantity and type of material she wishes inscribed on the rear of the memorial. This is a relevant consideration. She wishes part of a verse to be placed on the rear and does not ask for further design features there. This cannot of itself justify the placement on the reverse of a headstone in my judgment, but, taken in combination with other relevant arguments in its favour (if any), it is relevant.
 - vi. Next, there is the question of the verse itself. I have always viewed the verse as moving, appropriate and proper for the headstone. I now know more about the particular and extremely moving reason why Mrs Bye wishes the verse to be on the memorial which strengthens the case for the verse being there.
 - vii. Mrs Bye asks me to consider that if the verse were to be on the front of the headstone in its conventional place it is her view, and that of her Mason, that it would look untidy. That is a relevant consideration and I may have wished to see further evidence about this. I am not convinced necessarily that it need look untidy or busy, but I might have needed to consider this further. However, it is not necessary for me to do this in view of the decision I have made in light of the point that follows.
 - viii. The Reverend David Daniel Harrison has drawn my attention recently to something he had not appreciated before, as I had not either, namely, that this is a double depth grave and, I understand, will be the last resting place of Mrs Bye herself. Being a double depth grave, if the verse occupies the front space on the headstone there would be no room to record the death of the second person, namely Mrs Bye. That would be unfair and unsatisfactory. So, the choice would be that either the verse occupied the lower space (thus taking the available space for any other person buried there) or that it was not there at all, which would be wrong in this particular situation.
 - ix. Accordingly, I have decided, after much thought, that this petition should succeed as providing an exceptional reason why the double-inscription Rule should not be followed in this case, because of the peculiar significance of the verse to Mrs Bye and her family in the case of the very tragic case of the death of her son where, if the Faculty is denied either the verse itself will not be able to be placed on the headstone at all or the second occupant of the grave will be denied the possibility of having her own details properly recorded on the front of the memorial.
37. As will be obvious, this decision is because of three relevant and unusual facts that taken together in combination justify an exception being made to the Rule against double-sided inscriptions on headstones in this diocese. It is not to be taken as any relaxation in the general Rule and, indeed, demonstrates the sort of exceptionality that would be needed to justify departure from it.

38. Those considering applying for inscriptions on both sides of the headstone should be aware of the general prohibition and the fact that real exceptionalty will need to be demonstrated to justify departure from it.
39. I order that the Faculty on the petition of Mrs Anna Bye pass the Seal, and that she be permitted to erect a headstone on the grave of her son, the late James Patrick, according to the specifications and design presented in her petition.