

**Neutral Citation [2017] ECC Der 4**

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

**And in the Matter of the parish of Old Whittington, St Bartholomew**

**And in the Matter of a Petition for the Introduction of a Memorial by Irene Alice Lawrence in memory of Stuart Campbell Lawrence**

**Judgment**

***Application and basic facts***

- 1) Stuart Lawrence died at Christmas 2014, aged 94. By a petition dated 2<sup>nd</sup> April 2017, his widow, Mrs Irene Lawrence seeks permission to introduce a memorial in York stone in his memory in that part of the churchyard, known as The Croft. It is roughly triangular in shape, and lies to the east of the church, and perhaps somewhat to the south. There are a number of rows of graves starting from about 1981 (judging by the earliest dates), moving away from the church building and designated by letters of the alphabet. I have two plans provided to me by the Rector, Rev Joanna Morris. The grave I am concerned with is about 100 yards from the church itself, in Row V, plot 8.
- 2) The application is resisted by the Rector, the PCC and a number of individuals, some on the PCC, on the basis that there is a rule or regulation prohibiting the use of any stone other than honed grey in the The Croft. Public Notices were exhibited from 5<sup>th</sup> March to 8<sup>th</sup> April. None of the individuals who have expressed their objections to the Registrar as a result, chose to complete Form 5 and thereby become formal objectors to the application. I am nonetheless required under Rule 10.5 (2) of the *Faculty Jurisdiction Rules 2015* to take into account their letters of objection in considering the petition, and I will do so.
- 3) The matter came to me first at the end of July, and on 3<sup>rd</sup> August I sent out a Note and Request for further information, directed mainly to the Rector, who seemed best placed to provide it. Her response is not dated but it came to me at the end of August. I am grateful for the effort that has clearly gone into answering my queries.
- 4) Mrs Lawrence has been assisted in completing the paperwork by her daughter, Mrs Annabelle Yeomans, and the petitioner also wrote to me following the Request. Again I am grateful to her. The petition itself sets out the petitioner's case succinctly: *'According to diocese (sic) recommendations, York stone is on the list (sc. of permitted types of stone). Photographs 1 and 2 show that York stone has been used in The Croft in the past, there is already a gravestone adjacent to my husband's grave so previous incumbents have accepted the diocese recommendations'*.

***The stone***

- 5) I have photos of the proposed stone, and its design. It is to be of a modest size, 2'3" by 1'9" by 3", standing on a base 2'0" by 12" and 3"

deep. The top is to be curved, and the face is to carry some decorative carving, namely a small cross on an incised shallow plinth, surrounded by leaves and flowers. The base will have two flower-holders, and on the front of the base, the words *'Bells across the meadows'* will be placed, the significance of which for the family, I do not know. The inscription is to be in the form:

*Cherished Memories of*  
STUART CAMPBELL  
LAWRENCE  
A Loving Husband, Father & Grandad  
Died 23<sup>rd</sup> December 2014  
Aged 94 Years

The size and other features, and the inscription, are of a conventional kind. I cannot say I warm to the use of the '&' instead of 'and', and my spellchecker thinks 'Granddad' is the correct spelling, but both are conventional on memorials, and may help with the layout.

- 6) I have been sent a number of photographs in addition. A York stone memorial near Mr Lawrence's grave was erected in memory of Ian Moreton, who died in 2009. Photos 3 and 4 relate to Newbold churchyard and are sent to illustrate other headstones also in York stone, and that the idea is not out of the way. Photos 5 to 8 show a large number of different grey headstones, in honed granite, each chosen to illustrate unauthorised additions by way of edging, a proliferation of free-standing flower holders and flower pots, statuary, little gardens and other supposedly decorative items. The petitioner comments about these *'as showing no respect for those interred in surrounding graves'*. She contends that York stone has been allowed at Old Whittington in the past, and feels the family should not be confined to having only grey honed granite. She describes her husband's family's long association with St Bartholomew's, and his own service to this church in many capacities.
- 7) In an undated letter enclosed with the original papers sent to me, the Rector says she is unable to authorise the desired stone *'because it does not fall within the regulations for The Croft'*. On her arrival in the parish, which I now know to have been in September 2013, she was informed by the PCC that only grey stones were allowed in that area of the graveyard, a view reinforced by *'various stonemasons and the village funeral director'*. The appearance of this part of the churchyard, confirmed this view in her mind. She accepted there were a small number of inconsistencies, including some military memorials, but the stone preferred by the family, which she had seen at the stonemason's, was buff coloured, and would be *'considerably different from all the rest of the stones in The Croft'*. *'The area was the cause of considerable pastoral problems to her, the churchwardens and the PCC'* (a reference doubtless to the unauthorised additions made on a number of graves). If the petition were allowed *'when others have not been allowed, it*

would compound and increase the problems' and set a precedent for everyone else.

- 8) A letter dated 26<sup>th</sup> March signed by the Rector and PCC Secretary Joanna Moffatt on behalf of the PCC, recorded that at their last meeting the PCC had requested a letter be sent to the Registrar expressing the PCC's objection to an exception being made in this case. They felt, *'despite errors and exceptions having been made in the past to the detriment of the churchyard, we need to act very decisively now to prevent any further departure from the regulations and to maintain, as far as possible, a harmonious appearance in the churchyard. Many individuals with loved ones buried there have expressed their dismay at the presence of inappropriate fixtures which, for them, disrupt the desired atmosphere of peace and harmony'*.

**Objectors:**

- 9) The following individuals have sent letters of objection: Kathryn Martin OBE, Mrs M E Trueman, Joanna Moffatt, Mrs P Blackbourn, Mrs M Hollinshead,, Ms J Stapleton and Mrs Anne Limb. Of these, five subsequently returned copies of Form SA indicating they simply wanted me to take into account their earlier objections, and did not wish to become formal parties opponent. I will take the same approach in regard to the other two objectors. The original letters of objection are all produced in a similar format and font on a word processor, and are plainly produced in concert. The essence of Mrs Martin's letter will stand as an example. She wants to express *'... my objection to an exception being made for this headstone. Although there are other examples which spoil the appearance in the churchyard, I do not think this should be used as an excuse for further exceptions. The harmonious appearance of the churchyard is important to those who have loved ones buried there. The regulations were established for a very specific purpose and I do not consider that the petitioner has any reason for an exception to be made'*. Some of the other letters are identical, while others are slightly different, but embodying a strong family likeness both in wording and phraseology.

**Diocesan Advisory Committee**

- 10) The Chancellor is required to seek the advice of the Diocesan Advisory Committee in relation to the petitions submitted to the Registry, and one such as this relating to a specific memorial, is no exception. The Acting Archdeacon of Chesterfield, Rev Canon Tony Kaunhoven, has visited the churchyard, and prepared a report dated 1<sup>st</sup> July on behalf of the DAC. I am grateful to him, and do not underestimate the time and effort that goes into providing me with help. He records the strong feelings of the PCC on the matter as they contend that very early on in the opening up of this part of the churchyard, it was decided that stones should only be *'all honed grey'*. The PCC are clear about this as are local funeral directors and stonemasons. Local people are concerned about the choice of a different stone that will change the look and feel of the churchyard. According to his report, the Rector had given details of the Churchyard Regulations to the family before they went to see Mounsey's Memorials. There are some stones in this

part of the churchyard that are not 'honed grey' but these had crept in before her time and the PCC are supportive in the Rector's efforts to regulate the churchyard and stop 'a free for all' in the new section. On 7<sup>th</sup> June he had had an open meeting with the Rector about unauthorised additions to graves, and so on. The Rector and PCC consider the family were aware of the Regulations, as was the stonemason; to allow this request would create difficult pastoral relationships, with families whose requests for alternative stones may have been refused previously, and problems in sticking to only 'honed grey' in the future. He recommends that this request be refused.

#### ***Response to Request***

- 11) The response from the Rector to my request for information provides some further background. She is clear that she had no authority to allow a sandstone memorial in this churchyard (or at least this part of it) and this was the ground for her refusal. She always makes clear in such circumstances, that the family can petition the Chancellor for permission.

#### ***The Croft***

- 12) The Rector informs me there are some 325 headstones in the Croft, of which about 30 are sandstone. 295 are grey, 3 are black with a mirror finish and one Purbeck. (The numbers do not quite tally). Footpaths divide the area into top, middle and bottom. The distribution of stones is as follows: in the top section are 2 black, 9 sandstone and 26 grey; in the middle, 20 sandstone and 203 grey, and in the bottom section, 1 sandstone, 1 Purbeck, 1 black and 66 grey. She has not been able to find any authorisation for the Moreton headstone, and believes it was put in during an interregnum. She says that the local masons field the requests, and as they believe only honed grey is permitted, so by the time requests come to her, that is what families are seeking, '*not darker than Rustenberg grey*' – an interesting phrase when seen against the diocesan Regulations, set out below.

- 13) She says the PCC's belief is that the rule was introduced during the time Rev David Pickering was the incumbent, between 1990 to 1999, (obviously well after the area was first used for burials) and she considers that that accords with the distribution to be seen on the ground.

#### ***PCC decision***

- 14) She tells me that she and her husband read through a box of PCC minutes without finding any minute to the effect now asserted. '*What did become obvious is the way this PCC has never really made decisions but have ratified what the clergy told them*'. She is unable to recall now whether she gave the family a copy of the Regulations (as Canon Kaunhoven believed to be the case) but she had previously had discussions with Mrs Yeomans about what was allowed in relation to a memorial for another family member in a different part of the churchyard. She had also spoken with Mrs Amanda Dodworth, whom I take to be another family member, before they attended at the stonemason's, and she (the Rector) had explained the 'all grey' position to her.

### ***Other documentation***

- 15) Mrs Yeomans has forwarded to me a document headed *Churchyard Regulations* relating to the Croft, which she tells me was put up around the churchyard prior to the PCC meeting on 7<sup>th</sup> June. It is in essence a reminder that various shapes of memorial (like books and birdbaths), and items such as railings and chippings, are not allowed: *'Marble, synthetic stone, plastic materials, metal and terra cotta cannot be used'*. I have no idea when this notice was first produced, but it seems quite extraordinary to me in the light of the PCC's present strongly held views, that it does not state that *only* honed grey granite is permitted, and that all other types of stone are not permitted.

### ***Memorials in churchyards***

- 16) Let me turn briefly to another matter, namely the basis on which memorials may be placed in a churchyard. The churchyard is and remains vested in the incumbent of the parish. Although parishioners have a right of burial in the churchyard of the parish (assuming it has not been closed and that there is still room), a right accorded also to those who have their names on the church electoral roll, there is no corresponding right to erect a memorial to the deceased person, however common that practice now is. ***Permission is always required.*** Such permission would primarily be given by the Chancellor, who has general responsibility for churches and churchyards. If that always had to be sought from the Chancellor, then the process would be long, far too heavy and cumbersome. It would require consultation with the Diocesan Advisory Committee and the exhibition of Public Notices setting out details of the proposal, as in any other request for a faculty, and of course it would also entail the payment of a faculty fee, thus adding significantly to the costs of the funeral and its aftermath. It would be an unworkable system in practice. It would certainly be unnecessary, because the vast majority of applications are uncontroversial and do not give rise to problems, or to any opposition. So the practice of the Chancellor delegating authority to the parish priest to give permission in appropriate cases, has been adopted throughout the various dioceses of the Church of England over many years. It is not a delegation of total authority; it is given within limits.
- 17) This is done by means of ***Churchyard Regulations***. They are approved by the Chancellor after consultation, and generally relate, subject to any exception or amendment, to *all* the churchyards of the churches in the diocese. They are intended to assist clergy, funeral directors and monumental masons, together with the families of deceased individuals, by setting out limits for memorials in relation to size, materials, design and other details, ***within which the parish priest may give permission for the proposed memorial. If however the proposal falls outside those parameters, then the priest has no authority to allow it, and permission has to be sought from the Chancellor, as in this case.*** The simple process involves submission of the proposal, including details of the design, by the family to the parish priest, and, if approval is given, there are no fees to pay (for the

approval itself), or other formalities, and undue delay is avoided. Far from being restrictive, the process provides a simple, straightforward and inexpensive method of obtaining the necessary permission.

- 18) Any application that has to be considered by the Chancellor, will therefore in all probability be for something '*outside*' the Regulations in one or more respects, otherwise it would be almost always approved by the parish priest. (There may be marginal cases, or some aspect of the proposal such as the proposed inscription, where the parish priest has concerns, that lead to the application proceeding by way of a petition for a faculty, but the above statement generally holds good).
- 19) If the Chancellor gives permission, (and is therefore in all probability approving a proposal that lies '*outside*' the Regulations), he or she is *not* to be considered as thereby '*breaking*' the Regulations by giving permission. It is simply the original and basic means of obtaining the necessary permission to erect a memorial.
- 20) Not every such petition will however be approved. It is not an automatic process, like buying a TV licence. The Chancellor will have regard to the features that put the proposal outside the Regulations, which provide in practice what most families want. But on what basis are such applications to be approached, in the individual case? Some chancellors in considering such requests have held there is some special burden or responsibility laid on an applicant for something that is outside the parameters of the Regulations, so that some good reason for allowing such a proposal needs to be demonstrated. I take the view it only has to be suitable, but some proposed departures from the Regulations, like kerbs or chippings, will be '*unsuitable*'. It will not be necessary to explore that question further in this case.

#### ***Churchyard Regulations***

- 21) In the light of the above, the first question that does have to be looked at here is the obvious one: what types of stone are allowed in this churchyard? The starting point must be the Churchyard Regulations for the diocese.
- 22) The Regulations can be found (eventually) on the Derby diocesan website. The only relevant section for present purposes relates to types of stone, and I set out only the important parts:  
*'The following materials will generally be permitted:*  
*Natural stone: limestones (including Nabresina, Boticino and certain suitable Portuguese stones), sandstones, Stancliffe or Darley Dale stone, grey granite (no darker than Rustenburg grey) and slate.....*  
*The following materials are not permitted: Black, blue or red granites and all granites which have had all their surfaces polished, any marble, synthetic stone, plastic materials, metal and terra cotta'.*  
It is obvious from the wording used, that whoever prepared the document placed in the churchyard in June, had access to these Regulations. It is further obvious that York stone is a form of sandstone, and so permitted under the diocesan Regulations.
- 23) The Regulations are a public document, that is, they are provided for the guidance of clergy, stonemasons and families wanting to know

what materials are permitted in the churchyards of the diocese. People rely on them and are entitled to do so. But choosing an approved type of stone is not the end of the matter, as in each case, someone wanting to erect a memorial has to have the permission of the parish priest, or failing that, of myself.

#### ***Variations and amendments***

- 24) It is also permissible for a PCC to seek a variation of the Regulations in regard to their churchyard or part of it, either by making them somewhat freer, or alternatively, stricter, for some reason. The PCC of Old Whittington contends it has done that some years ago, by introducing a rule requiring only honed grey stone to be used, but the dispute that has arisen illustrates only too clearly why this is not, and cannot be, simply a decision for the PCC alone. Are the diocesan Regulations to have precedence or the local variation?
- 25) The Churchyard Regulations for the diocese are made or approved by the Chancellor in consultation with the DAC and other interested parties, to apply to the churchyards of the whole diocese. It would defeat a large part of their purpose if every churchyard had different Regulations, with, say, differing materials and dimensions allowed, and all the rest of it. No one would know where they were without making specific enquiries. Nonetheless such variations may be necessary and advisable from time to time. If the Chancellor's Regulations are to be altered, he or she has to be involved, *and authorise any changes*, not least because otherwise there may well be conflicting provisions appearing to apply to the same churchyard. Chaos and confusion would result!

#### ***PCC decision***

- 26) Of course, in the present case, a second issue that plainly arises is: have the PCC actually come to a decision that only honed grey stone is to be used? It is plain they *believe* they have, and they believe it very strongly. No trace of any minute to that effect can be found in their records. Further, there are a number of cases where stones of a different kind, mostly sandstone, have been introduced. It is difficult to understand how that can have happened, once the decision had been made. I accept that anomalies can occur even in the best-managed churchyards, and things are introduced which may not strictly comply with any applicable Regulation. Perhaps someone is ill, or on holiday, or a stonemason from outside the area is involved, or there is an interregnum, or there is some other reason. I accept that. Whether a total of about 1 in 11 memorials in sandstone rather than in honed grey granite scattered throughout The Croft can plausibly be considered to arise simply as such anomalies, could well be the subject of heated discussion.
- 27) To suggest as they do, that there is a Regulation to the effect only honed grey stone can be introduced, when nothing in writing can be found to support it, and the purpose of the PCC minute book is to record the decisions they make, is very strange. Why would it not be readily available if the PCC were attending properly to its business? I am sure those convinced such a decision was reached, will not be

affected by my doubts, and in the end it is not necessary to come to a final determination as to whether the PCC at some time reached such a decision. It is however worth noting a similar case.

28) It is not unknown for views to be held strongly by members of a PCC on some factual matter, and for them to be mistaken. In a recent case (in early 2016), in the Blackburn diocese at St Wilfrid's Standish, a request for reservation of a grave space was resisted by members of the PCC and others, on the basis that many years before a decision had been made that all such requests would be turned down. Some of the present PCC members recalled the matter clearly. That was *'the policy'* as far as they were concerned, and it should be enforced. Many families had apparently accepted it, and not pursued their own requests for reservation, although they would have wished to do so. When it was looked into, a PCC minute was found, but on inspection it related not to reservation, but to the possibility of the incumbent allowing the burial in the churchyard of those who had no established right, by being resident in the parish, or on the electoral roll, or by dying within the parish boundaries. The belief in the existence of such a *'policy'* was deeply held, and firmly asserted, but it was mistaken. A strongly held belief could not be relied on to defeat the application.

29) In any event, it is plain that there has been no acceptance and endorsement of any such decision of the PCC of Old Whittington by me. In the result, I am not prepared to accept that there is any effective Regulation requiring only *'honed grey'* stone to be used in existence at the present time.

### ***Objections***

30) However, the objectors have raised arguments in support of their position, and suggested that allowing a stone of this type into the churchyard will be damaging. It will lead to *'inconsistency in appearance'*, the *'harmonious appearance'* of the churchyard will be damaged, and so on.

31) In my experience of well over 30 years as a chancellor in two different dioceses, I have no recollection of ever coming across a churchyard, or even a distinct part of a churchyard, where there is a desire to limit all memorials on graves to a single kind of stone, and that alone. This churchyard is not a war cemetery of the kind overseen by the Commonwealth War Graves Commission, where uniformity of size and material is firmly regulated and restricted to a single type for ideological reasons. The situation at Old Whittington that the objectors want to achieve, is a situation otherwise unknown to me. I appreciate the PCC has not sought to be more prescriptive in other ways, for instance by defining the shape and size of the headstones to be permitted, (although the photographs do in fact appear to show a preponderance of memorials of a very similar kind).

32) In my judgement, such objections as are given in the various letters are simply overstated. The real *'spoilers'* of harmony and order in the churchyard are not the relatively few memorials of a different type of stone, but those that have become adorned with all sorts of unauthorised additions.



### ***Conclusion and summary***

- 33) It seems to me the petitioner in the present case, Mrs Lawrence, seeks to erect a memorial made of a type of stone authorised by the Churchyard Regulations for the diocese. The Rector was not persuaded that was the case, and so declined to give her approval under the authority delegated to her. The petitioner has therefore petitioned me for permission. No objection has been raised to the memorial itself, save as to the type of stone she has chosen. She does not have to justify it as such. It is permitted under the Regulations. The objectors have not persuaded me the PCC has ever formally adopted a rule limiting the type of material to 'honed grey', although it is plain that they and others professionally interested in the issue, believe that to be the case. Even if they had, it then requires my approval before it can become an effective part of the Regulations for this churchyard. My approval has been neither sought nor given. I also reject the various points of objection put forward as to the effect of this type of stone on the appearance of the churchyard.
- 34) I have not the slightest doubt that the decision I have reached will not only be a disappointment to the objectors, but cause annoyance and anger. It will perhaps be a reminder of the need to record things properly, including the decisions of the PCC, and insofar as they relate to changes to the diocesan Churchyard Regulations, to have those approved by the Chancellor.

### ***Addendum***

- 35) There is nothing to prevent the PCC approaching me at this stage to seek a faculty to endorse a clear decision by them that only 'honed grey' stone is to be used in the churchyard. It will not be automatically approved, and the PCC will need to justify why such a rule should be adopted. Is it really necessary, having regard to the restrictions in place through the diocesan Regulations? If such a request were made to me to restrict the type of material in a section of a churchyard, to a single type of stone, I would want to be sure that not only the parish priest and PCC wanted that to happen, but also that there was widespread support within the wider parish. After all, the inhabitants of the parish have a right of burial there, even if they would never enter the church building itself. The churchyard is for them, and not simply the churchgoing congregation. There would therefore need to be good evidence of widespread consultation and support for such a policy. I make clear that lists of signatures on petitions, or 'round robins', are far less persuasive than individual and independent letters, for or against any proposal!

### ***Costs***

- 36) Regrettably, where objections are lodged to a petition, there is inevitably an amount of extra work generated for the Registry, in dealing with the objectors in accordance with the requirements of the Faculty Jurisdiction Rules 2015. Although I am required to take account of the objections made, none of the objectors has become a party, and so liable to pay any order for costs.

- 37) In any case, under this jurisdiction in the Consistory Court, costs do not simply follow the event. 'Losing' therefore does not of itself make one liable to pay any costs, either those of the 'winning' side, or those of the Court itself. Such orders are very rarely made, and there would need to be clear evidence of unreasonable behaviour by an objector before he or she was required to pay. If it were necessary to make a determination, I would not find the objectors here to have acted unreasonably. Therefore, although the objectors have not prevailed, there is no basis for making them pay those additional costs. ***That means that those extra costs must be paid by the petitioner.*** She, understandably, will consider it very unfair. It will be little comfort for her to know that no fee is sought for the preparation of this judgment, which seeks to explain to everyone the basis for my decision. Such costs could have amounted to several hundred pounds under the applicable Fees Order, which is approved by Parliament.
- 38) The Registrar has provided me with figures for the additional time spent by her and her staff on the matter, and I assess the total recoverable at a figure of £120 plus VAT, a total of £144.



John W. Bullimore  
Chancellor  
12<sup>th</sup> October 2017

#### **ORDER**

- 1) A Faculty is to issue for the memorial to Stuart Campbell Lawrence, in accordance with the design and illustration provided, in York stone, to be erected within 6 months of the date below.
- 2) An enhanced correspondence fee is to be paid by the petitioner, in a sum of £144.00 inclusive of VAT, such sum to be paid as a condition of the faculty being issued.