

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

C5291/2014

STRATFORD UPON AVON: HOLY TRINITY

IN THE MATTER OF THE PETITION OF CHRISTINE AND LUCY DALE

JUDGMENT

- 1) The cremated remains of Mary Middleton and her husband, Ken Middleton, were interred in plot D7 in the churchyard of Holy Trinity in 2005 and 2007 respectively. That plot is not marked by any memorial. Christine Dale and Lucy Dale are the daughter and granddaughter of Mr. and Mrs. Middleton and they petition for a faculty authorising the installation of a 10" square memorial plaque at the site of that interment. For the reasons set out below I have concluded that this petition should be granted and accordingly I direct the grant of the faculty as sought.

The Physical Appearance of the Churchyard and the Parochial Church Council's Policy on Memorial Plaques.

- 2) Holy Trinity is an important church with a Grade I listing. The churchyard makes an important contribution to the setting and appearance of the church. It is a large churchyard and contains a number of memorials principally in the form of upright headstones. However, it is very largely open consisting of grassed areas with some hedges and bushes.
- 3) There have been no burials in the churchyard since 1879 but the interment of ashes has continued. The plots where the ashes are interred are almost all unmarked. There are eight plots marked by small memorial plaques in the configuration which I will describe below. Those mark interments which were made in the 1960's (with in some cases subsequent interments of family members into the same plot being commemorated). Mr. Warrilow, one of Holy Trinity's churchwardens, has explained that marker stones were permitted for a short period in the 1960's "*but it was soon realised that the nature of the green churchyard would change forever if it was gradually paved over with memorials and the practice was stopped.*" Since then memorials have not been permitted at the site of the interment of cremated remains. Pursuant to a faculty granted by the Deputy Chancellor in 2011 a memorial wall has been created bearing plaques

to commemorate those whose cremated remains have been interred in the churchyard since 2010.

- 4) It is the use of plot D7 for the interment of the remains of Mr. and Mrs. Middleton which is the potentially exceptional feature of this case. In the relevant part of the churchyard there are five columns of interments of cremated remains A – E. They stretch across an area of green sward. The two rows nearest to the footpath (and nearest to the church building) contain the eight memorial plaques from the 1960's. In the row nearest to the church there are memorials on plots A2, B4, C6, and D8 (plot E10 apparently being either unused or unmarked by a memorial). In the second row there are memorials on plots A1, B3, C5, and E9. As already explained those mark plots containing interments from the 1960's (sometimes with later additions). Plot D7 contains the remains of Mr. and Mrs. Middleton and lies between the marked plots C5 and E9. There are no memorials on any of the further rows of any of these columns. My site visit took place shortly after Christmas and there were a number of floral tributes lying on the green sward at points appearing to correspond to unmarked interments. It was apparent that there were at least some people who were conscious of the point at which their loved ones' remains had been interred and who marked those points by laying flowers there. I will assume that such persons may well wish there to be memorials at those points.

The Competing Contentions.

- 5) The Petitioners emphasise the position of plot D7 as lying in a row of memorials and between two plots marked by memorial stones. They say that the absence of a memorial makes the site of Mr. and Mrs. Middleton's interment appear "*vacant and unloved*". Mrs. Dale says that she was not told of the parish's policy when the interments were arranged. I do not need to make a finding of fact as to what Mrs. Dale was or was not told. I am able to accept that at a time of distress and bereavement she may well not have heeded information about the policy in question. I also accept that she assumed that plot D7 would be capable of being treated in the same way as the adjoining plots C5 and E9.
- 6) Letters of objection have been received from Rev'd Patrick Taylor, the vicar of Holy Trinity, and from the two churchwardens, Michael Warrilow and John

Cohen. None of those gentlemen wished to become parties opponent. Their letters explain the policy which has been adopted by successive incumbents and Parochial Church Councils since the 1960's. They emphasise the importance of the policy and rôle it has in preserving the appearance of the churchyard. They also emphasise that the policy has been applied rigorously and without exceptions since the 1960's with the only new memorials being those on two plots where husbands had been interred in the 1960's and where the cremated remains of their wives were subsequently placed in the same plot with a new memorial plaque being allowed to commemorate both of those interred in the particular plot.

- 7) The Diocesan Advisory Committee has not recommended approval and has explained its reasoning. It refers to the long-standing policy of the Parochial Church Council and says "*it would be undesirable to set a precedent which would perhaps open the floodgates to hundreds of similar requests both retrospective and new*".
- 8) I concluded that it would be expedient to determine this matter on the basis of written representations together with an unaccompanied site visit and the Petitioners have consented to that course.

The Applicable Approach.

- 9) Where a Parochial Church Council acting together with an incumbent has adopted a particular policy as to what is to be done in a churchyard then very considerable weight should be given to that policy. Unless that policy is unreasonable or in some way wrong in principle then exceptional circumstances will be needed to justify departure from the policy. This is particularly so where the policy has been applied consistently for a number of years. Moreover, in deciding whether the policy is unreasonable the Court will attach weight to the position of incumbents with their knowledge of and responsibilities for the church and to the position of the Parochial Church Council with its local knowledge and its status as the elected body with democratic validity. Nonetheless no parish policy can remove the Court's discretion and there will be exceptional circumstances which justify a departure from even the most reasonable of policies.

- 10) I am satisfied both that the policy which has been adopted in Holy Trinity is reasonable and that it has been consistently applied by successive incumbents and Parochial Church Councils for forty years or more. The open grassed appearance of the churchyard contributes significantly to the setting of the church building and to the attraction of the churchyard. Holy Trinity is in the middle of a populous town and the beauty of the churchyard combined with Holy Trinity's historic and cultural associations mean that the churchyard contains a large number of interments and that there will be a continuing desire to make interments in the future. I agree with Mr. Warrilow's point that if memorial plaques were to be allowed at the site of interments there would be a steady march of stone across the green sward. There would be a permanent and adverse impact on this churchyard. If memorial plaques were to continue down columns A – E beyond the current first two rows there would be an immediate and marked loss of openness. Moreover, it is relevant that the Parochial Church Council has taken steps to meet the pastoral needs of those who wish individual memorialisation of their departed loved ones through the creation of the memorial wall which bears individual memorial plaques.
- 11) It follows that the question is whether there are exceptional circumstances in this case justifying departure from that reasonable and longstanding policy.
- 12) I note the concern which has been raised by the Diocesan Advisory Committee as to opening the "floodgates" to similar requests. The "floodgates" argument is one which has to be handled with particular care. The Consistory Court has to deal with cases fairly as does any court. That involves treating like cases in the like manner and unlike cases in an unlike manner. Account has to be taken of the impact which there would be if other cases were determined in the same way as the instant case but in making that assessment the court needs to consider whether they are like cases or not. The need for exceptional circumstances to justify a departure from a reasonable parish policy is the real answer to concerns about the floodgates being opened. For a case to be exceptional it has to be sufficiently out of the norm to justify departure from a reasonable and appropriate general policy. If there are potentially "*hundreds*" of cases in the same category in

relation to a particular churchyard then the case is unlikely to be an exceptional one.

Analysis of the Circumstances of this Case.

13) I turn then to consider whether this is an exceptional case and whether a departure from the policy adopted over successive years in this churchyard is justified. The answer to those questions involves balancing the overall policy applicable to this churchyard against the circumstances of the particular location of plot D7. Much depends on whether D7 is more appropriately seen as part of column D or as part of the second row of interments. It is, of course, both but the question is which is the more appropriate way of viewing it. If D7 is more appropriately seen as part of column D then only D8 has a memorial and there is nothing exceptional in the absence of a memorial from D7. Conversely if D7 is more appropriately seen as part of the second row then it is the only plot without a memorial plaque and the absence of such a plaque can be seen as making it exceptional particularly as it lies between C5 and E9 both of which are marked by plaques.

14) I have concluded that the most natural way of viewing this plot is that it is part of the second row of interments. This is to some extent a matter of impression but I am satisfied that this is the impression which would most naturally strike a visitor to the churchyard. On that basis the plot is the only one in that row which does not bear a plaque. This feature is highlighted by the fact that it is between two plots on which there are plaques. I am satisfied that this can be seen as an exceptional circumstance justifying a departure from the general policy which has been applied at Holy Trinity. The Petitioners' sense of grievance that the Middletons' plot is the only one in the row without a memorial is understandable. The exception justifying the departure from the normal policy is that the Middletons' cremated remains were interred in a particular part of the churchyard, namely the second row of interments, where that policy has not been applied to the other interments. The purpose of the policy is to preserve the green and open appearance of the churchyard. That purpose cannot be achieved in respect of the second row of interments because that row consists of memorials with the sole exception of plot D7. It would, accordingly, be arbitrary and unfair to apply the

policy so as to deny to the Petitioners the opportunity to have a memorial akin to those already covering the rest of the row of interments.

15) I am also satisfied that allowing this Petition will not open the door to a material change in the appearance of the churchyard or to a progression of memorials across the churchyard. I will, of course, consider any applications in respect of plots in the next row (namely A3, B2, C4, D6, and E8) or elsewhere in the churchyard on their merits but the placing of memorials on those plots would be unlikely to be justifiable. That is because none of the interments in that row or in the rows beyond it extending into the churchyard are marked by memorials. There would appear to be no reason justifying a change of approach for any particular plot in those rows let alone for the entirety of those rows.

16) Accordingly, a faculty is to issue for the memorial as requested.

STEPHEN EYRE
CHANCELLOR
5th January 2015