

In the Consistory Court of the Diocese of Norwich

Re Buxton, St Andrew

## Judgment

1. The churchwardens and fabric officer of the church of St Andrew in Buxton have petitioned for a confirmatory faculty in relation to works of refurbishment to the ashes plot in their churchyard.
2. In the period prior to the summer of 2015 the Parochial Church Council received certain complaints about the condition of the area set aside for the interment of ashes in the churchyard. The area was marked by a rectangle of stone flags set flush with the surrounding turf and contained 32 interments most of which were marked by plaques of differing size set very close together and flush with the surrounding turf. When that area was filled, a further nine sets of ashes were interred outside its borders also marked with tablets of differing size. The area had become untidy and overgrown with grass.
3. In response to these concerns in July 2015 the PCC passed a resolution to undertake certain works of refurbishment to the ashes plot. The proposal was to extend the area both to accommodate those interments outside the marked area and to provide space for additional burials. The PCC determined that it wished to replace the turf between the tablets with gravel over a weed-proof membrane to avoid the area becoming overgrown again. In order to contain the proposed gravel and minimize ground disturbance the new stone flags marking the perimeter of the area were to be raised on a low wall two bricks high.
4. Unfortunately, rather than seek advice from the Archdeacon, the Diocesan Advisory Committee or the Registry about the consents required for the proposed changes, the PCC simply carried out the proposed works between 20 September and 9 October 2015. It was only when the Archdeacon's Visitation took place on 20 April 2016 that the need to seek faculty permission for the changes was drawn to the attention of the churchwardens. The Petition for this confirmatory faculty was then issued.

5. The advice of the DAC was sought and in a Notification of Advice dated 11 November 2016 the Committee did not recommend the works or proposals for approval by the Court. The reason given for this advice was that “[t]he raised area for cremated remains does not conform to the Churchyard Regulations“. The Notification went on to inform the Petitioners that they could nevertheless seek the Court’s permission for the works.
6. Public Notices were displayed as required by Part 6 of the Faculty Jurisdiction Rules 2015. There were no objections made as a result of those notices. Indeed, the Petitioners say that the local community (both within the church congregation and outside it) have universally welcomed the change. I have been given copies of four letters from family members of those whose remains are interred in the area speaking highly of the “improvements“ made. I note that the changes have been in place now for almost 18 months. In that time no concerns have been raised by local residents, families of the deceased or church members. The only reservations expressed have come from one or two members of local clergy, including the new incumbent (who was not in post at the time of the works). Those members of the clergy are, however, concerned about the pastoral implications of requiring the plot to be returned to its original state and as such are content that things should remain as they are.
7. It is surprising, to say the least, to hear that the parish concerned did not understand that faculty permission was required before they could make the changes sought. This is not least because the newly refurbished plot falls so far outside the limitations placed on what can be authorized by an incumbent within a churchyard under the Churchyard Regulations. At the time the works were undertaken the regulations in force were the Churchyard Regulations May 2010. They have since been superceded by the new Diocesan Churchyard Regulations 2016 (which, in all material respects contain the same limitations as the 2010 Regulations). The 2010 Regulations included the following provisions:

“6. Nothing shall be erected or placed, and no work shall be done, in any churchyard without the consent of the Chancellor of the Diocese or of the Incumbent of the Parish acting within the authority delegated to him/her by the Chancellor.

7. Where the Regulations are silent on any matter, that matter is not delegated to the Incumbent, and no implied authority is given for it. In case of doubt about whether a matter is covered by the authority delegated by these Regulations, application should be made to the Diocesan Registrar for guidance.

16.1 The burial of cremated remains may...be commemorated by tablets or plaques [which] must be flush with the turf..

18. No monument shall include any kerb, railings, fencing [or] chippings of any kind...

### Part III

(1) The surface of the churchyard shall be kept, as far as possible, level..."

8. The reason for limitations upon what may be permitted in a churchyard are essentially threefold: firstly, theological; secondly, aesthetic; and thirdly, practical. The theological limitation was succinctly described by Hill Ch in *Re St John the Baptist, Adel* [2016] ECC Lee 8:

"the only constraint [is] the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrine of the Church of England in any essential matter."

Churchyards are places of burial in consecrated ground; they are the setting for churches. Any works done within them must not be inconsistent with Christian theology or Anglican doctrine.

9. The aesthetic limitation reflects the wider importance of churchyards as burial grounds for the communities that they serve, both now and for many generations to come. To use the words of the 2016 Regulations, churchyards "are an important part of local and national heritage in the communities they serve: a place for reflection and prayer, an historic record of successive generations, a home for funerary monuments of architectural and aesthetic excellence and a setting for the church itself." They stand as a place of Christian witness to the generations of saints who have gone before and have been committed into God's hands in the hope of future resurrection. They provide a place of solace and comfort to those who are bereaved. As Eyre Ch said in *Re Holy Trinity, Eccleshall* (Lichfield Consistory Court, 1 June 2013):

"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."

10. The third limitation arises from the fact that the duty to maintain churchyards falls upon the PCC and as such they are often maintained by a group of volunteers, sometimes limited in number and capacity. As the 2016 Regulations say: "In addition, the upkeep of a churchyard is a considerable burden upon the limited resources of PCC funds." It is in the interests of all that the maintenance of the churchyard remains as simple as possible - that it does not add to what can already be an onerous burden. It is for that reason that kerbs and fencing and chippings are generally not allowed and plaques and

ledger stones and the like must generally be sunk flat with the surrounding turf. Such requirements ensure that mowing and strimming is easier and, in the case of chippings or gravel, avoids a risk of damage to adjacent memorials or church windows from flying stones thrown up by a passing mower or strimmer. Any additional maintenance burden thrown upon a PCC by the introduction of such items falls not just upon the current PCC but also upon future PCCs for decades, if not centuries, to come. The introduction of such items can also potentially encourage other applications of a similar nature, giving rise either to a proliferation of items which complicate churchyard maintenance or an understandable sense of injustice if permission for the same is refused.

11.I pause at this stage to clarify the nature of the Churchyard Regulations as I am concerned that it has been misunderstood by some. The authority for permitting works in consecrated churchyards in this Diocese rests in the Consistory Court. Nevertheless, there are 656 churches in the Diocese, the overwhelming majority of which have churchyards, and as such, as a matter of administrative convenience, the authority to permit simple, uncontentious memorials is delegated to the incumbent through the Churchyard Regulations. This does not mean that memorials which fall outside the scope of the Regulations should not and will not be permitted, as might be seen to be suggested by the advice of the DAC in this case. It is not the intention of the Regulations that churchyards should become uniform and bland. There is no presumption against memorials which fall outside the regulations but instead, as McGregor Ch said in *Re St John's Churchyard, Whitchurch Hill* (Oxford Consistory Court, 31 May 2014):

"As is the case with any petition for a faculty, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition."

Petitions for works in churchyards will simply be judged on this basis having regard, amongst other things, to the principles set out in paragraphs 8 to 10 above.

12.And so, have the Petitioners discharged the burden of showing that a faculty should be granted in this case? Looking to the factors identified above, I can make clear immediately that there is nothing objectionable in relation to the works on theological grounds. There are, however, concerns on both aesthetic and practical grounds.

13.Aesthetically, the new ashes area may be seen by some as striking a discordant note in the churchyard of this Grade II\* listed church. I am told that efforts were made to match the perimeter stones as closely as possible to those that were removed from the original plot. They are, nevertheless, rather bright in a setting of muted older stones.

They enclose an area much larger than the previous perimeter stones did. The original area contained 32 plots within its perimeter and nine plots without. The new area has the capacity for 106 plots. The area between the tablets within the perimeter stones is no longer of turf but has been covered with a mixed natural stone gravel which I would describe as golden in colour. The area is set against a hedge (which I take to form the boundary of the churchyard) to the north west of the church and is largely surrounded by an area of turf, although there are two old headstones very close to the edge of the area. The Petitioners say that the new stonework will weather in time and become more in keeping with the older stone in the churchyard and indeed with the church itself which is of flint with limestone dressings.

14. I am mindful of the fact that there is inevitably a subjective element to a judgment on aesthetic grounds and it is clear from the testimonies I have seen and the information provided by the Petitioners that there are a good number of local people who believe that the new cremated remains area is a significant aesthetic improvement on what came before. Significantly, none of those whose family members are commemorated in the area have expressed any concerns; indeed many have expressed deep gratitude for the works done - "I was impressed by the lovely garden you have created", "I must congratulate whoever had the inspiration to create this pleasant area", "what a lovely improvement to the memorial garden...It really looks so much better." I accept entirely that the area looked scruffy and rather disorderly prior to the works being done and can understand why the parish received a number of complaints about the area. Nevertheless, I do find that despite the improved tidiness which is appreciated by many locally, the design of the new area is stark (some may say jarring) in this setting. I accept that the passage of time and the weathering of the stonework will mute this effect somewhat.

15. I am perhaps more concerned about the practical difficulties created by the new design. The Petitioners say that the new area will be easier to maintain than the previous one which had become overgrown with grass and weeds. I am mindful of the fact that this new area has the potential to serve parishioners in Buxton for many years to come and its maintenance should be as simple as possible if it is not to impose too great a burden on future generations of the PCC.

16. The Petitioners argue that the membrane placed over the new area (beneath the gravel) means that grass no longer grows around the plots. That may be true in the short term, but the membrane will need to be pierced when new interments take place. Both that and the natural eventual deterioration of the membrane over years means that the area will inevitably require weeding and clearing in future years is

a way which must be more onerous than the passing of a mower over tablets set flush with the turf.

17. The use of gravel has the potential to create a hazard too. There will inevitably be a natural gradual spread of some of the gravel out of the defined space as people move across the area to tend graves or inter remains. If that gravel is then caught by a passing mower or strimmer there is a risk that it may cause damage to nearby stonework or indeed injury to people. As the years pass there is a real risk that the brickwork which holds the gravel in place will itself deteriorate to the extent that gravel spills out onto the adjoining grassed area with an increased risk of damage or injury.
18. For these reasons I find that it is likely that there will be an increased maintenance burden in relation to the churchyard for this and future generations. How great that increase will be is, to an extent, speculative, but it is real. I suspect that these issues had simply not been properly appreciated by the PCC when deciding how to "improve" their cremated remains area.
19. The Petitioners in this case have apologized unreservedly for having undertaken the works without authority. I am told that it was not done deliberately and whereas I have already expressed my surprise at the apparent belief that no sanction was required for the works, I accept that the PCC acted out of a desire to improve their churchyard by addressing the concerns raised by parishioners and bereaved families.
20. As things now stand the PCC has a churchyard which I have found is likely to be more onerous to maintain in the future than it otherwise might have been. It has a cremated remains area which, whilst appreciated aesthetically by many, is more visually intrusive than needs be. This case highlights why parishes should seek advice early in such circumstances. Advice of real expertise and from extensive experience is freely available to parishes through their Archdeacons, the DAC and the Registry. A simple telephone call or email would have clarified the need for (and method of obtaining) appropriate permission. At least as important is the fact that such advice would, in all likelihood, have resulted in a more careful consideration of the wider and longer term consequences of the choices made and the breadth of alternative options available.
21. It nevertheless falls to me to decide whether the Petitioners have shown that a faculty should be granted. I am mindful of the serious pastoral implications within this parish which would flow from a requirement that the works be undone and the area be returned, as far as is now possible, to its former state. Nevertheless, I am also very aware of the wider pastoral problems which would be likely to flow from a granting of permission for this area to remain as it is. Whereas

each case must be carefully considered on its own merits, it is easy to foresee how another parish might feel aggrieved should permission for a similar plot in their churchyard be refused in future – indeed there may be parishes who might reasonably feel a sense of injustice having, before my tenure as Chancellor, already been refused such permission. Such matters must be dealt with fairly and with appropriate consistency.

22. I have not found it easy to reach a decision in this case. Whereas the aesthetic impact is, in my view, less harmonious than is ideal, the passage of time and the weathering of the stones will ameliorate that problem to a degree. My principal concern is for the additional maintenance burden imposed by the current arrangement. I do not think that the PCC have sufficiently considered those implications.

23. I have come to the conclusion that the most appropriate order in this case is the granting of a faculty for a period of ten years. Upon the expiry of that term the PCC will need to decide whether they wish to apply for permission to continue with the current arrangements or seek permission to adjust or amend them in the light of experience. This will give the PCC the opportunity to assess the longer term implications of the works undertaken for the maintenance of the churchyard and its aesthetic impact once a degree of weathering has taken place. It will be a condition of the faculty that twelve months prior to its expiry the Petitioners shall apply to the DAC for a Notification of Advice (or whatever equivalent step exists at that time) and shall include in that application an assessment of the aesthetic and maintenance implications of the new arrangement, the condition of the structure and future proposals for the area. It is to be hoped that, in future, the information contained in that assessment might be used to aid not only the parish of Buxton but also any other parishes who may be considering changes to their own areas for cremated remains.

The Worshipful Ruth Arlow  
Diocesan Chancellor

1 March 2017