

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

17 JULY 2024

IN THE MATTER OF ST JAMES, SUTTON CHENEY

AND IN THE MATTER OF THE BOSWORTH 1485 SCULPTURE TRAIL

JUDGMENT

Introduction

1. The Battle of Bosworth Field took place in Leicestershire on 22 August 1485.

The battle was a turning point in English history and marked the final end of the struggles between the Houses of York and Lancaster. King Richard III was killed and the victor, King Henry VII, assumed the English throne. The night before the battle Richard's army made camp in the village of Sutton Cheney and Richard is reputed to have attended mass in the church there, dedicated to St James. Some of the dead from the battle are believed to be buried in the churchyard.

2. Over 500 years later the church still stands. It is Grade II* listed. The Historic England listing entry reads as follows:

“Small Church. Largely late C13 with some Perpendicular work, and Victorian restoration. Limestone, coursed and squared with some ashlar, but rendered on the south wall. Plain tiled roof. Single cell with western bellcote and separate south Chapel. Bellcote is Victorian, tile hung with conical roof and wood louvres to lights. Half timbered open work gabled porch on stone footing walls. Angle buttresses to nave and side chapel. South windows of chapel are Perpendicular with stilted hood moulds, one with corbel figure heads. East and West windows are Decorated. 3-light east window to chancel, partly recut, with a resited fragment of carved stonework above it. Perpendicular north chancel windows. The north nave windows are also

Perpendicular in style, but made of wood, possibly C18 or early C19 renewals. Possibly the north and south walls of the nave which are rendered have been either extensively repaired or rebuilt in brick. Inside the nave and chancel are in one, the arcade to the south chapel is of two bays with wide double chamfered arches and low shafts: the responds are keeled, and the central shaft is octagonal with one chamfer, a carved head. Roof trusses partly ceiled over but curved braces support the tie and there are raking braces to a collar. Double sedilia and piscina in chancel, simple chamfered arches with hood mould. Stained glass in Chapel east window, the Good Shepherd and Samaritan. Small piscina niche in south wall of Chapel.”

3. The church holds services twice a month with average congregations of 10-12. The immediate population of the parish is 125. St James’s has been known as “the Battlefield Church” for many years. It has various items on display relating to Richard III, many of the church kneelers commemorate the colours, badges of that king. There is a modern commemorative plaque to Richard III. An annual service is held to commemorate Richard III and those who died in the battle, and this attracts national and international visitors.
4. Following the battle, Richard was buried in Greyfriars Church in Leicester. After the Dissolution of the Monasteries, the site of his grave was lost. As is well known, his remains were discovered in 2012 and were subsequently reburied in Leicester Cathedral in the presence of HRH the Duke and Duchess of Gloucester. To this day, Richard III is a controversial monarch, defended by some historians, but viewed by others as a usurper who seized the throne and was complicit in the disappearance and likely murder of his young nephews King Edward V and Richard, Duke of York.
5. Mary Burgess and Ruth Brothwell, the churchwardens of St James’s, have brought a petition seeking to introduce into the churchyard a sculpture of

Richard III titled “The Calm Before the Storm” which is intended to form part of the Bosworth 1485 Trail, a 12 mile walking trail linking sites connected with the battle. Although the churchwardens have brought the petition, the scheme is in fact promoted by Bosworth 1485 (“the promoters”), which is the body responsible for establishing the proposed sculpture trail, and many of the documents filed in support of the petition are derived from the promoters rather than the petitioners.

6. Sutton Cheney is the proposed start of the trail. It is planned that the trail will consist of five artworks marking key moments from the events of 1485. Two of the other proposed artworks are also in nearby churchyards (at St Margaret’s Stoke Golding and St James’s Dadlington respectively) and faculty approval for the Dadlington artwork was granted by me last year.

7. The PCC and the DAC unanimously support the proposal for the installation of the sculpture at Sutton Cheney, and planning permission was granted by Hinckley and Bosworth Borough Council in May 2023. The petition has been advertised and no objections have been received. However, Historic England has raised a number of concerns and have identified that in its view the proposal would cause a degree of harm to the significance that St James’s derives from its setting. Those concerns were before the local authority when it granted planning permission, but as a faculty is also required in this case I have to consider them afresh. Historic England have declined to become a party opponent to this petition but have asked for its letters of objection

(written initially in opposition to the grant of planning permission) to be taken into consideration by me.

8. In addition to reading all of the documents filed in support of the petition, I have also had regard to the publicly available planning report of Hinckley and Bosworth Borough Council dated 25 April 2023, pursuant to which the local authority granted planning permission for the proposed sculpture. The local authority (in the context of the secular planning system) was required to balance the harm that would be caused to listed buildings (including St James' church) against the public benefits likely to be secured from the proposals. Whilst my task is not the same as that of the local authority, and my focus is specifically on the impact of the proposals on the consecrated church and churchyard rather than heritage assets more generally, I considered that an understanding of why the local authority reached the conclusion that it did, provided relevant contextual background information.

The Proposed Artwork

9. The proposed sculpture is of Richard III. He is kneeling, his head bent in prayer and he is holding his crown or circlet in his hand. The sculpture is large and will be carved from white Portland stone. The figure is substantially larger than life size so that the height of the figure, notwithstanding that it is kneeling and with its head bowed in prayer or reflection is 1.63m or 5'3" high. The sculpture sits on a circular black basalt plinth some 2.87m in diameter, surrounded by a ring of cubed granite blocks each 0.1m in width (intended to

protect the base from damage by mowers), so that the total exposed base of the plinth will be 3.07m in diameter. Behind the king, his cloak drapes out to largely cover the plinth. In front of him, the black basalt is exposed and a smaller section immediately below the king's head will be mirror polished to create a "reflecting pool". The robe itself will be fringed with a passage from King Richard's prayer book and will be decorated with images of soldiers in his army asleep in their encampment before the battle.

10. Below ground the sculpture sits on foundations of reinforced concrete above a bed of compacted hardcore and sand. The proposals require an excavation of 0.5m.
11. Although the sculpture shows King Richard apparently bowed in prayer, the sculpture is aligned so that he would be facing west rather than east. This was queried by the DAC. Bosworth 1485, the promoters of the project have explained that the sculpture is aligned so that it faces towards the church, rather than towards any particular cardinal point.
12. In addition I am told that (if a faculty is granted for the installation of the sculpture) there will be a further application for the installation of an interpretation board. I note that the conditions attached to the local authority's grant of planning permission include (a) a requirement that the location, form, dimensions and content of the proposed interpretation panels should be submitted to the local authority prior to any installation works

commencing and (b) a requirement that the panels are installed within three months of the final installation of the sculpture.

13. I should add that there appears to be a discrepancy between the faculty petition and the planning application made to the local authority. The final version of the plans submitted in support of the faculty petition are shown as being amended at 4 April 2023 (and are described in a letter from the promoters to the DAC dated 8 May 2023), whilst the planning permission granted by the local authority requires the development to take place in accordance with earlier drawings submitted on 1 February 2023. If a faculty is granted, it will be necessary for the promoters to obtain a variation of this condition from the local authority.

14. The project is funded by a grant from the Leicester and Leicestershire Enterprise Partnership and match funding by Hinckley and Bosworth Borough Council. The sculpture, once installed, would be insured and maintained by the local authority.

The Proposed Site for the Sculpture

15. The churchyard remains open to burials. It is proposed that the sculpture is placed in the southern part of the churchyard, near to a path that runs from a gate into the churchyard towards the church. The church itself lies to the northwest of the sculpture. To the north of the proposed site of the sculpture, just outside the churchyard, is a grade listed row of almshouses dating from

around 1612. Immediately to the south of the proposed site for the sculpture is a hedge and a bench and beehives. There are no modern graves in the immediate vicinity of the sculpture, although there may be older graves in this area. The Heritage Impact Assessment prepared by the University of Leicester that has been submitted in support of the petition assesses that there is also a moderate-high potential for medieval archaeological remains within the site that will require excavation.

The Law

16. This petition has to be considered in the context of what have become known as the *Duffield* Questions following the decision of the Court of Arches In *Re St Alkmund, Duffield* [2013] Fam 158. These are as follows:

- “(1) Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
- (2) If the answer to question (1) is ‘no’, the ordinary presumption in faculty proceedings ‘in favour of things as they stand’ is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8 and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3 4 and 5 do not arise.
- (3) If the answer to question (1) is ‘yes’, how serious would the harm be?
- (4) How clear and convincing is the justification for carrying out the proposals?
- (5) Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at para 8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and

putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering Question 5, the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade I or II*, where serious harm should only exceptionally be allowed.”

Harm

17. It is accepted by the petitioners that the installation of the proposed sculpture will cause harm to St James’ church due to the effect on its setting. The Heritage Impact Assessment (which has been prepared having regard to the NPPF guidance) recognises that, given its grade II* listing the significance of the church is “high”. It assesses the magnitude of the impact of the proposal as “minor”¹. This leads to a conclusion that the overall effect of the proposal is that the harm caused will be “slight to moderate”. Historic England has not sought to quantify the overall effect of the proposals, although its letter of 7 February 2023 confirms its view that the proposal would cause “a degree of harm” to the significance of the church and that the Heritage Impact Assessment failed to consider the issue of significance in depth and that the level of harm that the proposals will cause is higher than that indicated in the assessments.

18. Particular features of the proposals that have been identified by Historic England as causing harm are as follows:

¹Defined as “A change from baseline conditions to the asset, or change in its setting leading to the slight loss or reduction in the significance of the asset. Characteristics of the setting can still be appreciated - the changes do not conflict with the character of the heritage asset.”

- (1) The scale, form and siting of the sculpture appears likely to dominate the churchyard setting of the church and detract from its prominence.
- (2) Historic England refer to the sculpture as forming “an incongruous element within the churchyard and the setting of St James’s church”, something emphasised by the choice of Portland stone - a non-local material.
- (3) It identifies the selected location as very open and prominent when entering the churchyard from the south, something it considers to be at odds with the quiet, contemplative theme of the sculpture and considers that increased activity may conflict with events associated with the church’s original function.
- (4) The sculpture will create problems with the memorialisation of the dead in the churchyard.
- (5) The footings of the sculpture may impact upon buried remains within the churchyard.

In its final advice dated 7 February 2023 Historic England recommended two design changes:

- (1) The relocation of the sculpture to a less prominent and more contemplative location to allow visitors to discover and share the private moment depicted; and
- (2) Reducing the size of the sculpture to human scale, allowing it to be read in line with existing churchyard monuments.

19. The planning report for Hinckley and Bosworth Borough Council concluded at para 8.24

“However, the sculpture is considered to result in a minor level of harm to the significance of the Grade II* Listed Church of St James and Grade II Listed Almshouses due to the effect on their setting. This outcome was also reached by both the Council’s Conservation Officer and the Applicant’s Heritage Impact Assessment. This level of adverse impact is considered less than substantial harm in terms of the NPPF and towards the lower end of this spectrum of harm.”

20. The siting of the sculpture has been the subject of discussion, and I note that the initial proposals envisaged siting it closer to the church. I understand from documents submitted by the petitioners that the final siting of the sculpture was chosen in February 2022 following a meeting with various stakeholders which included representatives from the PCC, the Parish Council, the owners of the adjoining almshouses, the Battlefields Trust, the Richard III Society, Historic England and the local planning authority.

21. The promoters of the project, Bosworth 1485, observe that the location is “not particularly prominent” and is shielded by hedgerows and trees on an approach from the south.

“It is a location that has to be discovered once entering the boundary of the churchyard and will not be readily visible before this”.

This appears to me to be overstating the position. Among the documents filed in support of the petition are a set of photographs that show a life-sized mock up of the sculpture in position (the document is dated in March 2022 and I have assumed that these were taken during the siting visit the previous month). These pictures show that the statute will be visible from the south before entering the churchyard as its head and shoulders are significantly higher than the hedge. I note that the local authority planning officer seems to have taken a similar view referring to the sculpture being “partially

screened” by the boundary vegetation.

22. The promoters make the point that the siting of the proposed sculpture is sufficiently set back that it will not block views of the church or almshouses from the churchyard gateway. They also point to the fact that there is an existing bench near to the proposed site of the sculpture which will provide a place for quiet contemplation. Following consultation with an access auditor and the DAC advisor, the sculpture is situated sufficiently close to the churchyard path to ensure that most people would be able to access it.

23. The promoters’ view is that the scale and location of the sculpture has been carefully chosen not to dominate the churchyard space or the church building, whilst allowing a viewer to make the link of a king at prayer. They make the point that a sculpture viewed outdoors appears less massive than it does in a studio and state:

“Because one tends to relate the scale of sculpture to one’s own human physical dimensions, the emotional impact of a colossal figure and a small figurine are quite different.

The figure is not significantly raised from the ground. A human scale may make it look and feel like a garden ornament rather than a sculpture. The presence up close, and the vulnerability of the figure as viewed from a distance, would be completely lost if it were to be made smaller.”

They conclude by noting that reducing the size of the sculpture (as suggested by Historic England) could make it look like a gravestone or memorial, which it is not.

Justification for the Proposals

24. A detailed statement of significance and of need was filed by the promoters in relation to the Bosworth 1485 trail as a whole (and is relied upon by the petitioners). The impetus for the walking trail is described thus:

“Bosworth1485 captures the energy, community spirit, positivity and commitment shown on the day in 2015 when the mortal remains of Richard III were reinterred in Leicester Cathedral. This was after their discovery of the remains in a car park in 2012. On that day, the cortège wound its way through the beautiful West Leicestershire landscape. It shone a momentary spotlight on this piece of countryside and its communities. We are now capturing that moment, as desired by local communities, and presenting it for future generations.

The project has been in preparation and consultation since 2016. Local communities and churches are very eager to see this exciting project finally come to fruition. Consultees have included The PCC and church wardens, the local community, planning officers and representatives from Hinckley and Bosworth Borough Council, heritage professionals, The Richard III Society, The Battlefields Trust, The University of Leicester Archaeological Services and Historic England.”

25. In terms of benefits that will be secured by the trail the promoters assert:

“The Sculpture Trail provides a multi-layered benefit to the public. It is a distinct and unique way to engage visitors to the churches. These visitors may be from ‘age groups which are often underrepresented in churches’ (From Tourist to Pilgrim, Revd Andrew Braddock). They may not be regular attendees at church but ‘open to engaging with the spirituality of the building’ when presented with opportunities to do so (From Tourist to Pilgrim, Revd Andrew Braddock). The Trail will also encourage people to come to the Church Monday-Friday and not just on a Sunday or at Easter and Christmas.

The project has used the churches throughout its lifetime for meetings and events connected to The Sculpture Trail. This included hosting lectures relating to medieval life. The churches were delighted to welcome large audiences into their buildings and to share the spaces with them. The project will enable further opportunities for people to be invited in, learn and explore, and ponder their own faith and beliefs. Donations from increased visitor numbers will also be a tangible benefit.

The sculptures further the opportunity to present the churches to visitors as a welcoming place which is open and there to be shared with others. ‘The church and it’s grounds provide a place of encounter with God’ (From Tourist to Pilgrim, Revd Andrew Braddock) and the sculpture will encourage people to spend time in the grounds in thought, reflection and contemplation. For those that walk through the churchyard without going into the building itself, areas of ‘healing plants and sculpture can offer places to sit and reflect’ (From Tourist to Pilgrim, Revd Andrew Braddock).”

26. Historic England are supportive of the creation of the Bosworth 1485 Trail in principle, recognising that it will bring benefits:

“The project has a positive and welcome ambition to widen interaction and understanding of the battle both within and beyond the boundary of the registered battlefield.

The use of trails can be an engaging way to increase public accessibility and understanding. They have value particularly in aiding the ability to read landscapes, and where the process of moving through a landscape can be as important to understanding as static views.”

However, its view is that these benefits do not outweigh the harm that will be caused to St James’s church by the proposals.

27. In its planning report, recommending the grant of planning permission, the local authority took the view that the adverse impact of the proposals on the listed heritage assets (St James’s church and the neighbouring almshouses) amounted to less than substantial harm within the terms of the NPPF and was towards the lower end of this spectrum. It identified a variety of heritage benefits arising from the scheme:

“It is acknowledged that the proposal can demonstrate a variety of heritage benefits, which result from an increased understanding and awareness of the significance of the Bosworth Battlefield, and potentially other affected heritage assets via the scheme of interpretation panels, which are secured via planning condition. Furthermore, there are also likely non-heritage benefits that result from the proposal, which include tourism activities that relate to the proposal and the wider Bosworth 1485 Sculpture Trail. These non-heritage benefits are considered to support the local economy and the profile of the Borough. Therefore, it is considered that there is a high level of benefit from this scheme.”

The local authority concluded that these overall benefits outweighed the less than substantial harm caused by the proposals and granted planning permission.

Further Representations

28. Upon reading the papers in this matter, I was concerned that the documents filed by the petitioners did not adequately address the issue that the court had to consider. In particular I was concerned that the justification for the scheme

(as described above) focussed largely on secular benefits of the proposed trail for the wider community (such as increased awareness of the Bosworth battlefield site or an increase in tourism), and did not really seek to identify what the specific benefits of the introduction of this sculpture would be for St James's church itself.

29. I therefore made the following direction on 22 May 2024:

"I have carefully read all of the material that has been filed in support of this petition. I have also downloaded from the Hinckley & Bosworth Borough Council website the planning report dated 25 April 2023 in respect of the proposed sculpture setting out the planning officer's recommendation for the grant of planning approval.

I note that this is a case where it is accepted by the petitioners that the introduction of the proposed sculpture would result in some harm to the Grade II* listed church. My decision will therefore need to proceed in accordance with the test set out by the Court of Arches in *in Re St Alkmund, Duffield* [2013] Fam 158 and I will need to consider:

- (a) How serious the harm would be; and
- (b) How clear and convincing is the justification for carrying out the proposals.

The justification for the proposals within the statement of needs that I have seen seems to me to be focussed on wider secular advantages of the Bosworth 1485 Trail rather than the particular benefits for this parish, and I currently have concerns as to whether the *Duffield* test is met in this case.

This is an unopposed petition and I consider that it is important to give the petitioners an opportunity to address my concerns before I make a final determination. I would invite the petitioners to provide me with written evidence expanding on the following matters:

- (1) Given that there is a recognition that the installation of the sculpture would cause harm to St James', what are the countervailing benefits to the church and its community that they consider that the introduction of the sculpture into the churchyard would bring?
- (2) Have they considered whether those benefits could also be achieved in a different way which would not cause harm to the church, for example by the choice of a different artwork or the selection of an alternative location?
- (3) Is there anything else they would wish me to consider before making my final determination?"

30. In response to this invitation the petitioners have filed a further document entitled "Answers to the Deputy Chancellor's Questions" on 13 June 2024. The document is unsigned, but I consider it to be a very careful and thoughtful response to the issues that I have raised.

31. In response to my first question:

“Given that there is a recognition that the installation of the sculpture would cause harm to St James’, what are the countervailing benefits to the church and its community that you consider that the introduction of the sculpture into the churchyard would bring?”

The petitioners identify a number of matters.

- (1) First they observe that the impact of the sculpture on the church building will be minor (as identified in the University of Leicester Heritage Impact Assessment) and will have no impact on the fabric of the building itself.
- (2) They consider that the sculpture will bring many benefits to the church and the community observing:
 - (a) The sculpture is an acknowledgment of the theme and importance of prayer at St James’ church for many hundreds of years, and will provide an opportunity to engage visitors with the importance of prayer;
 - (b) The sculpture will provide an opportunity for outreach and mission; it will encourage visitors to come to Sutton Cheney to learn about the church. Other sculptures that have already been installed as part of the Bosworth 1485 Trail have already attracted visitors and the petitioners consider that the installation of this sculpture will provide an opportunity to increase reach and engagement for a church that has a small congregation and irregular services.
 - (c) An increase in visitor numbers will also be likely to result in

increased giving and to raise funds for “much needed repairs”.

- (d) The sculpture will also reinforce St James’ as a hub and focal point for the local community, as it was in the medieval period. The church is the only remaining landscape marker from 1485 and the sculpture will serve as a reminder of the longevity of the church and Christian faith, highlighting the importance of this setting over centuries.
- (e) The story of Richard III at prayer is a significant part of this church’s unique identity and the proposed sculpture would help raise the profile of the church within the parish and beyond.

32. In relation to my second question:

“Have you considered whether those benefits could also be achieved in a different way which would not cause harm to the church, for example by the choice of a different artwork or the selection of an alternative location?”

the petitioners observe:

- (1) That the location selected has been carefully considered by the DAC and has been chosen so that it does not obstruct views of the church or almshouses. It is behind a hedgerow, concealed until you are almost upon it, and is in a “quiet” part of the churchyard away from graves.
- (2) The chosen location is close to a hard-surfaced path to promote accessibility.
- (3) The chosen location is the only practical one, and other locations would have led to “actual ‘harm to the church and fabric of the church”.

- (4) There has been significant community input into the design of the sculpture over a prolonged period of time, with the artwork being designed and redesigned several times to take the community's views into consideration.

The petitioners answer to this question concludes:

"This piece is one which the community feels reflective of the important story that it has to tell. It's an artwork that we do not wish to hide. Whilst the location is sensitive, we are proud to share the sculpture with our community and visitors from further afield and tell them about the importance and significance of St James' Church. This sculpture is a representation of the unique identity of our church. No other artwork would portray the same message and sentiment."

33. In response to my third question:

"Is there anything else you would wish me to consider before making my final determination."

the petitioners add the following points:

- (1) The community of Sutton Cheney would like the same opportunity as has been afforded to that of St James' Dadlington to tell their story through the Bosworth 1485 trail. Sutton Cheney's narrative of prayer and contemplation is one of the lesser known stories of the Battle of Bosworth and the petitioners believe it to be an "incredibly important and defining part of our church community".
- (2) My attention is drawn to the contrast between the proposed sculpture and another public sculpture of Richard III outside Leicester Cathedral. That sculpture shows the king, ready for battle holding a sword and crown. Sutton Cheney's proposed sculpture tells a different story, showing a man taking time for prayer and contemplation.

34. In conclusion the petitioners ask me to take the following matters into account:

- (1) The lack of actual and physical harm to the church.
- (2) The careful selection of a quiet, contemplative but yet accessible space that does not impinge on important views.
- (3) The sympathetic use of materials in a design which has been derived from many years of community input.
- (4) The ability for St James's Sutton Cheney to cement its identity, as St James in Dadlington has been able to do.
- (5) The opportunity for the parish to use the sculpture for outreach and mission and extend its our voice out to a wider audience.
- (6) And "most importantly", the opportunity for St James' to clearly tell its story to its community and visitors from both near and far. A story about the importance of prayer and a continuation of that prayer and worship, in St James's, over many hundreds of years.

Discussion

35. There is no dispute that these proposals will cause harm to the Grade II* listed church. The sculpture is intentionally massive in scale and form and although it has been sited to avoid directly impinging on certain views of the church and the neighbouring almshouses, it will be an obvious and very visible presence within the churchyard. I accept the petitioners' submission that it will not do "actual" harm to the fabric of the church, in that it is situated on the edge of the churchyard, however there will be some harm caused as a

result of the effect of the sculpture on the church's setting.

36. I therefore need to determine the level of harm likely to be caused by the introduction of the sculpture into the churchyard. In the absence of an alternative quantification of the likely harm from Historic England, I accept the conclusions of the petitioners' Heritage Impact Assessment that the overall effect is "slight to moderate". It is clear that the Heritage Impact Assessment, which has adopted the NPPF guidance, correctly recognises that as a Grade II* building the significance of the church is "high". I agree with both the Assessment and the local authority's planning officer, that under the same guidance, the impact of the proposal on the church falls to be categorised as minor. Although the introduction of the sculpture represents a change to the church's setting, the location of the sculpture near the edge of the churchyard means that the overall change is slight and the characteristics of the setting can still be appreciated.

37. Nonetheless, the church is Grade II* listed, indicating that it is a particularly important building of more than special interest and I therefore need to consider whether the justification for the proposals put forward by the petitioners outweighs that harm. As I indicated in the directions I gave in May, I was not initially persuaded that this was the case. However, I am now satisfied by the additional reasons provided by the petitioners that the balance lies in favour of granting the petition. In summary:

(1) The sculpture will be a focus to attract visitors to St James' church and

to the local community. This is of particular importance given that its small congregation is responsible for the maintenance of this historic building.

- (2) The story of Richard III's visit to Sutton Cheney on the eve of the Battle of Bosworth is a significant part of the church's identity and the sculpture will play an important part in allowing the church to tell that story as part of its mission and wider outreach.
- (3) The final proposals reflect much hard work by the community at St James's, by the promoters of the Bosworth 1485 Trail and the artist. I recognise that this scheme has gone through a significant number of iterations and now has wide community support.
- (4) Although I do not accept that the sculpture will not be seen by those approaching the churchyard from the south, I recognise that its location close to the hedge is likely to mean that it will not dominate the approach from that direction. I do accept that the benefits identified at (1) and (2) above, are best secured by placing the sculpture in the churchyard and that significant care has been taken in identifying an appropriate location for it. I am satisfied that the proposed location is the place within the churchyard which will minimise its impact on the views of the church and almshouses.
- (5) I accept also that significant care has been taken in the design of the sculpture and that a smaller form (as suggested by Historic England) would reduce its impact and would run the risk of it appearing to be a grave marker or memorial.

I will therefore allow the petition, subject to certain conditions that I set out below.

Richard III's Posthumous Reputation

38. Finally, I should add that although this point has not been taken in the representations before me, I have also considered whether the posthumous reputation of Richard III is itself a factor which should cause me to pause before allowing this petition. I have concluded that it should not.
39. Even at this remove, Richard remains a contentious figure. Posterity, encouraged no doubt by Shakespeare and other Tudor accounts of his reign, has tended to view Richard as a villain; a usurper who was complicit in the death of his nephews. Yet despite this, Richard has his adherents, who argue that his reputation has been traduced. It is not for me in this judgment to seek to investigate, let alone determine, the allegations that have been made against Richard. However, I make the following points:
- (1) Although Richard III's reputation remains contentious, this is not an issue which has been raised in any of the responses to the petition. Observations on the petition have been confined to the balancing of the harm likely to be caused by the introduction of the sculpture and the benefits likely to flow from it.
 - (2) Notwithstanding his contentious reputation, Richard III is important to both St James's church and to the wider diocese of Leicester. Following their discovery, the late king's remains were laid to rest with

dignity in Leicester Cathedral before the Bishop and members of the Royal Family. If it was considered appropriate to reinter his remains in such a manner and place, I do not consider that the erection of a sculpture of him in a churchyard with strong connections to him should be considered to be problematic.

- (3) The proposed sculpture makes explicit reference to a specific moment in Richard's life; to the night before his death when he took time to pray and to bow his head before God. Whatever Richard may, or may not, have done during his lifetime, in my view marking his final session of prayer in this way is an explicit recognition of the Church's message of hope for redemption and salvation.

Conclusion

40. In the circumstances I will allow the petition and a faculty for the proposed works may pass the seal. The faculty is to be subject to the following standard conditions:

- (1) That details of the works are entered in the Log Book so that a record is kept of what has been done
- (2) That no works shall take place until the PCC, after consultation with the Diocesan Archaeological Adviser, has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted by the PCC and approved by the DAC
- (3) That any trenches should be dug by hand and the DAC Archaeological

Adviser invited to be present during the excavations

- (4) (a) That the contractors should be aware of the possibility of fragmentary human remains being found in the course of the works.
- (b) Any disarticulated human remains shall be collected for reburial and the Incumbent notified.
- (c) Any articulated remains shall be covered from public view and the discovery notified to the Incumbent. The remains shall be cleaned in situ for recording purposes, recorded and, where directly affected by the works, removed by a competent archaeologist experienced in church archaeology for reburial as close as possible to the point of discovery
- (d) All human remains must be treated with reverence and respect at all times.

41. In addition, I also impose the following two additional conditions:

- (1) No works are to be carried out until the petitioners have demonstrated to the satisfaction of the Registrar that the commitment from the local authority to insure and maintain the sculpture has been properly documented; and
- (2) No works are to be carried out until a faculty has been obtained for the introduction of the proposed interpretation board.

42. Finally, I reiterate the point that I made at paragraph 13 above, that there

appears to be a discrepancy between the faculty petition and the planning application made to the local authority. The faculty, as issued, will give permission for the introduction of a sculpture which accords with final submitted version of the plans (amended as at 4 April 2023). Any discrepancy between this permission and the extant planning permission will need to be taken up with the local planning authority.

43. That is my judgment.

David Rees KC

Deputy Chancellor, Diocese of Leicester

17 July 2024