

Neutral Citation Number: [2018] ECC Wor 1

In the Worcester Consistory Court

Archdeaconry of Dudley

Parish of Areley Kings: Church of St Bartholomew:

Faculty petition 15-86 relating to memorial to A W Bourne and v L Bourne

Judgment

Introduction

1. This petition relates to a memorial to Arthur William Bourne and Violet Lillian Bourne, which was introduced into the churchyard of St Batholomew, Areley Kings in 2015, without either the authority of the incumbent or a faculty. The memorial mason has submitted a petition for a faculty for its retention.
2. The Rector and PCC objected to the retention of the memorial, but neither has sought to become a party opponent. The DAC has expressed views. But no-one has requested or even suggested an oral hearing. I considered that it would be expedient to determine the petition on the basis of written representations alone, although I would need to inspect the churchyard to inspect the memorial in question and those nearby.
3. I have accordingly visited the churchyard on 7 February 2018. On that visit I was accompanied by the Deputy Registrar and the Archdeacon, but not by either a representative of the Parish or a representative of the petitioner or of the Bourne family.

The churchyard

4. On my visit I observed that the churchyard is generally both attractive and well-maintained. The section to the west of the church – which is the location of the memorial in this case – is still in active use, and benefits from an attractive view across

open countryside to the west. It is also the subject of much activity by moles.

5. This area contains a number of memorials commemorating those whose cremated remains have been interred there. They have been designed to a number of patterns – including some flush with the surrounding ground level, some parallel with ground level but raised above it by a few centimetres, some surrounded with borders of chippings, some with stone or other edging (either plain or in ropework). Many of the memorials have been adorned with real or artificial flowers.
6. I consider that the photographs submitted by the petitioner, although taken some while ago, are broadly representative of what I saw on my recent visit.

The memorial

7. No issue arises as to the inscription on the memorial, which is in conventional terms.
8. However, this particular memorial is designed so that the principal face, containing the inscription, is slightly tilted, with the rear edge slightly higher above the ground than the front edge. It is principally this feature that has led to the objection by the parish, along with the fact that it is made of polished stone.
9. When this application for permission for the memorial was received by the parish, the Rector was on holiday; and he was very busy on his return. It was accordingly not processed for some while, and in the meanwhile the stonemason simply carried on without any permission. It seems that this failure to obtain prior approval is the matter that most exercises the Rector (“furthermore, *and more seriously*, the said memorial is already in the churchyard without permission”).

The case in support of the memorial

10. The stonemason takes full responsibility for having erected the memorial prior to receiving written permission. However, he draws attention to the amount of time that elapsed after he submitted his application to the Rector. And he wishes to apply for consent for the memorial to remain, on the grounds that there are others exactly the same (and some taller) in the same area, with the same polished finish, in the same colour granite.

The objection to the memorial

11. The Rector argues that all the other memorials in the vicinity are flush with the ground – and that the memorial that is raised above ground level, shown in one of the petitioner’s photographs, has been subsequently lowered. He notes that some relatives have added kerbs, but the parish is trying to have these removed. He observes that the Bourne memorial is not in accordance with the churchyard regulations, which are on display in the church porch. He also briefly refers to the reflective finish, and notes that many masons add a reflective finish even though not stating this on the permission forms.
12. The Rector also points out there are no other sloping memorials nearby; and that the introduction of this one has already led to applications from others for similar memorials. To allow this one would result in a free-for-all that would be undesirable in a churchyard that is already proving difficult to keep in order.
13. The PCC has objected in similar terms, and requests that the stonemason be instructed to remove the stone forthwith.
14. The DAC has supported the PCC’s view that the stone should not be permitted, due to the risk of a precedent being set.
15. The Rector says that he does feel for the family caught up in the middle of this; and he observes that they have been, to say the least, ill advised by their stonemason. However, there is no indication that the relatives of the deceased have been contacted by the parish, nor any indication as to what might be the pastoral consequences of an order being made requiring the removal of the memorial.

General principles

16. The first consideration in considering any churchyard memorial is whether it is for some reason intrinsically undesirable. That is, procedural and other factors, including the conduct of the parties, may sometimes be relevant, but the starting point must be an examination of the memorial itself, against any principles that may be applicable.

The churchyard regulations

17. Regulations for this particular churchyard have been approved, with effect from 1 January 2000. They state that:

“the Rector can ... approve memorials provided that they comply with the following criteria:

1. [a] They will be square shaped, and
[b] [they will] lie flat on the ground.
[c] The maximum size will be 21” (520mm) square.
2. The material for the memorial must
[a] be natural stone, and
[b] have a non-reflecting surface.
3. The surface of the memorial
[a] will be level and
[b] will be flush with the surrounding ground.
4. The position will be in line with existing memorials.
5. No vertical sections are permitted.
6. Wording on any memorial is personal, but should be discussed with the Rector before commissioning a mason.

Any proposed memorials which do not comply with the above must be the subject of a detailed faculty and approved by the Chancellor.”

18. For clarity, I have subdivided some of the criteria where they deal with more than one point.

19. Also relevant, in terms of general principles, will be the documents I issued at the start of 2004, entitled *Churchyard Memorials: a Guide for the Bereaved* and *Care of Churchyards: a Guide for Parishes*. In those I outlined the principles which should guide all those responsible for memorials in churchyards – that is, in the first instance, incumbents. In particular, they put forward a three-fold test to determine whether any particular proposed memorial is appropriate, according to certain general principles, as follows:

-) a memorial should respect its surroundings;
-) a memorial should not impose an unreasonable burden on future generations; and
-) the inscription on a memorial should be the most appropriate in all the circumstances.

20. As would be expected, the churchyard regulations reflect a similar approach to these more general principles, although worked out in slightly more detail. Thus the first five of the numbered criteria are an elaboration of the first general principle, designed to result in memorials respecting their surroundings. The requirements for memorials to be flat on the ground (1) and flush with the surrounding ground (3) reflects both the first and second general principles, in that memorials that protrude above ground level may be obtrusive (if others do not) and may result in future maintenance and mowing being more difficult. The last criterion reflects the third bullet point.
21. I give considerable weight to the churchyard guidelines at Areley Kings, and the considerations likely to have led to their production. Clearly it would be desirable for all new memorials to comply at least broadly with their requirements; and any significant deviation is likely to lead to potential problems, especially if regularly repeated, in that it will make enforcement of the regulations more difficult in the future. The same would apply in relation to other churchyards where there are such guidelines in place; and also to those where there are no specific guidelines, and where memorials therefore have to comply with the diocesan guidelines.

Non-conforming memorials

22. However, whilst conformance with the relevant regulations is clearly desirable, and whilst the introduction of a non-conforming memorial is not merely undesirable but a breach of the law, it has to be recognised that in many if not all churchyards in the Diocese a considerable number of memorials are introduced that amount to a departure from the relevant churchyard guidelines at least to some extent. As a result there has to be an element of common sense as to the way in which the guidelines are applied in particular cases.
23. In particular, memorials with a reflective finish are thus common, here as elsewhere –

either without permission or permitted in response to an application that specified a matt finish, or one that did not specify any finish. Whilst it may be desirable to discourage (indeed, to discourage strongly) the introduction of such memorials in the future, it would be both unreasonable and impracticable to require the removal and re-making of all shiny memorials that have already been introduced. Surrounding strips of chippings and edgings, on the other hand, can be removed with relative ease, leaving the memorial itself intact; and that might be worthwhile.

24. Further, particular care needs to be exercised in a case where a memorial has been introduced without any permission, or in breach of the terms of a permission that has been granted. In case such as the present, which is probably not unusual, it may be inappropriate (or impossible) to determine with certainty precisely where lies the responsibility for the choice of the detailed design of the memorial, as between the mason and the bereaved. But to insist on the removal of a memorial, especially after some time has elapsed, would generally require substantial justification.
25. I also bear in mind that the churchyard regulations explicitly (and correctly) note that a non-conforming memorial may still be allowed, but only with the authority of a faculty. So they are not entirely prescriptive.

Assessment of this memorial

26. Against that background, I now consider the Bourne memorial in relation to each of the criteria outlined in the churchyard regulations issued in 2000, and the general principles in the 2004 *Guide* (noted at paragraph 19 above).
27. There is no dispute that the Bourne memorial complies with criteria 1[a], 1[c], 2[a], 4, 5 and 6 of the 2000 Regulations. It is not clear whether criterion 3[a] means that the surface of the memorial must be “planar” – that is, it must not contain carvings or other elements protruding below or above the general surface – or whether it must be “horizontal” – that is, flush with the ground. If the first interpretation is correct, this memorial complies with that criterion too.
28. The points as to which there is non-compliance are thus:

1[b]. The memorial does not lie flat on the ground;

2[b]. The material for the memorial has a reflecting surface; and

3. The surface of the memorial is not flush with the surrounding ground.

29. As to the first and third of these, I have already noted that they reflect both the first and second general principles in the 2004 *Guide*, in that memorials that protrude above ground level may be obtrusive and may result in future maintenance and mowing being more difficult. However, I have already observed that there are a wide variety of other memorials in this part of the churchyard; and many are to some extent similar to the Bourne memorial that is the subject of the present petition. I did not see another one that was tilted in precisely the same way, but there were a number that were to patterns that were not entirely in line with the guidelines. Indeed, the ground was sufficiently uneven that it was not entirely straightforward to determine what would be in line with it – and the upper edge of the Bourne memorial was only slightly higher than the tops of some the molehills nearby.

30. As to the second, I have observed above that memorials are not infrequently introduced – without authorisation – that are made of stone that is at least to some extent polished, or shiny. That is certainly the case at Areley Kings.

Conclusion

31. I therefore conclude that the Bourne memorial does not comply with the churchyard regulations in that it is not flush with the surrounding ground, and is made from reflective stone.

32. However, I consider that the lack of uniformity in the immediately surrounding area means that the extent of that non-compliance is not sufficient to justify ordering the removal of the memorial.

33. A faculty should accordingly issue for the retention of the memorial.

34. I make no order as to costs.

Implications for future memorials

35. Finally, I should make it clear that this decision is based entirely on its own facts, and in particular on the circumstances in which the Bourne memorial came to be erected without authorisation and the physical nature of the surrounding churchyard. It does not in any way justify the introduction of memorials without authorisation, or in breach of any authorisation that may have been issued. And I shall not hesitate to require the removal and replacement of a memorial where that seems to be justified.
36. I thus take note of the fact that the Rector is apparently under pressure to authorise the introduction of further memorials at Areley Kings similar to the Bourne memorial. This judgment provides of itself no justification for any further departure from the Churchyard Regulations.

CHARLES MYNORS

Chancellor

2 March 2018