

**IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY**

**BERKSWELL: ST. JOHN THE BAPTIST**

**RE: THE PETITION OF DAVID WEATHERSON**

**JUDGMENT**

- 1) The late James Weatherson died on 10<sup>th</sup> October 2012 and is buried in the churchyard of St John the Baptist, Berkswell. David Weatherson is his son and petitions seeking a faculty for the installation of a memorial at his grave.
- 2) The inscription proposed for the memorial is wholly unexceptionable. It records James Weatherson's dates of birth and death together with family relationships and states the love with which he is remembered. However, the Petitioner seeks permission for the memorial to be of honed grey granite. It is that element which goes beyond what is permitted without faculty by the Churchyard Regulations and which has necessitated the petition.
- 3) There has been no response to the public notice. The Diocesan Advisory Committee has not recommended approval. In addition to that Committee's Notification of Advice I have received correspondence from Mrs. Janet Roberts, the parish administrator of St John the Baptist. Mrs. Roberts sets out the approach which the Rector and Parochial Church Council have in recent years taken in relation to the materials for headstones in the churchyard.
- 4) I have decided that it is expedient for this matter to be determined on the basis of written representations. The Petitioner has consented to that course. Mr. Weatherson was provided with copies of the advice of the Diocesan Advisory Committee and of Mrs. Roberts's letter. He has provided short representations supplementing the petition in the light of that material.
- 5) I made an unaccompanied site visit to view the churchyard.

## The Relevant Principles.

6) The Churchyard Regulations identify those memorials which can be installed in a churchyard without the need for a faculty. They also explain the reasons why such memorials are likely to be appropriate in a churchyard and why others are not likely to be appropriate. I set out my understanding of the approach to be taken in cases where a faculty is sought for a memorial of a type which is not authorised by the Churchyard Regulations in my judgment given sitting in April 2012 in the Lichfield Consistory Court in the case of the proposed memorial to Richie Nickisson in the churchyard of Newchapel, St James. The relevant parts of my judgment stated:

21) “ ... permission for a memorial which does not accord with the Chancellor’s Regulations will not be given lightly. A powerful reason must be shown before a faculty for such a memorial will be given. In *Re St. Mary: Kingswinford* [2001] 1 WLR 927 Ch. Mynors summarised circumstances in which such a faculty could be given thus (at paragraph 38):

*“However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the diocese and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where it is of a type, which may or may not be desirable in itself, of which there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted.”*

22) The four potential reasons given by Ch. Mynors are useful as examples of the circumstances where a faculty might be given for a memorial which does not conform to the Chancellor’s Regulations. However, they are, in my view, to be seen as illustrations only. As Ch. Holden said it is impossible to identify definitively and in advance all the matters which are capable in particular cases of being a sufficiently exceptional reason to justify the granting of a faculty. There will be circumstances falling within one of Ch. Mynors’s four categories where it will nonetheless be appropriate to refuse a faculty and also circumstances where a convincing and powerful reason of a kind different from those set out by Ch. Mynors will be established and the grant of a faculty will be justified.

- 23) The requirement that there be a powerful reason if a memorial which does not conform to the Chancellor's Regulations is to be permitted is a matter of justice and fairness to those who have erected conforming memorials. There are many families and individuals whose personal preference would be to have a memorial to a departed loved one in a form going beyond the Chancellor's Regulations. In the vast majority of cases such persons accept the approach laid down in the Regulations and erect a memorial conforming to the Regulations. In doing so they put aside their personal preferences and accept a memorial in a form different from that which they would have chosen if given a free hand. In many instances this will involve acceptance of a memorial which they regard as second-best or otherwise unsatisfactory and such acceptance will often be combined with a feeling of unhappiness and distress. Such people would have a legitimate sense of grievance if others (perhaps more articulate or forceful or with more time, money, or personal skills) were able easily to obtain faculties for non-conforming memorials. Fairness to those who have reluctantly complied with the Chancellor's Regulations requires the Court to confine exceptions to cases which are truly exceptional.
- 24) Similarly account must be taken of the legitimate expectations of those who have buried their departed relatives in a particular churchyard and of those who are to be buried therein. Those who have interred departed relatives in churchyards on the footing that the appearance of the churchyard will be maintained in line with the Chancellor's Regulations will have cause to protest if the requirements of the Regulations are lightly set aside. Again those who have paid fees for the reservation of grave spaces have a legitimate expectation that the character of the churchyards in question will be kept in accord with the Regulations.
- 25) Whether a particular reason is sufficiently exceptional to justify the grant of a faculty will be an exercise of judgment in each case. The Court has to take account of the foregoing factors and of the matters said to justify the departure from the Regulations. Account will also have to be taken of the extent of the deviation from the Chancellor's Regulations. The greater the extent of the deviation and the more readily apparent the same is to those visiting the churchyard in question the less likely it will be that a faculty will be granted. Conversely in a particular case where the extent of the deviation is less there is likely to be a lesser impact on visitors and the considerations operating against the grant of a faculty might have less weight though I repeat that in every case a good reason must be shown before a faculty will be granted for a memorial which does not conform to the Regulations.
- 26) Particular issues arise in cases where there are already a number of non-conforming memorials in a churchyard. The mere fact that non-conforming memorials have been allowed in the past or have been erected without faculty is clearly not of itself a justification for a further inappropriate memorial. However, there will be occasions when the extent of previous non-compliance with the Regulations will be relevant. In the passage quoted above Ch. Mynors referred to situations where the number of non-conforming memorials is such that it would be "*unconscionable*" to refuse permission for one more. In my judgment the proper approach is to take account of the number, type, and appearance of non-conforming memorials in relation to the size and appearance of the churchyard taken as a whole. There will be cases where the non-conforming memorials are so numerous or so dominant that it is simply unrealistic to believe that the objective of preserving the desired appearance of the churchyard can be achieved. That desired appearance

being one that is harmonious in appearance and forming a worthy setting for the church. In such circumstances the balance of unfairness changes. It can then become unfair to the Petitioner to refuse a petition for a memorial of a kind akin to those already present in and dominating the churchyard. There is then a risk that the Petitioner's wishes and preferences are being thwarted in pursuit of an unrealistic objective. Moreover, in such cases the risk of unfairness to those erecting conforming memorials contrary to their own preferences is likely to be diminished. "

- 7) The Coventry Churchyard Regulations articulate those principles stating at Regulation 6.1 that a "*substantial reason*" will have to be shown if there is to be permission for a memorial falling outside the Regulations.

### **The Churchyard Regulations.**

- 8) The Churchyard Regulations provide at 5.5 that memorials should be "*of natural stone of a colour, type, and texture traditionally used within or in the locality of the churchyard concerned.*" At paragraph 6.2 the Regulations state that "*Polished granites ... are contrary to these Regulations ... Such stone rarely blends well with the church itself and looks out of place amongst memorials made from the more traditional kinds of stone.*" At paragraph 20 the Regulations explain that the choice of suitable material will depend on the particular locality within the diocese given the wide range of building stones used in the different parts of the diocese. However, by way of general guidance the paragraph identifies various types of limestone, sandstone, and slate as potentially suitable stone.

### **The Approach of the Incumbent and the Parochial Church Council.**

- 9) Mrs. Roberts has explained the approach which has been taken in recent years by the Rector and Parochial Church Council of this parish. The churchyard contains a number of memorials made of granite but in recent years the approach has been to decline to support such memorials and to require that memorials be of a stone which is in keeping with the church and the surroundings of the churchyard. There was a limited exception to this in that honed granite memorials were allowed in Row H until June 2010 but that was because the row already contained a number of such memorials.

- 10) Mrs. Roberts says that since then the only use of granite anywhere in the churchyard for memorials has been in the case of like for like replacement of existing granite memorials. Mrs. Roberts says that a number of those who initially

sought to introduce granite memorials have accepted the approach of the incumbent and the Parochial Church Council and have installed memorials of a different stone.

### **The Appearance of the Churchyard.**

- 11) The church of St. John the Baptist has a Grade I listing. It is described in *The Buildings of England: Warwickshire (Second Edition)* as “*easily the most interesting Norman village church in Warwickshire.*” The church in its current form dates substantially from the late Twelfth Century and was built in sandstone. The churchyard contains a separately listed Nineteenth Century cross on a mediaeval base. In addition it is to be noted that the area around the church and churchyard contains a number of other listed buildings.
- 12) The part of the churchyard immediately surrounding the church contains a considerable number of memorials including several very old memorials. There are a few granite memorials in that part of the churchyard but there are no more than a handful of these.
- 13) James Weatherson’s grave is in a newer portion of the churchyard. This is immediately adjoining the area around the church itself but is marked off by a low wall. It is accordingly not as close to the actual church building but it is nonetheless sufficiently close to form part of the setting of that building. The position in this newer part of the churchyard is more mixed and there are a number of granite memorials. I did not carry out a count but the impression I formed was that although the presence of granite memorials was obvious such memorials were a clear minority even of those in this part of the churchyard. James Weatherson’s grave is in Row J. The memorials in that row are in a variety of stones. Mrs. Roberts explains that the other memorials in Row J are made of York stone, blue slate, and various types of limestone.

### **The Advice of the Diocesan Advisory Committee.**

- 14) The Diocesan Advisory Committee has not recommended approval of the petition. The Committee explains that it has taken note of the approach taken by the Rector and the Parochial Church Council of St John the Baptist. It says that

the policy is in line with the Churchyard Regulations and that it wishes to support the Parochial Church Council in its approach.

### **The Petitioner's Submissions.**

- 15) David Weatherson makes his submissions in moderate and balanced terms. They are all the more forceful because of his moderation.
- 16) Mr. Weatherson explains that the situation has arisen because of a misunderstanding. He lives in the Birmingham diocese and he engaged a reputable firm of Birmingham-based monumental masons to provide a memorial. The memorial was cut, engraved, and paid for before either Mr. Weatherson or the masons checked with the Berkswell parish office about the acceptability of the proposed memorial. Mr. Weatherson and the masons had both assumed that the use of honed granite would be acceptable.
- 17) Mr. Weatherson has now discovered that a faculty is needed if the memorial which has been prepared is to be used. He makes the point that the memorials currently in the churchyard are made of a mixture of types of stone with a number being of granite. It follows that the proposed memorial will not be the first of its kind. Mr. Weatherson frankly accepts that he made an error in not checking the position before arranging for the memorial to be made. He says that an exceptional course is justified and that the memorial should be permitted because there are already some memorials of this stone in the churchyard and because the memorial has already been made and paid for as the result of an honest error.

### **Analysis.**

- 18) Is there in the particular circumstances of this case a good reason sufficient to allow a memorial which does not conform to the Churchyard Regulations?
- 19) I accept that the current situation in which the Petitioner finds himself has been brought about by an honest and genuine error. This is not a case where there has been an attempt to steal a march or to create a *fait accompli*. Mr. Weatherson has made a mistake and he (or his father's estate) will have wasted the cost of the memorial if permission is not given.

20) I have concluded that the circumstances here do not constitute a good reason for departing from the approach laid down in the Churchyard Regulations and that the petition must be dismissed. The position in which Mr. Weatherson finds himself arose from a failure to check with the Rector or the parish office before having the memorial prepared. That was an error made in good faith but it was an error. There was a failure to take the simple precaution of checking what the applicable rules were before commissioning the memorial. I take note of the fact that the churchyard already contains some granite memorials. Nonetheless, the approach which the Rector and the Parochial Church Council have taken over recent years of preventing further granite memorials seeks to ensure that for the future memorials in the churchyard will be of a material compatible with the church and the locality. That approach is an entirely appropriate one. This is particularly so given the grade I listing of the church and the appearance of the surrounding area. That approach is to be commended and supported. It is not appropriate that the Petitioner's error should be allowed to undermine it.

21) I am also conscious of the need for fairness to those other persons whose preference was to install granite memorials to their loved ones but who checked with the Rector or the parish office before commissioning a memorial. Mrs. Roberts explained that a number of such persons have accepted the decision that memorials should not be of granite in this churchyard and have agreed to use other stone for memorials contrary to their initial wishes. There would be a real unfairness to such persons if Mr. Weatherson were to be allowed to install a granite memorial because he did not check the applicable approach in advance. Accordingly the Petition is dismissed.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
16<sup>th</sup> October 2016