

IN THE COMMISSARY COURT OF THE
DIOCESE OF CANTERBURY

ALL SAINTS, BIDDENDEN

In respect of the Churchyard at All Saints, Biddenden

JUDGMENT

1. Mrs Sylvia Coar petitions for permission to make changes to two graves in the churchyard of All Saints, Biddenden.
2. Both graves are kerbed. The petition seeks authorisation "*To apply pea-beach or fine gravel to the area within the kerbs of the graves of Frederick William Henry Lancaster and that of his mother (situated next to the grave of Frederick Lancaster) for the purpose of weed suppression.*" I have taken this wording from the Public Notice which was published on 27th January 2020. Part A of the Petition Form itself only mentions the Frederick Lancaster grave, though an Addendum explains that the Petition is intended to relate to both graves.
3. The Addendum states:

"As niece to Mr Frederick Lancaster, and great-niece to his mother who lies beside him in the Churchyard of All Saints, Biddenden in Kent, and having noticed that both graves are kerbed and unattended within those kerbs, I would ask for consent to infill both plots with fine gravel or pea-beach for the purpose of weed suppression.

I am the nearest remaining relative of these two members of my family (one of whom, Mr Lancaster, is remembered by the Commonwealth War Graves Commission which yearly cleans his headstone) and am now, myself, in my 80s and sadly far from well.

I would very much wish to leave these two graves both tidy and respectfully kept while I am able. I have chosen to suggest pea-beach or fine gravel, having a marked dislike of marble chippings and a preference for something more natural and in keeping.

I have been told by a local stone-mason (Cleverley and Spencer) that the cost of marble chippings for both graves would approach £190 and this, for me, is also an obvious consideration.

Photographs of both graves are attached by e-mail. They were cleared of weeds in the past six weeks and already, as you can see, are beginning once again to be overgrown. It is a dear wish that you will help me, please, to leave these memorials tidy and neat and in little need of attention, as they should be in an English Churchyard."

4. Part B of the Petition Form and an Addendum explain that the PCC does not support the Petition. There are 10 other kerbed memorials in the churchyard. At its meeting on 5th November 2019, the PCC unanimously decided to oppose the Petition for the following reasons:

- “1. For the past twelve years we have consistently sought to uphold the churchyard regulations. Apart from this being our legal duty we are aware there is a need for a careful balance between the special nature of the Churchyard; of its importance to the whole community, and the individual aspirations of families and friends of those whose earthly remains are to be interred in the Churchyard. Prior to any burial we ask families to agree to keep to abide to (sic) these guidelines. I attach a copy of the form we require families to sign.
2. For the past twelve years, where chippings or other stones and kerbs have been introduced in the churchyard without permission (sic). In all of the instances where this has happened, families have been challenged and the kerbs and or the stone chippings have been removed and in one case this was by the PCC.
3. The PCC is unconvinced the proposal will provide a lasting solution to the upkeep of the grave, vegetation will continue to colonise the area.”

The PCC added in its Addendum that:

“The PCC takes great care to maintain the churchyard, which is entirely done through voluntary effort. It would be much easier to maintain, and keep the memorials respective (sic) to enable mowing of grass around the headstone of Frederick Lancaster if the kerbs were removed. If the family were in agreement, the PCC could facilitate this.”

5. I have been provided with a copy of the statement which those erecting memorials in the churchyard are asked to sign, setting out the need to abide by the Churchyard Regulations and that memorials with kerbs and chippings are not permitted.
6. Because Frederick Lancaster’s headstone is maintained by the War Graves Commission, I directed, pursuant to Rule 9.4 of the Faculty Jurisdiction Rules 2015, that special notice be given to the Commission. I also directed that the Diocesan Advisory Committee should advise me about the Petition. The Commission indicated that it has no objections to the Petition. The DAC’s advice, was to the effect that “shingle should not be permitted, being unconvinced pea shingle would suppress weed growth.” They add, in relation to the kerbs: “they are longstanding and may well have been put in when they were allowed. There are also other kerbs around the grave behind the war grave. It is difficult to justify a requirement to remove them.”
7. Photographs of the graves are included with the Petition materials. They are both kerbed and each contains a compact stone flower holder standing in the earth within the kerbed rectangle. There is some weed growth visible in the earth within the kerbs.
8. Mrs Coar is, I am told, near to death. The Petition is being handled for her by her friend, Ms Anne Woolfe, who reports that this matter has become Mrs Coar’s principal preoccupation. Ms Woolfe argues, on Mrs Coar’s behalf that:
 - “a) the Petition concerns both graves, and not just Mr Lancaster’s;
 - b) both graves are much more than 12 years old (1945 and 1953 respectively) so pre-date the apparent 12-year ruling;
 - c) no mention was made during the meeting of the cost of removing the existing kerbs (presumably to be borne by Mrs Coar) and no discussion at all was had to decide whether such old graves really needed to be so radically altered;
 - d) in the context of a churchyard already occupied by graves festooned with toy caravans, plastic flowers and even fairy lights, a ban on infilling two graves with pea-beach might seem both pedantic and uncharitable.”

She adds:

"It is hard for an onlooker, which is what I am, to see any element of common humanity in this very small affair. You will see that Mrs Coar has no wish to upset any careful balance in the churchyard but merely to keep these two family graves neat and decent after her death....."

9. A faculty is required because the introduction of shingle into memorials is not permitted under the power of approval granted to the Minister by the Diocesan Churchyard Regulations 2015. Additionally, Regulation 3(g) provides:

"kerbs, railings or chippings, whether raised or at ground level, are not permitted."

In these respects, the current Regulations carry forward the position under my predecessor's Regulations. The Churchyard Guide which accompanies the Regulations, explains that kerbs, railings and chippings are not permitted because of the practical difficulties which they can present for those whose job it is to maintain churchyards and the fact that such features can pose safety hazards.

10. No objections have been made as a result of the public notice and the Petitioner and the Parish are content for me to dispose of this matter on the papers.

11. The nature of Churchyard Regulations was discussed by Hill Ch in his judgment, In the Matter of St John the Baptist, Adel and in the Matter of St Michael, Markington and in the Matter of the Churchyard Regulations for the Diocese of Leeds [2016] ECC Lee 8. He noted differing approaches in the judgments of the consistory courts of a number of dioceses; some treated their regulations as requiring exceptional circumstances to be demonstrated by a petitioner seeking to introduce a memorial which went outside the scope of delegation authorised by the relevant regulations. He favoured the approach of McGregor Ch in Re St John's Churchyard, Whitchurch Hill [2014] para 16, as follows:

"As is the case with any petition, 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."

12. Hill Ch continued, at para 7, saying:

"The terms and content of the Churchyard Regulations will, of course, be a relevant factor – often highly relevant and doubtless on occasion determinative. But they will be one of the constellations of infinitely variable factors which the court must consider on a case-by-case basis. I anticipate that the same outcomes may well result irrespective of the differing approaches, but as I have the responsibility and privilege of creating clear practices for the Diocese of Leeds, justice requires that I set out in advance which mine will be. There will be no presumptive preference for what is contained in the Churchyards Regulations, nor a bias in favour of the standard, bland or anodyne."

13. I respectfully agree with this approach and there is nothing in the Canterbury Regulations which is inconsistent with it. I would simply add that the Canterbury Churchyard Guide states, at paragraph 13:

"If a proposed memorial is not authorised by the Regulations, a Faculty must be sought for its introduction. The Commissary General ... will have regard to the principles set out in this Guide and underlying the Regulations in deciding whether to allow departures in specific cases. The views of the Parochial Church Council and the Diocesan Advisory Committee will also be taken into account."

14. The exclusion of kerbs and chippings from the scheme of delegation in the Canterbury Regulations is not unusual. There are numerous consistory court judgments from other dioceses dealing with petitions for new or restored kerbs. Such features were fashionable in the past, but are now recognised to produce the drawbacks referred to in the Churchyard

Guide. Pea shingle or fine gravel is not the same as chippings, although some of the characteristics are similar.

15. The reported cases turn on their own facts and I do not think that it will assist to rehearse them in this judgment.
16. I have carefully considered the arguments for and against the Petition and am aware that I need to strike a balance between, on the one hand, the policy of the incumbent and the PCC which is, commendably, to ensure compliance with the Churchyard Regulations and, on the other, the wishes of the Petitioner to do what she perceives to be the right thing by her deceased relatives. I give particular weight to the following factors in favour of the Petition:
 - (i) that the kerbs are in place and there is no Petition before me for their removal;
 - (ii) that the introduction of shingle or gravel will not, therefore, make the task of mowing or strimming round graves materially more difficult;
 - (iii) that fine gravel or shingle is more natural in appearance than many of the chippings which tend to be used for this purpose;
 - (iv) that weeds are untidy and not a fitting memorial and the introduction of shingle or gravel should slow down their progress somewhat.

Against the Petition are the following factors:

- (i) the fact that, as the PCC and DAC point out, the introduction of shingle or gravel will not permanently suppress weeds;
- (ii) the commendable desire of the PCC to enforce the Regulations and to encourage the removal of kerbs;
- (iii) the fact that another way to allay the Petitioner's concerns would be to remove the kerbs and allow the graves to be mown with the rest of the churchyard.

A neutral consideration, but one which will, I hope, comfort the Petitioner, is the continuing commitment of the War Graves Commission to keep Frederick Lancaster's headstone in good order so as to ensure that his personal sacrifice will be remembered in perpetuity.

17. On balance, I have decided to allow the Petition. My general aesthetic and practical sympathies in relation to this form of memorial are with the PCC and DAC, but it is not the purpose of the faculty jurisdiction to enable chancellors to impose their tastes on others. The proposal would not, in my view, do any harm and it is not, strictly speaking, expressly dealt with by the Churchyard Regulations, since gravel and chippings are different materials. If the parish wish, in due course, to work on a scheme for the general removal of kerbs, that will be a separate matter. By then, it is possible that the graves in question will not be controversial. Nothing in this judgment, however, would predetermine the outcome of such a petition.
18. I therefore propose to grant the Petition in the terms in which it was described in the Public Notice and subject to a time condition of 12 months.



MORAG ELLIS QC
31 March 2020