

In the Consistory Court of the Diocese of Worcester

Archdeaconry of Dudley: Parish of Brierley Hill: Church of Brockmoor, St John

Faculty petition 12-56 relating to a headstone over the cremated remains of Mr and Mrs Gwilliams

Judgment

Introduction

1. This is a petition relating to the erection in Brockmoor Churchyard of a memorial over the cremated remains of Mr and Mrs Gwilliams. The memorial in question has already been erected, so the petition is for a confirmatory faculty for its retention.
2. Mr Geoffrey Vernon Gwilliams died on 9 March 2011; his wife Mrs Susan Gwilliams died a few weeks later, on 5 April 2011. Their cremated remains were buried in neighbouring plots in the Churchyard of St John's Church Brockmoor.
3. The church is set in a large churchyard, containing a wide variety of headstones and other memorials. There is no particularly obvious or significant house style. Most of the memorials relate to coffin burials, but there are two areas, to the north-east and the south-east of the east end of the church, containing the remains of those whose bodies have been cremated prior to burial. The remains of Mr and Mrs Gwilliams are in one of those areas.
4. Generally the memorials there are of a similar size, about 60 cm (2 feet) square, and are either horizontal or slightly sloping (the latter is the style sometimes known as

“desktop”). Some are in wider plots; and one is 90 cm wide. Many are of black marble with gilt lettering.

5. The memorial to Mr and Mrs Gwilliam, by contrast, is a vertical slab of black marble, mounted on a horizontal plinth, spanning across both plots. It is the only vertical stone in this area of the churchyard (although there are of course many vertical stones above the plots containing non-cremated remains). The vertical stone is approximately 120 cm wide, and 60 cm tall; the plinth is approximately 120 cm by 60 cm deep. Both stones are approximately 10 cm thick.
6. The left half of the stone contains (in gilt lettering) the details of Mrs Gwilliams, and a tribute in the words, “A Devoted Wife, Mom, Nan and Greatnan, Sadly Missed But Forever In Our Hearts Goodnight God Bless Love You Always.” The right half contains the details of Mr Gwilliams and a tribute in similar terms. In the centre of the stone, towards the top, is a photographic image of Mr and Mrs Williams, that appears to have been converted into an engraving into the stone, presumably by means of a scanning process of some kind. On the vertical (front) face of the plinth are the words “together forever”.
7. Attached to the top of the stone, in the centre, is a small white figure sitting on a white stone containing the words “welcome to our garden”. Towards the front of the plinth are two vases, one on each side, bearing the words “Mom” and “Dad”.

Procedural history

8. Following the death of Mr and Mrs Gwilliams, an application dated 1 August 2011 was submitted by memorial masons (Quality Memorials, of Cradley Heath) to Mr Hoskin, the rector designate of the Brierley Hill Team (which includes Brockmoor), seeking permission to erect a memorial to be erected over their burial plots. The drawing attached to the application form illustrates a memorial similar to the one that was in

due course erected, but neither the form nor the drawing referred to a photographic image.

9. That application was rejected by the incumbent following consultation with the district church council (DCC), which passed a resolution stating that

“memorial stones within the new ash-plot area should each be of a size compatible with the single stone slabs which identify the plots; memorial stones should be of a ‘tablet’ type, either ‘desktop’ or ‘book’ design.”

In other words, the stone in this case was too wide – covering two plots instead of just one – and vertical, instead of horizontal or at a gentle slope.

10. The children of Mr and Mrs Gwilliams, having lost both their parents in quick succession, then suffered further serious illness in the family. They appointed Mrs Carol Foxall to act on their behalf in relation to the memorial to their parents.
11. Mrs Foxall then approached the diocesan advisory committee (the DAC), as a first step towards seeking a faculty for the memorial to Mr and Mrs Gwilliams. She explained that, at the time of Mr Gwilliams’s death, his wife knew that she herself had not long to live, and had requested that her ashes be buried next to his, rather than in one plot. She also chose the stone. Mrs Foxall says that Mrs Gwilliams was not told that a double stone would not be allowed.
12. Mrs Foxall also explained that an alternative would be to allow the ashes of Mr and Mrs Gwilliams to be exhumed, and to bury them with the bodies of their child, who died 47 years ago (in or around 1964), and two grandsons (buried in 1990 and 1993) – although she was well aware that exhumation was not to be taken lightly.

13. The DAC considered the matter at its meeting on 31 January 2012, and recommended that a faculty be granted for the installation of a double width stone over the two adjacent plots, but subject to a proviso

“that the shape of the stone be designed so as to match the other ‘desk-top’ style stones in the immediate vicinity, as per the attached photograph, and not a vertical stone as indicated in the attached drawing, and that there be no added pictorial representations of the deceased.”

In other words, the DAC echoed the concerns of the DCC, and added a further concern, as to the photographic image.

14. Mrs Foxall responded by a letter to the registrar received in 28 March 2012, stating that the family would like to accept advice given in the DAC certificate (that is, the proviso to the recommendation, quoted above). She also confirmed that the family were aware that no work could commence until permission had been given.
15. A faculty petition was submitted, dated 18 May 2012, attached to a drawing (“RA 1”) showing a stone slightly different from that which had been the subject of the original application for permission, but still similar to that which has been actually been erected (see paragraphs 5 to 7 above). There is no specific mention of a photographic image of the deceased; but the drawing shows two ellipses at that point of the design, which could be said to refer to images.
16. The DCC passed a resolution at its meeting on 28 May 2012, accepting the proposed monument as shown in drawing RA 1, but noting that the design contained no provision for floral tributes.
17. The faculty petition was advertised for 28 days, and no formal objections were received.

18. However, before the petition could be determined, a memorial was erected, as described above. And I have been told by the Archdeacon that the stone has given rise to complaints from those who have erected stones, in conformity with the normal pattern, over neighbouring plots.

Law and custom

19. By virtue of Canon F13(2) and section 11(1) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, a faculty is at least in theory required from the consistory court for any alteration to a consecrated churchyard, including the erection of a new memorial.

20. However, by custom, an incumbent is authorised to permit the introduction into a churchyard of a memorial over a new grave, provided that it complies with the relevant guidelines. In this diocese, I formalised that position by issuing in January 2004 a document entitled “Instrument authorising ministers to approve or carry out works in churchyards without the need for a faculty”. That provides a minister may approve the erection of a memorial, provided that it is in accordance with the relevant guidelines.

21. There are no guidelines relating specifically to this churchyard. The relevant guidelines are therefore those, also issued in January 2004, apply generally throughout the diocese. These enable an incumbent to authorise a memorial if it comes within any of the categories normally encountered in practice – and in particular provided that it is made of a standard material and does not exceed the specified size limits. These detailed guidelines are set out in paragraph 2. However, paragraph 4 of the guidelines provides that:

“The minister shall not approve a proposed memorial, notwithstanding compliance with paragraph 2 above, if he or she considers that it is:

- (1) likely to be controversial for any reason;
- (2) in any way inappropriate,

and in considering what is appropriate the minister shall have special regard to the documents entitled *Churchyard Memorials: a Guide for the Bereaved* and *The Care of Churchyards: a Guide for Parishes*, issued on 1 January 2004, and any documents superseding them.”

This provides the incumbent with some latitude to refuse particular memorials.

22. And of course anyone is entitled to seek a faculty for a memorial, whether or not it complies with the relevant guidelines, and whether or not the incumbent approves of it.

Application to the present case

23. The memorial in this case does not strictly come within the approved categories, for three reasons:
 - it is made of a granite darker than Rustenberg grey (see paragraph 2(4)(a));
 - its width is greater than 900 mm (paragraph 2(5)(b)); and
 - the horizontal plinth projects more than 100 mm from the base of the vertical stone (paragraph 2(6)(c)).
24. As to the first of these, Rustenberg grey is essentially “dark” grey (images can readily be found on the internet showing memorials in various shades of grey). In practice, in this Diocese as elsewhere, very many stones are erected that are made of what might be described, in layman’s terms, as shiny black marble – although they are in fact almost always in granite rather than marble – and these are all unauthorised because of paragraph 2(4)(a). And there are many such memorials in the immediate vicinity of the stone in this case. I am therefore not unduly concerned by the fact that the present memorial is too dark.
25. As to the second and third points above, they are designed to achieve a reasonable degree of uniformity as between the various memorials in close proximity, so that no

one of them obtrudes unduly or spoils the general appearance of that part of the churchyard. Thus in particular the dimensional restrictions in paragraph 2(5)(b) ensure that each stone relates to a single plot, rather than spanning two plots – the latter being a pattern commonly found in Jewish cemeteries but only rarely in Christian churchyards. And it is noticeable that both the DCC resolution and the DAC decision (see above) have picked up this point. On the other hand, that would be much less noticeable if the memorial were horizontal, or nearly horizontal, rather than vertical.

26. It would have been helpful if Mrs Gwilliam had been made aware of this issue before she arranged for her ashes to be buried in the neighbouring plot to her husband's, as it is not possible to design two separate memorials over two separate (even if adjacent) plots so as to include the uniting feature with the words "together forever" – obviously that can only be included as part of a single memorial. And it would seem unduly elaborate to require the remains of Mr and Mrs Gwilliams to be exhumed solely to deal with this point – as well as being in defiance of the general presumption against the disturbance of human remains buried in consecrated ground.
27. The third restriction should be read against the background of paragraph 2(2) of the diocesan guidelines, which provides that the form of each memorial should be a vertical headstone, with or without a horizontal stone base to give it structural stability, or a horizontal stone slab, or a simple timber cross. Generally a memorial above a plot containing a coffin burial will be in the form of a vertical slab, whereas one above a plot containing cremated remains will be a small horizontal slab. The present memorial falls in neither category, in that it comprises both a vertical stone and a large plinth, rather than just a modest base to provide stability.
28. It may be noted that, in the case of memorials relating to the burial of cremated remains, sloping memorials are also found – those referred to by the DAC as 'desktop' or 'book' designs. They are not strictly within the letter of the diocesan guidelines,

although here again they are sufficiently common (both in this churchyard and elsewhere) that it would be churlish to seek to prevent them being used.

Photographic image of the deceased

29. However, even if the above points could have been overcome, so that the memorial would have complied with the guidelines, the incumbent could have refused it (under paragraph 4 of the diocesan guidelines: see above) on the basis that it does not comply with the principles set out in *Churchyard Memorials: a Guide for the Bereaved*. The first of those is that a memorial should respect its surroundings, and should not stick out like a sore thumb. By way of expansion upon that principle, the *Guide* notes that “photographs or portraits of the deceased are almost always inappropriate, as they would be totally out of character with an English churchyard.” Interestingly, neither of the two DCC resolutions referred to this point – although that may be because the memorial had not by that stage actually been erected, so that the question of a picture had not yet arisen. But the proviso to the DAC recommendation did explicitly mention it.
30. The prohibition of pictures on funeral memorials is found in almost all diocesan guidelines. But it dates back to a period when such pictures usually took the form of photographs printed on paper, either in a frame or otherwise, affixed to the face of the memorial with glue or in some other way – and sometimes protected from the elements by means of clear plastic or acrylic. Such photographs would fade, and in many cases they quickly became unsightly.
31. However, technology has moved on a long way since then, and it is now perfectly possible to reproduce a photograph – or any other image (such as a regimental mascot, or one representing the occupation or hobbies of the deceased) – by means of a scanner linked electronically to an engraving tool. In that way, any image can be satisfactorily reproduced in a manner that will not degrade for many decades, possibly

centuries, provided that the stone in question is a dense one such as granite, and provided that it is at least fine honed, if not actually polished. And such an image would not be coloured.

32. This means that there is no longer any particular reason to reject, on aesthetic grounds, a photograph or portrait of the deceased, if transferred to the stone by an engraving technique of this kind rather than being simply printed on paper and affixed to the face of the stone, since such an image would be no more obtrusive than a conventional decorative device such as a rose or a dove, and more interesting to future generations. It would of course be important to ensure that the quality of the image is high.
33. The photographic image of Mr and Mrs Gwilliams in this case is of perfectly satisfactory quality, and is of modest dimensions. I therefore see no reason to reject the present petition on that basis.

Decision

34. I am not prepared to authorise the retention of this memorial in the form in which it has been erected, on the basis that it is both too wide and vertical. But the width of the monument on its own would not necessarily be a problem, as a double-width memorial, if horizontal or desktop-style, would not be so prominent. And, as already explained, I do not see a satisfactory way of having a memorial of conventional width over a double plot; nor do I consider that it is either appropriate or necessary to exhume the bodies of Mr and Mrs Gwilliams. Clearly it would have been better if they had been buried in the same plot, so that they could have shared a single memorial of a standard width, in line with the other memorials nearby. But that cannot be rectified now.
35. However, in other respects the memorial seems to be satisfactory.

36. In all the circumstances, and to save the need for the Gwilliams family (or anyone on their behalf) having to submit a further petition for a modified memorial, I am therefore prepared to authorise now the introduction of a replacement memorial of the same size as the one that has already been erected, and with same or similar wording and other material (including the engraved image), but subject to conditions:
- (a) that the memorial shall be in the form of a horizontal slab, or a desktop style monument, similar to those nearby in form (if not dimensions); and
 - (b) that it shall not be made until its design has been approved in writing by the Archdeacon; and it shall be made in accordance with the design thus approved; and
 - (c) that it shall be introduced within a period of one year from the date of this decision.

Clearly, given the absence of a separate plinth, it may be necessary to introduce the words “together forever” at the foot of the main stone.

37. A faculty should issue accordingly.
38. Finally, it should be noted that, until the new memorial has been introduced, the present one will remain unauthorised; and if it is not removed within a year, I will have to consider taking further action as necessary. However, in view of the conciliatory tone of the most recent letter from Mrs Foxall, I have no doubt that the family will comply with the terms of this judgment, so that such action will not be required.

DR CHARLES MYNORS

Chancellor

30 August 2012