



*Faculty – Grade II\* listed church – Memorial outside Churchyard Regulations – Kerbing and stone chippings – Faculty refused*

**Application Ref: 10853**

**IN THE CONSISTORY COURT**  
**OF THE DIOCESE OF OXFORD**

Date: Sunday, 12 August 2021

**Before:**

**THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR**

**In the matter of:**

**ALL SAINTS, CALVERTON**

**THE PETITION OF MR WAYNE MURPHY**

Unopposed petition determined on the papers and without a hearing.

The following cases are referred to in the Judgment:

*Re Holy Cross, Woodchurch* [2020] ECC Chr 2

*Re Holy Trinity, Freckleton* [1994] 1 WLR 1588

*Re St Andrew, Leyland* [2021] ECC Bla 1

*Re St. Giles, Exhall* [2021] EACC 1

*Re St Mary, Kingswinford* [2001] 1 WLR 927

## JUDGMENT

1. This is an application, dated 8 June 2021, by Mr Wayne Murphy for retrospective faculty permission to retain a memorial different from those permitted by the Diocese of Oxford Churchyard Regulations 2016 (which came into operation on 1 January 2017). So far as material for present purposes, by regulation 32 a monument (meaning a headstone or similar form of commemoration) must not include:

*f. kerbs or other fencing, railings or other demarcation*

*g. stone or glass chippings*”

Mr Murphy’s grandmother, the late Mrs Ethel Anne Marie Blake, was laid to rest on 23 June 2020 in the old part of the churchyard of All Saints, Calverton, which lies south of Stony Stratford, just outside the north-western boundary of Milton Keynes. She had passed away on 6 June 2020 in her 94<sup>th</sup> year and she was clearly a much-loved mother, grandmother and great-grandmother. The petitioner seeks to retain what is described in the petition as a “*grey plastic border and white gravel*”. Paragraph 14 of the petition relies, by way of special reasons, upon the assertions that: “*The churchyard already has bigger monuments than ours and assumptions were made when we were unaware permission was required.*”

2. This petition results from an email sent by Mr Murphy to the Registry on 19 May 2021 “*seeking permission for a small border around*” the graveside of his late grandmother “*as we need to hold the stones in. We have stayed within the boundary required and assume you will agree the grave has been tastefully done.*” Having sought both the views of the parish and my directions, on 24 May the Registry responded by email explaining that “*... the kerbing and stones falls outside the Churchyard Regulations. Therefore, the Chancellor has directed if you and your family wish to maintain the present arrangement, you should apply to the consistory court for retrospective permission (a faculty). However, I must stress the Chancellor has said this is not a guarantee your application will be successful as the Rector has confirmed his churchwardens and Parochial Church Council do not support any application to add kerbing or stone chippings of any description. There is also the possibility someone within the local community could object to your application through the public notice period which is part of the application process so you need to think about how you can present your case in persuading the Chancellor why the present arrangement must remain.*”

3. With the email submitting his petition, Mr Murphy attached for consideration photographs of “*... a plethora of other graves in the churchyard, some with weeds, some with boards, some with borders and gravel, some which are too wide and out of the boundary allowed and some in simply a terrible state of condition. I hope it can be considered that our grave is certainly improving the overall look of the churchyard and has been done tastefully with easy maintenance in mind. I hope this will be seen in our favour and if not we intend to pursue any options we may have.*” The email attaches some 12 photographs. These show at least five kerbed graves which have the appearance of being visited on a regular basis and well-maintained but also a number of other demarcated grave spaces in a poorly maintained or neglected state. I have attached at the end of this judgment one of the photographs submitted by the petitioner of the grave of his late grandmother. It is clearly regularly visited and well-maintained.

4. In response to the petition, on 18 June 2021 the Rector of Stony Stratford with Calverton signed a document in which he made it clear that the Parochial Church Council did “*not agree to the introduction of embellishments, kerbing and chippings. This application is not approved.*” The

document stated that: *“We constantly face unauthorised introductions to the graves of unsuitable and inappropriate materials ... We have a number of graves (5 or 6) where we are requesting families to remove similar embellishments ... The rubber kerbing, chippings and embellishments were introduced without authorisation being sought. If this application is granted it will make it impossible to refuse others and not help us deal with the removal of other such embellishments.”*

5. The Diocesan Advisory Committee’s Notification of Advice is dated 19 July 2021. In the opinion of the Committee, the proposal is not likely to affect the character of the church as a building of special architectural or historic interest, or the archaeological importance of the church, or archaeological remains existing within the church or its curtilage. However, the Committee did not recommend the proposal for approval by the court. The Committee’s principal reasons for not recommending the works were: *“Whilst the DAC had no objections to the size, design or material of the headstone, or its inscription, the DAC were not content to support the introduction of kerbing and chippings contained within due to their impact on the character of the churchyard and the adverse impact this is likely to have on the ability of the parish to maintain the churchyard in the future.”* When this advice was communicated to the petitioner, his response was: *“... we are obviously very disappointed with this decision and understand their points however wonder why others are and were allowed to remain which totally flaunt the rules? Considering the above we wish to pursue this as far as we can for a fair outcome.”*

6. On 28 July 2021 the Registry sent an email to the petitioner informing him that I had given his application my preliminary consideration; and that the Registry had also submitted a public notice to the Rector to display inside and outside the church, as well as at all the entrances to the churchyard, for a full 28 days, informing the local community of the application and of where they had the opportunity to lodge any objections. The email also informed the petitioner that I considered that the matter was suitable for determination on written representations rather than at a hearing; and it invited Mr Murphy to lodge any witness statements or other written representations in support of his petition within 28 days of the date of the email. If the petitioner was content to rely upon the documents and photographs he had already lodged with the court, he was invited to confirm this in writing. The email concluded:

*“You should also be informed that the burden lies upon you to satisfy the court why a faculty should be granted for this particular form of grave memorial. You should therefore seek to show why this particular memorial is desirable, or at least is not undesirable, even though it falls outside the Churchyard Regulations. You should bear in mind that the threefold purpose of a grave memorial is to honour the dead, to comfort the living, and to inform posterity.”*

A few minutes later, the petitioner responded:

*“I am satisfied with the pictures I have already sent along with the evidence supplied which proves this graveside will certainly improve the overall look of the churchyard compared to what is already existing there.*

*I believe what we have done is simple, within the boundary, is easy for our family to maintain and has been done correctly to ensure weed growth is maintained.*

*If I need anything else then please do let me know.”*

7. By email dated 4 September, the Rector wrote to the Registry as follows:

*“I have been asked by the Standing Committee of the Parochial Church Council of the Parish of Stony Stratford with Calverton to write to formally object on behalf of the PCC to this petition.*

*The objections are based upon the fact that the rubber kerbing is not in keeping with the Churchyard, and that the embellishments are also detrimental to the efforts the PCC is making to encourage other relatives of those buried not to embellish graves. The PCC finds that this is a constant struggle, and is very concerned that if faculty consent is granted to this application then the flood-gates to kerbing of varying quality will open and it will be impossible to maintain the churchyard through regular mowing. The PCC also fears that there would be a free for all with regard to the introduction of embellishments.*

*The PCC wishes to emphasise that whilst the applicants point to existing embellishments on other graves, they will not be aware of the pastoral efforts made to persuade families to remove them. Nor will they be aware that this often takes an inordinate amount of time to achieve.*

*The PCC also respectfully asks the Chancellor to be mindful of his predecessor's judgement with regard to the Wilsber Memorial Application in which he was minded to refuse further applications for kerbing in the churchyard at Calverton, All Saints."*

The public notices expired on 8 September, by which time no further objections had been received.

8. On 8 September the Registry wrote by email to the Rector, on behalf of the Standing Committee of the Parochial Church Council, in accordance with rule 10.3 (1) of the Faculty Jurisdiction Rules 2015 setting out the options available to him, following his formal objection to this faculty petition, of either becoming a party to the proceedings or simply having his objections taken into account when deciding whether or not permission for the proposals should be given. By email dated 10 September the Rector responded stating that *"it would be best if the letter I sent on behalf of the Parochial Church Council stands 'as is,' and that its involvement is on the basis of 'correspondence only'."* On the same day, the Registry wrote by email to Mr Murphy informing him of the Rector's response, confirming that his letter was to *"... stand as it is and any involvement is on the basis of correspondence only – this means the PCC are not entitled to submit any further written representations or be heard if there was a hearing ... the next step is for me to ascertain from you whether you have anything further you would like to add in response to the recent letter from the Rector."* Later that morning the petitioner responded as follows:

*"I wish to place on record that our grave has been tastefully done and with low maintenance in mind considering the membrane and stones on top. Again I must stress this is our first ever bereavement as a family (my nan was 93) so were not aware of any rules and therefore as we were aware of many other graves which have borders, stones, fall outside of the permitted space and some which are in a terrible condition, we assumed we would be increasing the overall look of the churchyard rather than the other way around. What the Rector will be able to vouch for is the fact we maintain the graveside (my mother is there every other day) and even mow the grass surrounding it to keep it as tidy as possible.*

*I trust that everyone will see sense in this decision and once again I thank you so much for all your information and assistance."*

9. In accordance with the wishes of the petitioner and the non-party objectors, and pursuant to FJR 14.1, I am satisfied that it is expedient, having regard to the overriding objective of dealing with this case justly, to determine this petition on the basis of the papers. In accordance with FJR 10.5 (2), I take account of the letters of objection received from the Rector, on behalf of the Standing Committee of the Parochial Church Council, and also the comments received from the petitioner on those letters, when reaching my decision on the petition.

10. I note that the church of All Saints, Calverton is Grade II\* listed. From the listing details, the fabric has some work dating back to the Middle Ages but the predominant character of the church stems from works carried out in the C19. It was rebuilt in 1817-18 by William Pilkington and the church was extensively “Gothicised”, probably in the 1850s, by an unknown architect. South of the church tower there is an ornate churchyard cross of c 1873 with the symbols of the Evangelists at the corners. According to the listing description, the church of All Saints, Calverton, is designated at Grade II\* level for the following principal reasons: (1) It is a building of considerable interest showing a variety of highly interesting work from the late Middle Ages to the mid-Victorian period. (2) The Victorian decorative scheme in the chancel and in the stained glass windows together create an interior of note. Nothing specific is said about the churchyard.

11. In one of his pre-petition emails to the Registry, the petitioner has set out the family’s understanding that “... a huge grave which flaunts all your rules was permitted by the courts in this churchyard and therefore unfortunately assumptions have been made for our subtle changes”. This is a reference to a decision of my predecessor (Chancellor Bursell QC) in July 2005 granting a faculty for a double-width memorial, in grey granite and surrounded by kerb stones, commemorating the petitioner and her late husband, who were both Romanians. Having noted that the proposed memorial was in keeping with Romany traditions, paragraph 5 of the judgment recorded: “The PCC is concerned ... that a precedent should not be set in this case; however, the incumbent assures me that the fellow members of the Wilsber family fully appreciate that, if granted, this memorial could not in any way be emulated by the remaining family.” At paragraphs 7 to 8 the Chancellor said this:

*“7. I have been sent photographs by the incumbent demonstrating that there are already three other graves surrounded by kerbs in this churchyard; indeed, one of these encompasses four different burials. The memorial sought for would therefore not be entirely out of keeping with the rest of the churchyard even though those other graves are distant from Mr Wilsber’s resting place. Nonetheless to allow such kerbed graves to proliferate would change the character of the churchyard as a whole ...*

*8. In all these circumstances I have concluded that on balance I can grant this petition for pastoral reasons ... In particular I stress that this petition is granted on its own particular circumstances and in no way sets a precedent for memorials in the future. Indeed, it is most unlikely that I will permit any further kerbed graves in this churchyard.”*

12. I understand that in 2020 the parish produced a leaflet entitled “A Guide for Churchyard Users”. This is a helpful document which references the Diocesan Churchyard Regulations. Under the heading “Headstones and Memorials” the leaflet states:

*“Before planning a headstone or other memorial, or contacting a memorial mason, it is essential that you contact the Rector, as permission will be required before you can proceed.*

...

*There are a number of things which are not allowed including: raised curbs of any type, artificial turf of any type, railings, fencing around a grave, chippings, photographs, lights, glass vases, statues and ornaments (except head-stones which have been properly authorised by the Chancellor of the Diocese of Oxford) within the grave space.*

*Some monuments from the past may not conform to today’s Regulations. Unfortunately, this cannot be accepted as a reason for not adhering to the current Regulations.”*

The court commends the publication and dissemination of leaflets such as this since they may tend to reduce the scope for future misunderstandings about the monuments that are permitted within churchyards. However, there is no evidence that this leaflet was ever received by the petitioner or any other member of his late grandmother's family; and it therefore has no relevance to the present petition, and I have no regard to it accordingly. There is no evidence to controvert the petitioner's assertion that the late Mrs Bake's family had no prior knowledge that kerbing and chippings were not permitted in this churchyard. Conversely, there is no evidence that any family member had ever received any verbal, still less any written, assurance, whether from any representative of the parish, or from the funeral director who arranged for the burial, or from the monumental mason who installed the headstone, that kerbing or chippings would be permitted in this churchyard. Rather, the petitioner relies upon the existence of a number of other graves which display such features and the fact that, because the churchyard already had larger monuments than theirs, the family made assumptions at a time when they were unaware that permission was required. On the evidence, the churchyard would appear to contain some five or six kerbed graves which appear to be visited regularly and are well-maintained and a number of others in a poorly maintained or neglected state.

13. In *Re Holy Trinity, Freckleton* [1994] 1 WLR 1588 at 1589-1590 Chancellor Bullimore (in the Diocese of Blackburn) noted that the right to be buried in a churchyard does not include any right for the personal representatives, the next-of-kin, or anyone else to erect a memorial to the deceased; and any memorial placed in a churchyard without permission granted by or on behalf of the Diocesan Chancellor constitutes a trespass, as does a memorial which does not comply with the terms of any permission that may have been granted. The usual way to seek permission to erect a memorial in a churchyard is for the person who seeks to introduce the memorial to discuss the matter with the minister, or with the minister and the churchwardens, before any steps are taken to commission any work from a monumental mason. If all that is proposed falls within the applicable diocesan churchyard regulations, then the minister has the power and the authority, delegated to him by the diocesan chancellor (through the churchyard regulations), to grant the request, and a formal application for a faculty does not need to be made. If, however, a departure from the churchyard regulations is involved, then a formal application must be made to the consistory court, presided over by the chancellor, for an exception to be made to those general rules. These requirements exist to protect and maintain the very beauty, dignity and order of the churchyard which, in many cases, were the very reasons which led those left behind to choose it as the final resting place for their loved one. In the end, everyone suffers if the appearance of a churchyard is disfigured, or the tranquil beauty of a burial place is disturbed, by ill-conceived or poorly designed monuments, or by inappropriate memorial inscriptions.

14. At section 11 of their recent decision in *Re St. Giles Exhall* [2021] EACC 1 (a case on foreign language inscriptions), the Court of Arches (the appeal court for the Southern Province of Canterbury) considered the nature and purpose of Churchyard Regulations and how they should inform the court's decision-making process. Noting that the decided cases revealed different approaches to such regulations, the Court favoured a "merits-based" approach. Clearly, any regulations in place for the parish or diocese concerned would be part of the matrix of relevant considerations; but the Court did not think that the consideration of a faculty petition should start with any presumption against allowing a memorial which fell outside the parameters of the relevant regulations.

15. In my judgment, the proper approach to any faculty application seeking permission to install, or retain, a memorial different from those permitted by the relevant Churchyard Regulations is as follows:

(1) As is the case with any faculty 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.

(2) The terms and content of the applicable Churchyard Regulations will clearly be a relevant factor; indeed, they will often be highly relevant and, on occasions, they may be determinative. That is because the Regulations will have been approved by the Chancellor after consultation with the Diocesan Advisory Committee; and they will have been drafted with a view to ensuring that memorials erected in churchyards respect their surroundings, harmonise with existing memorials, and enhance the character of the particular church or churchyard in which they are located. The Regulations exist to promote good order, consistency of approach and public expectations in consecrated churchyards. They emerge following wide consultation and sometimes they reflect the bitter experience of past difficulties and misunderstandings which need to be avoided in the future.

(3) However, the Regulations will be only one of a constellation of infinitely variable factors which the court must consider on an individual, case-by-case, and fact-specific basis. There are bound to be cases where, for some good reason, strict adherence to the Regulations may be inappropriate. Many hand-crafted and individual memorials would not be allowed under the criteria laid down by the Regulations; but their design may merit approval as beautiful works of art, which would enhance the overall appearance of the churchyard, as well as providing a fitting memorial to the departed. Thus, there need not be a “powerful” or an “exceptional” or a “substantial” reason for approving a departure from the Churchyard Regulations. Rather, the petitioner must show some “good reason” for the court to approve the memorial sought.

(4) Mere non-compliance with the standards imposed by the Churchyard Regulations, of itself, can never be the only basis upon which to oppose a faculty petition. It is always necessary to consider whether the particular memorial in question is inherently desirable, or at any rate not undesirable, whether or not it complies with those standards.

(5) The court should approach the suitability of the proposed memorial on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrine of the Church of England in any essential matter.

(6) In considering the suitability of a proposed memorial, the court should bear firmly in mind the threefold purpose of a grave memorial, which is to honour the dead, to comfort the living, and to inform posterity about the deceased. The first purpose infuses the other two and must be considered in the Christian context of the setting of a Church of England graveyard to which members of the public have access. Such cases are always sensitive, both to the facts, and to the personalities involved, and they involve reconciling legal principle with personal wishes in a public context which is distinctively Christian. In particular, the court must have regard to the longer-term view and the wider public aspect in ways which may be less apparent to the family of the deceased, who will inevitably be caught up in their personal bereavement. What may be permitted in the unconsecrated parts of a local authority cemetery may not be appropriate in the setting of a Church of England graveyard.

It is these principles which I have borne in mind, and have sought to apply, in the present case.

16. In *Re St Mary, Kingswinford* [2001] 1 WLR 927 Chancellor Mynors (in the Diocese of Worcester) identified (at paragraph 38) four circumstances in which he considered that non-standard memorials might be approved:

*“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.”*

Of these four circumstances, only the third is conceivably of any relevance in the instant case.

17. In my recent judgment (as the Chancellor of Blackburn) in *Re St Andrew, Leyland* [2021] ECC Bla 1, albeit in the very different context of an application for permission to exhume human remains from consecrated ground, I explained (at paragraph 10) why I find it helpful to consider the decisions of consistory courts in previous cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as providing potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed in past cases. I reminded myself of the desirability of securing equality of treatment, so far as circumstances should permit, as between petitioners, and of treating similar cases in similar ways, avoiding over-fine distinctions.

18. It is against that background that I have considered the recent decision of Chancellor Turner QC (in the Diocese of Chester) in *Re Holy Cross, Woodchurch* [2020] ECC Chr 2. The petitioners in that case wished to install in the churchyard a memorial which was outside the relevant churchyards regulations. It was described in the judgment as “... of lawn design, with kerbstones, to be in black granite and with the addition, within the kerbs, of a Sadsbalil Grey ‘pathway to heaven’ – a curved, raised area running the length of the grave from its foot to the headstone itself”. Letters of objection had been received from the rector, the two churchwardens, four members of the Parochial Church Council, and a former churchwarden who was then a member of the clergy with the Bishop’s permission to officiate. The DAC had resolved not to recommend the proposed memorial, considering that if the parish wished to seek to uphold and apply the regulations, the committee should support that stance. The petitioners argued that a number of memorials with kerbs had been introduced into the churchyard in the past, notwithstanding the regulations. Chancellor Turner QC approached the petition by asking if, despite the objections raised, the petitioners had established a ‘good reason’ for him to permit the memorial sought. Accepting the parish’s desire to ‘draw a line’ and enforce the regulations, the Chancellor made an ‘admittedly context-specific’ decision to dismiss the petition for the kerbed memorial requested. At paragraphs 53 to 65 of his judgment, Chancellor Turner QC said this:

*“53. The mere presence of other kerbed memorials (let alone illegally introduced ones) is not, in my judgment, of itself a good enough reason, apart from these considerations, for authorising a further kerbed memorial.*



54. *The high point of the petitioners' case is arguably to be found in the presence of a significant number of other kerbed memorials. Against that need to be balanced the parish's concerns about precedent, order and maintenance, of which the petitioners are largely dismissive.*

55. *The court has always to strike a balance in a case such as this between the heart-felt desires of petitioners for a chosen memorial, the interests of the parish who carry ultimate responsibility for the churchyard, but at the same time weighing considerations of justice and fairness to those who, over the years, have erected conforming memorials, possibly putting aside personal preferences to do so.*

56. *The right balance is not always easy to strike.*

57. *I have not been assisted by any precise statistical appraisal of numbers of kerbed graves as part of an overall total. The photographs I have studied do not appear to support the prevalence the petitioners suggest. I have not been persuaded refusal here would be in any way 'unconscionable'.*

58. *Personal preferences, however strongly held, need to be taken into account but I must also have regard to the wider views of those responsible for the good order and maintenance of the churchyard.*

59. *The burden is on petitioners to show good reason for departing from regulations which the parish ask me to uphold. They have failed to do so upon the evidence.*

60. *I found the pleas from Mr Mills and the Rector particularly persuasive here. This is a churchyard into which, regrettably, a significant element of unauthorised activity appears to have crept in recent years. Kerbed memorials invariably make maintenance a more complicated exercise.*

61. *In any event, a parish is always entitled to say to the Court: 'please uphold our wish to stand by and enforce the regulations'.*

62. *In my judgment, absent good reason to the contrary, that stance deserves support. There is, as Mr Mills said, something of a 'mishmash of unauthorised kerbstones'.*

63. *The petitioners' (perfectly proper) plea seeking to add another is not one to which I can accede.*

64. *I consider the parish here is acting entirely reasonably in seeking to draw a line.*

65. *I do not for a moment consider this is the product of any unfairness, let alone hostile animus or bias, directed to the petitioners personally from the Rector or any members of the PCC, indeed I reject that suggestion completely."*

Chancellor Turner QC appreciated that this outcome would be disappointing to the petitioners. He could understand the frustration they might feel that, at the very least, no past action appeared to have been taken against illegally introduced, non-compliant memorials. But that, ultimately, must be a matter for the parish's judgment and a court's decision. A reluctance to cause distress was always a complicating factor in these situations.

19. All cases of this kind turn upon their own specific facts. But, in my judgment, the considerations which led Chancellor Turner QC to dismiss the petition in the *Woodchurch* case apply with equal force in the present case. I am satisfied that the petitioner has not shown any good reason to justify the court approving the kerbing around the late Mrs Blake's grave or the stone chippings which cover her grave. I accept that the grave is well-tended and well-maintained. In that respect, its condition is in marked, and favourable, contrast to the condition of some of the graves to be found within this churchyard. However, whilst I have no doubt that the petitioner and his family will strongly disagree with my assessment, I do not consider that the

grave has been tastefully laid out, or that it improves the overall look of the churchyard. I agree with the view of the DAC that the retention of the kerbing, and the stones contained within it, would have an adverse impact upon the appearance of the churchyard, and thus the setting of this grade II\* listed church. In my judgment, the kerbing, and the stones contained within it, strongly detract from the open, rural appearance of much of the remainder of the churchyard (as appears clearly from the photograph below). Other visitors to this churchyard are entitled to look to the parish, and to this court, to see that this pleasing aspect of the churchyard is preserved. In my judgment, the mere presence of a few other kerbed memorials, of itself, is not a sufficiently good reason for authorising a further kerbed memorial. I am satisfied that there are not so many examples in this churchyard that it would be unconscionable for me to refuse consent for one more. The photographs that have been produced to me do not appear to support the prevalence of kerbed memorials. In any event, this is a churchyard into which, regrettably, an element of unauthorised activity appears to have been introduced in recent years. The parish complain that they “*constantly face unauthorised introductions to the graves of unsuitable and inappropriate materials*”. They say that they “... *have a number of graves (5 or 6) where [they] are requesting families to remove similar embellishments ... If this application is granted it will make it impossible to refuse others and not help us deal with the removal of other such embellishments.*” Those are legitimate concerns to which this court is entitled to have proper regard. The court is also entitled to bear in mind that over 16 years ago my predecessor made it clear that it was “*most unlikely*” that he would permit any further kerbed graves in this churchyard. Over that time, there will doubtless have been bereaved families who have borne that warning in mind, and who have consequently refrained from applying for permission to introduce kerbs around the graves of their loved ones, as evidenced by the relatively small number of kerbed graves within this churchyard. Weighing considerations of fairness and justice to those who, over the years, have erected conforming memorials, possibly putting aside personal preferences to do so, militates against making any exception in favour of Mrs Blake’s grave. I acknowledge that the kerbing and stone covering may make it relatively easy for the petitioner and others tending Mrs Blake’s grave to keep that grave neat and the grass around it cut; but that ignores the adverse impact that a proliferation of kerbed graves would be likely to have on the ability of the parish to maintain the entire churchyard in the future. The court must balance the parish’s concerns about precedent, order and maintenance against the wishes of the petitioner and his family. Ultimately, as with any faculty petition, the burden of proof lies upon the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition. I am satisfied that the petitioner has failed to make out such a case on the present petition.

20. For these reasons, the court refuses the faculty for the kerbing and the stone chippings contained within it (described in the petition as the “*grey plastic border and white gravel*”) and it dismisses the faculty petition. Since the first anniversary of the late Mrs Blake’s death has now passed, the kerbing, the chippings, and all other items not permitted by the Churchyard Regulations should be removed from the grave. If they have not been removed by the petitioner within six (6) weeks after the date of this decision, the churchwardens are authorised to remove them and to dispose of them as they may see fit. For the avoidance of doubt, the headstone may remain.

21. I appreciate that this outcome will be disappointing to the petitioner and to other members of Mrs Blake’s family. I can understand the frustration that they may feel if no action is taken against any other illegally introduced, non-compliant memorials. But that, ultimately, must be a matter for the judgment of the parish and the decision of the court, which, as in this

case, will be fact-specific, and may turn upon the date at which, and the circumstances in which, any particular non-compliant memorial was first introduced into this churchyard.

22. I waive any fee for this written judgment. The petitioner must pay the Registry's costs of and incidental to this petition, to be determined by the court if not agreed

*David R. Hodge*

His Honour Judge Hodge QC  
Chancellor of the Diocese of Oxford  
The Fifteenth Sunday after Trinity  
12 September 2021

