

Neutral citation number: [2017] ECC Bla 12

**Ref 2017/015091**

**In the Consistory Court of the Diocese of Blackburn**

**In re St George's, Chorley**

**His Honour Judge David Hodge QC, Deputy Chancellor**

**Judgment**

1. This is an unopposed online petition by the priest in charge and the churchwardens (Father David Arnold, Mr John Bradley and Mr Brian Addison) of the parish church of St George's, Chorley, in the Archdeaconry of Blackburn, for a faculty to inter the ashes of the late Reverend Tim Wilby in a granite casket resting on a concrete slab below the base and to the west of the newly re-positioned "Angel" font in the baptistery at the eastern end of the south aisle of the church and to erect a white marble plaque set within a timber surround above the casket which will sit flush with the surrounding timber boarded floor. The marble plaque will match the tiled font surround as closely as possible and will bear the following inscription (as slightly modified in accordance with the recommendation of the Diocesan Advisory Committee):

The Rev'd Timothy D Wilby  
MA, MusM, ALCM  
1959 – 2016

*'Whoever dwells in the shelter of the Most High will rest in the shadow of the  
Almighty'*  
Psalm 91.1

The application is governed by the *Faculty Jurisdiction Rules 2015* ("the FJR 2015"). Since the petition is unopposed I propose to deal with it without a hearing under FJR rule 10.6.

2. According to the petitioners' statement of needs, in December 2016 the parish's much loved and respected vicar, the Reverend Tim Wilby, died suddenly and unexpectedly. Earlier this year, Tim's widow, Hilary, asked if consideration could be given to Tim's ashes being placed within the church that he loved so much. After taking advice from the Diocese, the PCC met formally to consider Mrs Wilby's request. The issue was unprecedented as no incumbent had previously passed away whilst holding office as the vicar of St George's Church. After discussion, the 21 members of the PCC present unanimously passed the necessary resolution for the former incumbent's ashes to be interred within the church. Mindful of the need to avoid creating any unfortunate precedent for the future, the PCC minutes record that "such a

procedure would apply only to incumbents who died while still in office at St George's. It would not set a precedent for all and sundry to be able to make such a request." The anticipated cost of £500 is to be financed by way of a gift to the church. The DAC has recommended the proposal for approval subject to a minor addition to the wording of the proposed inscription on the memorial plaque.

3. When the petition first came before me I caused the Registry to make inquiries of the petitioners as to: (1) whether the inscription should contain some reference to The Reverend Tim Wilby's role within the church, and (2) whether his widow might wish to be able to have her remains interred with those of her late husband as and when she ultimately passed away. By way of response, I was informed that: (1) The inscription had been supplied by Tim's widow and close friends, had been agreed by the PCC prior to presentation of the petition, and had been passed by the DAC with the addition of the word "The" in front of the word "Rev'd". It was pointed out that The Reverend Wilby's involvement with the church was mentioned on the church's board of vicars and curates located in the church entrance. (2) Upon specific inquiry, Mrs Wilby has indicated that she does not want her ashes interred next to those of her late husband. It was pointed out that this could not happen in any event because of the form of the resolution passed by the PCC, and forwarded to the DAC, which specifically states that only incumbents who die in service will be considered for interment inside the church. There is said to be a large plot of ground outside the church for the interment of ashes. These responses satisfy both of my concerns.
4. Paragraph 13.7.6. of *Mynors: Changing Churches* (1<sup>st</sup> edn, 2016) states that there is no legal bar to a faculty being granted for the disposal of cremated remains beneath the floor of a church; but that such proposals are only rarely permitted, generally in the case of a former vicar, and not always even then. Reference is made to two decisions. The first is that of the Commissary General (Judge Newey QC) in *Re St Peter's Folkestone* [1982] 1 WLR 1283. In that case, permission to inter the ashes of a priest within the church at which he had assisted after his retirement from the ministry, but of which he had never been the vicar, was refused in the face of objections from 16 members of the congregation. The principal reasons for the refusal were that the church was small, that there had never previously been any interment of any sort within it, and that the grant of permission would set a considerable precedent, leading to further applications and, the church being small, the need for "invidious choices". Whilst recognising that there was "no objection in principle to the interment of ashes in churches", the Commissary General regarded "the precedent point as being a very serious one indeed". The second is that of Chancellor Tattersall QC in the Manchester Consistory Court in *Re Warner, Re All Saints, Stand* (2007) 10 Ecc LJ 250. So far as material, the case involved a petition by a former incumbent of the parish for his cremated remains, and those of his wife, to be interred beneath the sanctuary of the parish church after their respective deaths. There had been no previous burials within the church. The PCC had unanimously supported the petition, and the DAC had offered no objection. The Chancellor refused the petition for interment for three reasons: (1) Following the *Folkestone* case, it would be

wiser not to create a precedent that could lead to difficult pastoral decisions as to whose remains could be interred in the church in the future. (2) Whilst it might conceivably have been the case that the petitioner's service to the parish had been exceptional enough to justify interment in the church, this could not possibly be said for his wife. (3) The Chancellor was not prepared to grant the faculty sought prior to the death of the petitioner and his wife.

5. In my judgment, both of these authorities are clearly distinguishable. In the instant case, the PCC has itself already addressed the "precedent point". It has made it clear that the interment of cremated remains will only apply to incumbents who die whilst still in office at the church. The Reverend Tim Wilby has sadly already passed away whilst still in office as incumbent. His widow does not wish her future remains to be interred with those of her late husband; they can be accommodated within the neighbouring churchyard. Moreover, the recent relocation of the font has created an opportunity for the Reverend Tim Wilby's last remains to be accommodated in a seemly and dignified location without any adverse visible interference with the appearance of the church. His death whilst in the service of the parish church as its vicar, and the affection and respect in which he is clearly held, amply satisfy the test applicable to the introduction of a memorial plaque into a church as set out by the Dean of Arches (Owen) in the case of *Re St Margaret's Eartham* [1981] 1 WLR 1129. (The citation at para 13.7.5 of *Mynors* is out by the space of a decade.) I would therefore propose to grant the faculty sought provided the other conditions appropriate to such a grant are satisfied.
6. That involves consideration of the guidance afforded by the decisions of the Court of Arches in the leading case of *Re St Alkmund, Duffield* [2013] Fam 158, as augmented by that Court's later decisions in *Re St John the Baptist, Peshurst* [2015] PTSR D40, 17 Ecc LJ 393, and *Re St Peter, Shipton Bellinger* [2016] Fam 193. Proposed changes to a listed church building (of whatever grade) need to be addressed by reference to a series of five questions, of which the first is whether the proposals, if implemented, would result in harm to the significance of the church as a building of special architectural or historic interest? If the answer to that question is "no", the ordinary presumption in faculty proceedings "in favour of things as they stand" is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals; and questions 3, 4 and 5 do not arise.
7. The parish of St George's Chorley is an urban town centre area with a population of some 10,000 concentrated into a small area. The church building is at the northerly end of the parish, next to the main shopping and business area of the town. According to the statement of significance, the church was consecrated in 1825 as one of the first, and largest, of the so-called "Waterloo" churches in Lancashire, and paid for by the Church Building Commission under the 1818 Church Building Act. The church is listed as Grade II\* and is a prime example of the Gothic revival in its early, or "associational Gothic", stage. In recommending the proposed interment and memorial plaque for approval, the DAC expressed the opinion that they were not likely to affect the character of the church as a building of special architectural or historic interest, or affect its archaeological importance, or any existing archaeological

remains. I concur with that assessment. I am satisfied that the proposals, if implemented, would result in no harm whatsoever to the significance of the church as a building of special architectural or historic interest. On that basis, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals; and questions 3, 4 and 5 of the *Duffield* series of questions do not arise. In the instant case, I am satisfied that the ordinary presumption in favour of things as they stand has been readily rebutted by the design of, and need for, the proposed memorial. The church should be granted its request to honour the memory its former vicar, who sadly died whilst in the service of his parish. To do so will be a fitting tribute to his work, and the respect and affection in which he is clearly held.

8. Subject, therefore, to no objections having been received, I will direct that a faculty be issued on condition that:

(1) The works are carried out within 6 months of the date of the faculty;

(2) The inscription on the memorial plaque is in accordance with that proposed by the petitioners subject to the addition of the word “The” before the word “Rev’d” (as recommended by the DAC); and

(3) The church’s insurance company is notified and approves of the works before they commence and they are carried out in accordance with any requirements of the church’s insurers.

His Honour Judge David Hodge QC  
Deputy Chancellor  
4<sup>th</sup> December 2017