

Neutral Citation Number: [2020] EACC 1

**IN THE ARCHES COURT OF CANTERBURY  
APPLICATION FOR PERMISSION TO APPEAL  
FROM THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY**

**(CHANCELLOR STEPHEN EYRE QC)  
[2020] ECC Cov 1**

**In the Matter of an Application for a Faculty for a Memorial in the Churchyard  
of St Giles, Exhall, Diocese of Coventry**

**Caroline Newey**

**Applicant /Proposed Appellant**

On consideration of the Chancellor's Judgment, his reasons for refusing permission to appeal and the Applicant's renewed application for permission to appeal,

**ORDER OF THE RIGHT WORSHIPFUL MORAG ELLIS QC, Dean of the Arches**

1. Permission to appeal is granted on Ground 1

*Reason:*

The Appeal has "real prospects of success" (within the meaning of Rule 22.2 of the Faculty Jurisdiction Rules 2015 (as amended)) in that the Chancellor's rationale that the inscription would be "*incomprehensible*" to almost all its readers in English speaking Coventry or to persons who did not know Margaret Keane; and / or that the inscription was a "*message which will be unintelligible to all but a small minority of readers*" which necessarily meant that the proposed inscription was "*inappropriate*" unless translated; and / or that there would be a risk of the proposed words being regarded as "*some form of slogan or that its inclusion without translation would of itself be seen as a political statement*", in the absence of objective evidence may have amounted to an unjustifiable exercise of his discretion and/or be unfair.

2. Permission to appeal on Ground 2 is refused.

*Reasons:*

- (i) Ground 2 does not have real prospects of success and there is no compelling reason for granting permission to appeal;
- (ii) the Chancellor properly took account of and did not misconstrue the diocesan Churchyard Rules and the argument raised in Ground 2 is not of general application; weight is not a matter for the Appeal Court.

3. Subject to the reservation indicated below, permission to appeal is granted on Ground 3.

*Reason:*

Whilst on its own terms Ground 3 does not appear to have any real prospect of success, having regard to the Chancellor's willingness to grant a Faculty for a memorial containing both the inscription in Irish Gaelic and an English translation, nevertheless, since there are other compelling reasons for granting permission to appeal in this case (as set out below), the Applicant is free to address the Court as to whether her rights under Articles 8,9,10 and 14 of the Convention were engaged in the context of the Court's general consideration of the matters set out in Paragraph 4 below.

4. Further, there are the following compelling reasons for granting permission to appeal:

*Reasons:*

- (i) the subject of non-English inscriptions on memorials has not been considered by the Arches Court or the Chancery Court;
- (ii) England is a multi-ethnic and multi-cultural society; for a significant minority of families who choose burial in an Anglican churchyard, the English language may not be the natural or complete form of expression and / or of ceremonial expression;
- (iii) the issue of non-English words on memorials is therefore likely to arise in future cases;
- (iv) questions of the approach to intelligibility and suitability of a Christian memorial in a Church of England churchyard are important matters of principle which the Court of Arches should consider, including in relation to the European Convention on Human Rights.

5. For these reasons, and because there is no Respondent, I order that an Amicus Curiae should be appointed to enable the Court to benefit from a full exposition of the arguments, the costs of such appointment to be the subject of further direction.
6. For the avoidance of doubt, I agree with the Chancellor that subsequent comment in the press and elsewhere about a judgment is not a compelling reason for granting permission to appeal and I have not taken it into account.
7. The Applicant shall pay the court costs occasioned by the application for permission to appeal. The Provincial Registrar shall notify the Applicant's solicitor of the court costs and such costs shall be paid within 21 days thereafter, failing which, the appeal shall be dismissed.

## **DIRECTIONS**

Without prejudice to the requirements of rule 24.1 and 27.2 of the Faculty Jurisdiction Rules 2015:

1. If she intends to proceed with the appeal, the Applicant (hereafter the Appellant) shall give notice to the Provincial Registry within 14 days of issue of this Order, accompanied by a revised Notice of Appeal, limited to the Grounds for which permission to appeal has been granted in paras 1 and 3, having regard also to paragraph 4 above.
2. Any application for permission to intervene in the appeal under rule 27.7 shall be made to the Provincial Registrar within 42 days of issue of this Order, and if permission is given, further directions will also be given.
3. An Amicus Curiae shall be appointed by the Provincial Registrar.
4. Within 42 days of issue of this Order, the Appellant shall file and serve an agreed, indexed and paginated, trial bundle.
5. Within 56 days of issue of this Order the Appellant shall file and serve a Skeleton Argument (limited to the two Grounds and the matters set out in Paragraph 4 of the Order in respect of which permission to appeal has been granted).
6. Within 84 days of issue of this Order the Appellant shall file and serve an indexed bundle of authorities (from the law reports, wherever possible).
7. Subject to compliance with Direction 1 above, the matter will be set down for hearing (time estimate one day, excluding judgment) at a place and at a date to be notified to the parties, the Amicus Curiae and any interveners by the Provincial Registrar. Such date shall be as soon as reasonably practicable after compliance with the above Directions and the hearing shall start at 9.30am.
8. Subject to public health regulations and advice in force at the time, the hearing shall take place live, with social distancing measures in place, and arrangements shall be made to broadcast the proceedings via Zoom, Teams or other suitable technology.

**18 August 2020**

**MORAG ELLIS QC, Dean of the Arches**