

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: FARNINGHAM; ST PETER & ST PAUL

J U D G M E N T

1. By a petition presented on 13th September 2018, the petitioner, Ms Julie Underwood, has applied for a faculty authorising the erection of a memorial in the churchyard of St Peter & St Paul's Church Farningham, Kent. The petitioner is the mother of the late George Frederick Barker, who was born on 9th October 1992, and died on 14th November 2016, aged, 24 years. Mr Barker's mortal remains were buried in the churchyard of the church on 6th January 2017. By the proposed memorial the petitioner seeks to commemorate the life of her son.
2. The facts surrounding the death of Mr Barker need to be briefly recited. Mr Barker was a young man who shortly before his death had become a father for the first time. He had been in some sort of business relationship with another man, and it would appear from what I was told by Ms Underwood when I visited the churchyard on 4th May 2019, that he may have owed that other man some money. Be that as it may, on 14th November 2016 Mr Barker visited a local gymnasium for a work out or exercise class. There, whether by chance or not is immaterial, he met that other man. Others, it seems, were present. Some sort of altercation followed, in which Mr Barker received a number of stab wounds, from which he died. A man has been arrested and charged with the murder of Mr Barker, and is due to stand trial in or around August 2019.
3. I have seen plans for the proposed memorial, which is proposed to be on a foundation and plinth of seven feet, by three feet, by four inches, with a headstone five feet tall. On the headstone it is proposed that there to be an open book motif. The material is sought to be Bahama Blue granite, with stainless steel dowels being used. The proposal is for a memorial which is undoubtedly outside those permitted by the current guidelines and regulations. Quite apart from the question whether such a memorial is appropriate is the issue that to allow such could be said to be

setting a precedent for future breaches of the approved Churchyard Regulations, which have become increasingly difficult to enforce.

4. At this point in time I do not propose to deal with the wording to be inscribed on the memorial, nor am I asked to do so. That remains to be dealt with in the future.
5. As I have indicated above, I have had the opportunity of visiting and inspecting the churchyard. The overall situation has been compounded by the fact that Mr Barker's mortal remains were not interred in the plot chosen by Ms Underwood and agreed with the Incumbent, the Reverend Gary Owen. It seems that when the grave digger came to dig the grave, someone, without any authority whatsoever, had deliberately moved the markers, with the result that the grave was prepared several plots away from the space originally chosen and agreed. The alteration only became apparent after the funeral service in church had ended and the burial party had moved to the churchyard for the interment. At that point in time there was nothing that could be done to rectify the situation. Understandably, Ms Underwood was upset, the more so because the plot where her late son has been buried is under trees, with the result that bird droppings are a problem. As a result, and without any authorisation, she has erected a seat with a shelter/canopy above it. This is clearly outside the Churchyard Regulations.
6. The P.C.C. at their meeting on 29th August 2018 were, perhaps understandably, equivocal towards what was being sought. Broadly, they agreed to the height of the memorial (four in favour, three against, and one abstention), to the type of stone requested (seven in favour, one against), and to the book shape (six in favour, two abstentions). The P.C.C. did not comment or vote on the issue of the plinth. They were placed in a difficult position, but clearly had in mind that each request should be considered on its merits, ie. on its particular facts, and supporting reasons. The facts of this particular case are sad in the extreme, and highly unusual.
7. The D.A.C. in its Notification of Advice dated 5th February 2019, did not recommend the proposed memorial on the grounds that; (i) it had concerns about the size of the memorial, which would be out of place in the churchyard, (ii) the large stepped ledger stone would look out of place, (iii) the polished stone would be out of place, (iv) stainless steel dowels would be likely to fail over time.

8. The Incumbent, in an email dated 27th February 2019, stated very fairly that other gravestones in the churchyard do not conform to the diocesan regulations, and that his predecessor permitted may gravestones; “for which he did not have the authority.” The result has been that; “People have introduced items (often curbing and chippings) without permission.” Signs have been erected informing people that that no monument may be added without the Incumbent’s permission, but; “These have been widely ignored.” This was all apparent to me in the course of my inspection of the churchyard.
9. Ms Underwood, for her part, is frustrated and upset at the length of time being taken to resolve these issues. Whilst she is not in any way to blame for this, the fact is that such delay as has occurred is not the fault either of the Incumbent, the P.C.C., the D.A.C. or the Registry. A most unfortunate set of circumstances has left Ms Underwood still uncertain of what she may or may not be permitted in respect of the memorial for her deceased son.
10. Overall, it seems to me that I must bear in mind the problems of creating a precedent, though such has already de facto been created, and set against that the desire of the Incumbent and P.C.C. to enforce the regulations in a meaningful yet sympathetic manner. The balancing exercise between those two contrasting poles is not an easy one.
11. To date, there have been no public notices displayed, as required under **Part 6 Faculty Jurisdiction Rules 2015**.
12. On 1st March 2019, I gave directions, and indicated that I was prepared to deal with the petition on the basis of written submissions, provided that all concerned agreed in writing to this course being adopted. Ms Underwood has confirmed her agreement to this. Having reconsidered the matter, and with the relevant consents from the interested parties, I am of the view that it is expedient and appropriate for me to deal with the petition on written submissions.
13. The reasons for limitations upon what may be permitted in a churchyard are essentially threefold, the first of which is theological, for which see **Re St John the Baptist, Adel 2016 ECC Lee 8**. Theological considerations are not sought to be raised in the instant case. The second reason is aesthetic, and the third, which sometimes is linked to the second, is practical, relating to maintenance, upkeep and the like, the burden of which normally

falls on the P.C.C. Essentially, I am concerned with aesthetic and practical issues.

14. Insofar as practicality is concerned, the P.C.C. must be taken to have considered the issue since they responded to the petition in some detail, as set out in paragraph 6 above.
15. As far as aesthetics are concerned, churchyards are Christian burial grounds for local communities, not just for the present but for generations to come. They also, of course, represent Christian witness and hope of generations past. At this juncture it is important to bear in mind the particular circumstances of the person sought to be commemorated. Mr Barker was a young man, who lived locally, but not in the village of Farningham, and had no particular personal or family connection with the parish church there. On any basis, he died in very tragic and distressing circumstances.
16. Ms Underwood argues that what she proposes would not be out of keeping, especially when bearing in mind what the Incumbent has said, and which I have set out in paragraph 8 above. There is undoubtedly some force to this argument. For all that it does not address the problems faced by the Incumbent and the P.C.C, who have the task of maintaining and policing the churchyard.
17. Bearing all this in mind it is, of course, important that the overall appearance of a churchyard is appropriate and not discordant. In the circumstances of this case, I am satisfied that the stone proposed to be used is not aesthetically offensive. Likewise, the "open book." I am prepared to allow them. Non-ferrous dowels must be used in the fixing, and the headstone must be no more than five feet tall. Insofar as pastoral considerations may be relevant to this petition, they are largely one way, namely in the petitioner's favour.
18. I am not able to accept the request for a raised/stepped ledger stone/plinth. I reject it on both aesthetic and practical grounds. It would be out of keeping with the rest of the churchyard, and would cause potential problems over maintenance etc, being hard to mow round. It would also, in my judgement, cause a problematic precedent in this churchyard which is attached to a Grade 1 listed medieval church, and would make the task of the P.C.C in enforcing the Churchyard Regulations that much harder.

19. Thus, for the reasons given above, I accept the arguments of the petitioner to the extent I have stated. I am satisfied that those of the proposed works to which I have given my approval are desirable and are appropriate. In the premises, subject to what I have to say below, I direct that faculty issue. In saying this, I understand and do not seek to criticize the reservations of the D.A.C. However, each petition, as stated above, must be considered on its own merits and facts, and I must exercise my own judgement in accordance with such. I further exercise my powers under **Rule 6.7(2)(a)** to order that the giving of public notice under the **Faculty Jurisdiction Rules 2015** be dispensed with because of the particular nature and unique circumstances of the petition as I have set out above.
20. I do not consider, on the peculiar and indeed unique facts of this case, that there is any serious risk of an undesirable precedent being created.
21. Depending on the outcome of the trial I have referred to above, I think it unlikely that the wording sought to be used on the memorial will be contentious, but I stress that Ms Underwood must apply at a later date for approval of the precise words.
22. There is, though, one condition to be attached to the faculty, which is that the bench/shelter presently at the head of the grave must be removed forthwith. It is wholly inappropriate and should not be there. In saying this, I have every sympathy with Ms Underwood who was put in an impossible position when she found that the grave plot she had chosen and agreed for her son had been wholly improperly moved. Nevertheless, the bench/shelter is not the appropriate way of resolving the issue.
23. The petitioner must pay the Registry and Court costs of and incidental to the petition, in the normal way. There shall be a correspondence fee to the Registrar in a sum as I direct.

John Gallagher
Chancellor
4th June 2019