

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

CHURCH LAWFORD: ST PETER

PETITION OF ELIZABETH HOWELLS

JUDGMENT

1) John Raymond Howells died on 23rd March 2013 aged eighty-eight and was buried in the churchyard of St Peter's, Church Lawford. His widow, Elizabeth Howells, petitions for a faculty authorising a memorial in the form of a small York Stone boulder with a slate plaque on its front face. The proposed memorial falls outside the scope of those authorised by the Churchyard Regulations hence the need for a faculty. Following the site visit mentioned below I authorised the grant of a faculty and this judgment sets out my reasons for having done so.

Procedure and Representations.

- 2) The Parochial Church Council of St. Peter's considered the proposed memorial. That Council noted that the memorial was outside the scope of the Regulations but recorded its assessment that the memorial would accord with the character of the churchyard.
- 3) There has been no response to the public notice.
- 4) The matter has also been considered by the Diocesan Advisory Committee. The Committee certified that it did not recommend approval. The reason for this advice was that the proposed memorial was a significant departure from the Regulations being small, of an unusual shape, and with an unconventional attached plaque.
- 5) I concluded that the case was suitable for determination on the basis of written representations together with a site visit. Mrs. Howells consented to this course and provided further representations. In those she explained the reasons why she sought to have a memorial in this form. In the 1970's and 1980's Mr. and Mrs. Howells had spent their Saturday mornings on a fortnightly basis mowing the churchyard. In that period they had come to the view that instead of an erect slab

marking their grave they wished to have a piece of unworked stone. There are two other memorials in this form in the churchyard and Mr. and Mrs. Howells came to admire them. Mrs. Howells describes them as having a “*natural look*” and as being “*practical and attractive.*” In the light of the variety of memorials in the churchyard Mrs. Howells contends that the memorial would not stand out “*in an unattractive or anachronistic way*”. Mrs. Howells intends to plant a low-growing dog rose against the memorial and envisages this together with lichens and moss growing over the stone.

6) I made an unaccompanied site visit on 30th January 2016. On that visit I noted that the churchyard already contains a mixture of memorials of various shapes and sizes. There are a number of memorials with polished surfaces and gilded lettering. Nonetheless the vast majority of the memorials in the churchyard are compliant with the Regulations taking the form of upright memorials in stone consistent with the stone of the church building. The row in which Mr. Howells was buried already contains four memorials of three different shapes and sizes. The two existing memorials in the form of unworked stone boulders are present in the churchyard but are not readily apparent. The current appearance of those memorials supports the point made by Mrs. Howells that in the course of time the proposed memorial will not attract attention. However, it does have to be noted that until the boulder has weathered and/or become covered by the rose or moss it will be readily apparent as being somewhat different from the other memorials in the surrounding part of the churchyard.

The Applicable Principles.

7) I set out my understanding of the approach to be taken in respect of cases where a faculty is sought for a memorial which is contrary to the Churchyard Regulations in my judgment given sitting in April 2012 in the Lichfield Consistory Court in the case of the proposed memorial to Richie Nickisson in the churchyard of Newchapel, St James. The relevant parts of my judgment stated:

21) “ ... permission for a memorial which does not accord with the Chancellor’s Regulations will not be given lightly. A powerful reason must be shown before a faculty for such a memorial will be given. In *Re St. Mary: Kingswinford* [2001] 1 WLR 927 Ch. Mynors summarised circumstances in which such a faculty could be given thus (at paragraph 38):

“However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. 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.”

- 22) The four potential reasons given by Ch. Mynors are useful as examples of the circumstances where a faculty might be given for a memorial which does not conform to the Chancellor’s Regulations. However, they are, in my view, to be seen as illustrations only. As Ch. Holden said it is impossible to identify definitively and in advance all the matters which are capable in particular cases of being a sufficiently exceptional reason to justify the granting of a faculty. There will be circumstances falling within one of Ch. Mynors’s four categories where it will nonetheless be appropriate to refuse a faculty and also circumstances where a convincing and powerful reason of a kind different from those set out by Ch. Mynors will be established and the grant of a faculty will be justified.
- 23) The requirement that there be a powerful reason if a memorial which does not conform to the Chancellor’s Regulations is to be permitted is a matter of justice and fairness to those who have erected conforming memorials. There are many families and individuals whose personal preference would be to have a memorial to a departed loved one in a form going beyond the Chancellor’s Regulations. In the vast majority of cases such persons accept the approach laid down in the Regulations and erect a memorial conforming to the Regulations. In doing so they put aside their personal preferences and accept a memorial in a form different from that which they would have chosen if given a free hand. In many instances this will involve acceptance of a memorial which they regard as second-best or otherwise unsatisfactory and such acceptance will often be combined with a feeling of unhappiness and distress. Such people would have a legitimate sense of grievance if others (perhaps more articulate or forceful or with more time, money, or personal skills) were able easily to obtain faculties for non-conforming memorials. Fairness to those who have reluctantly complied with the Chancellor’s Regulations requires the Court to confine exceptions to cases which are truly exceptional.
- 24) Similarly account must be taken of the legitimate expectations of those who have buried their departed relatives in a particular churchyard and of those who are to be buried therein. Those who have interred departed relatives in churchyards on the footing that the appearance of the churchyard will be maintained in line with the Chancellor’s Regulations will have cause to protest if the requirements of the Regulations are lightly set aside. Again those who have paid fees for the reservation of grave spaces have a legitimate

expectation that the character of the churchyards in question will be kept in accord with the Regulations.

- 25) Whether a particular reason is sufficiently exceptional to justify the grant of a faculty will be an exercise of judgment in each case. The Court has to take account of the foregoing factors and of the matters said to justify the departure from the Regulations. Account will also have to be taken of the extent of the deviation from the Chancellor's Regulations. The greater the extent of the deviation and the more readily apparent the same is to those visiting the churchyard in question the less likely it will be that a faculty will be granted. Conversely in a particular case where the extent of the deviation is less there is likely to be a lesser impact on visitors and the considerations operating against the grant of a faculty might have less weight though I repeat that in every case a good reason must be shown before a faculty will be granted for a memorial which does not conform to the Regulations.
- 26) Particular issues arise in cases where there are already a number of non-conforming memorials in a churchyard. The mere fact that non-conforming memorials have been allowed in the past or have been erected without faculty is clearly not of itself a justification for a further inappropriate memorial. However, there will be occasions when the extent of previous non-compliance with the Regulations will be relevant. In the passage quoted above Ch. Mynors referred to situations where the number of non-conforming memorials is such that it would be "*unconscionable*" to refuse permission for one more. In my judgment the proper approach is to take account of the number, type, and appearance of non-conforming memorials in relation to the size and appearance of the churchyard taken as a whole. There will be cases where the non-conforming memorials are so numerous or so dominant that it is simply unrealistic to believe that the objective of preserving the desired appearance of the churchyard can be achieved. That desired appearance being one that is harmonious in appearance and forming a worthy setting for the church. In such circumstances the balance of unfairness changes. It can then become unfair to the Petitioner to refuse a petition for a memorial of a kind akin to those already present in and dominating the churchyard. There is then a risk that the Petitioner's wishes and preferences are being thwarted in pursuit of an unrealistic objective. Moreover, in such cases the risk of unfairness to those erecting conforming memorials contrary to their own preferences is likely to be diminished. "

8) The Coventry Churchyard Regulations articulate those principles stating at Regulation 6.1 that a "*substantial reason*" will have to be shown if there is to be permission for a memorial falling outside the Regulations. They emphasise the need for a churchyard to be harmonious in its appearance. At Regulation 4.1 the point is made that harmony does not mean uniformity and "*attractive well-conceived new designs by skilled and imaginative craftsmen are genuinely encouraged.*" However, they go on to say in the same Regulation that "*harmony does ... mean that stones should be compatible with and appropriate to their surroundings and that no memorial should stick out like a sore thumb.*"

9) It is those principles which I will apply to the current case.

The Relevant Matters.

10) There are a number of factors operating in support of this Petition.

- a) The proposed memorial is the result of careful consideration. It is clear that Mr. and Mrs. Howells gave serious thought to the form of memorial which they wished to mark their resting place. It is particularly significant that this careful consideration was given by two people who were deeply involved in the life of St Peter's (as Mrs. Howells still is); who had real knowledge of the churchyard; and who were committed to maintaining its appearance. I have already said that Mr. and Mrs. Howells were for many years responsible for mowing the grass in the churchyard. In addition Mr. Howells was the organist at St. Peter's for nearly fifty years and then spent several years being responsible for the winding of the church clock. Mrs. Howells served as PCC secretary for forty years and was a Reader for about seven years. Mrs. Howells does not suggest that this involvement in the life of the church entitles her in some way to special treatment. However, she goes on to say that this service nonetheless gives "*substantial evidence of our understanding of the ethos and ambience of the church and its surrounding land.*" In my judgment there is very considerable force in this submission. The Churchyard Regulations apply to all memorials in a churchyard and long service to the church, commendable though it is, does not give a right to special treatment. However, where those making a reasoned and carefully considered case for a particular memorial can show a real knowledge of and commitment to the church and churchyard that history of commitment is of real relevance. This is because it lends force to the contentions that the proposed memorial is not being lightly suggested and that those proposing the memorial have good grounds for believing that it will be in harmony with the church and churchyard.
- b) In the circumstances of this case the preceding point is reinforced by the consideration which the Parochial Church Council gave to the proposed memorial. That Council recorded the unanimous view of its members that the memorial would be in keeping with the character of the churchyard. This

considered assessment by those who know the church and churchyard best must carry real weight. Moreover, it accords with the assessment I made on my site visit.

- c) It is also relevant that the proposed memorial is a work of craftsmanship. Mrs. Howells does not suggest that it is the result of special artistic design. Indeed, she wishes to have a memorial in this form because of its natural and unworked appearance. Nonetheless, I do take account of the facts that the memorial is an individual piece resulting from thought and assessment on the part of a craftsman and that it is not a mass-produced item.
 - d) I have already said that the churchyard contains a number of memorials which do not conform to the Churchyard Regulations. Most of the memorials do conform to the Regulations but the presence of a non-conforming memorial in the form proposed will not, to repeat the language of the Regulations, stick out like a sore thumb. The proposed planting and the likely weathering and aging of the memorial will mean that in the course of time the memorial will be markedly less noticeable. Although in the short term it will be readily apparent in the fullness of time it is unlikely to be noticed as being a departure from the norm in the churchyard other than by those seeing it and the surrounding memorials at close quarters.
- 11) Although those factors operate to support the grant of the faculty the position is not clear cut. The proposed memorial is a marked departure from the Regulations and is a departure in circumstances where what is proposed is not suggested to be a memorial of outstanding aesthetic qualities. I must attach considerable weight to the advice of the Diocesan Advisory Committee. However, the force of that advice is tempered by the fact that the reasoning underlying the advice is based on the extent of the departure from the Regulations rather than the particular circumstances of this churchyard.
- 12) It is my assessment that the factors supporting the grant of a faculty combine to enable me to conclude that in this case there are substantial grounds for departing from the Churchyard Regulations and permitting the proposed memorial. This is not a case where there is a single factor which amounts to a

good reason by itself but one where a number of factors combine to justify a departure from the normal approach as set out in the Regulations.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
17th April 2016