

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

LICHFIELD: ST MICHAEL

ON THE PETITION OF MARY JONES

RE: A PROPOSED MEMORIAL TO DAVID JONES

JUDGMENT

- 1) Mrs. Mary Jones petitions seeking a faculty for the erection of a memorial at the grave of her late husband, David Jones, who died on 5th May 2016 and who is buried in the churchyard of St Michael, Lichfield.
- 2) In the words of Ven. Simon Baker, the Rector of St. Michael, Mr. Jones was the "*patriarch of a group of traveller families.*" The proposed memorial has a number of features reflecting that heritage.
- 3) As proposed the memorial would be of Bahama Blue stone. It would consist of a headstone 6' wide and 4'4" tall at its highest on a base which would be 7' wide. In addition there would be a slab covering the grave as a whole. The headstone would take the form of two large interlocking heart shapes each of which would be flanked by two smaller heart shapes. One of the larger heart shapes would bear Mr. Jones's name, his age, date of death, some details of family relationships, and a short poetic expression of loss and Christian hope. It would also bear the image of a horse's head towards the upper left side with the lower third or quarter being taken up with the depiction of a riverbank scene containing a dog and a fishing rod. Across the base of the headstone would be a series of smaller heart shapes representing family members and containing words such as "*Rhoda with love*" and "*Lou & family*". The wording would be in gold lettering. One of the heart shapes is to be left blank.
- 4) The churchyard of St. Michael stands on a layer of hard sandstone. This means that graves cannot be dug deep enough to accommodate two interments. Mrs. Jones has reserved the gravespace immediately adjacent to that occupied by her husband's remains. She seeks a memorial of this width and consisting of two

hearts because it is intended that she will herself be buried in the plot immediately adjoining that occupied by her husband's remains. The intention is that a memorial to her will in due course be inscribed on the heart shape which is currently to be left blank.

- 5) The proposed memorial does not accord with the Churchyard Regulations. It falls outside the Regulations in a number of respects including the type of stone, the use of gold lettering, the number of images, and its shape. Most markedly it would be very substantially larger than memorials authorised by the Regulations. The Regulations prescribe a maximum height of 4' and a maximum width of 3'. It follows that although only marginally above the maximum permitted height the proposed memorial would be twice the maximum permitted width.

The Procedural History.

- 6) There was no response to the public notice but I have received a Notification of Advice from the Diocesan Advisory Committee and a letter from Ven. Simon Baker to both of which I will refer below.
- 7) Mrs. Jones has confirmed her willingness for the matter to be determined on the basis of written representations and for the submissions already made on her behalf to be treated as her representations. In the Petition it is said that the Petitioner and her family believe that a memorial such as is proposed is what David Jones would have wished. In addition I have been provided with a set of annotated photographs showing the appearance of the churchyard and a letter setting out the Petitioner's comments on my earlier directions and on Archdeacon Baker's letter. I have concluded that it is expedient to determine the case on the basis of written representations.

The Churchyard and St. Michael's Ministry to those of a Traveller Heritage.

- 8) David Jones's grave is about 200 yards from the church building and is not visible from the church. The photographs demonstrate that the churchyard contains a large number of memorials which do not conform to the Churchyard Regulations. There are memorials in stones of various colours; memorials bearing sundry images; memorials bearing coloured images; memorials bearing gilded lettering; and memorials in the shape of hearts. However, it is to be noted that most bear

only one image and almost all appear to be within the dimensions permitted by the Regulations.

- 9) The group of traveller families whose members looked to David Jones have a longstanding connexion with St. Michael's church. That is a connexion which remains lively and valued. Some members of those families play an active part in the regular life of the church. Other members turn to this church at times of sorrow or joy – to celebrate weddings or to bury their loved ones. The ministry to these families is a significant part of the work and life of St. Michael's and is valued by Ven. Simon Baker as rector and by the Parochial Church Council.
- 10) Some of the existing memorials in the churchyard recognise that heritage in terms of the lettering and type of stone and the images engraved on the memorials.

Representations.

- 11) Ven. Simon Baker has set out his position and that of the Parochial Church Council in a detailed and thoughtful letter. In essence he records the value which he and the Council place on the ministry of St. Michael's to traveller families. In the light of that ministry and particular features of the traveller heritage no exception is taken to a number of elements on the proposed memorial. Thus the number of images is regarded as an acceptable representation of important elements in Mr. Jones's life; gold lettering is seen as an appropriate reflection of the place of gold in the traveller lifestyle; and the reference to surviving family members although unusual is not a ground of objection. In addition it is accepted that the proposed stone is of a kind already present in the churchyard. A memorial in the shape of a single heart would not be objectionable. The difficulty which Archdeacon Baker and his church council have with the proposed memorial relates to its size. The memorial is in a part of the churchyard where there are a number of graves with memorials of sizes conforming to the Regulations. The concern is that the proposed memorial would overshadow and dominate these in a way which is not thought appropriate. In addition the letter points out that the Rector and church council have sought to discourage "*large and florid*" memorials encouraging the bereaved to choose memorials of a more

fitting design. There is a concern that to permit the proposed memorial would undermine those efforts.

12) When it considered the matter the Diocesan Advisory Committee was aware of the Parochial Church Council's position. In its Notification of Advice the Committee did not recommend approval and it agreed with the concern that a memorial of the proposed size and shape would be overly prominent.

13) In her response Mrs. Jones emphasises the point that she is to be buried in the adjoining plot and that the memorial will in due course make reference to her on the second heart. In essence she says that particular account is to be taken of the fact that two people will in due course be commemorated and that the memorial will serve two adjoining plots. It is also said that the overall space taken up by the headstone will be no greater than if two separate headstones were to be erected one commemorating Mr. Jones and the other his wife. Finally, the reason for seeking a design of two connected hearts is explained as being to symbolise the deep love and closeness between Mr. and Mrs. Jones.

The Principles to be applied.

14) I set out the approach to be taken when considering petitions for memorials outside the scope of the Churchyard Regulations when considering a proposed memorial to Richie Nickisson in *Newchapel, St James* (Lichfield Consistory Court April 2012). I said there:

15) Consideration of any petition for a memorial going beyond that authorised by the Chancellor's Regulations in relation to the management of churchyards must take account of the importance, effect, and purpose of churchyards and of memorials in them.

16) Churchyards are consecrated to God, Father, Son, and Holy Spirit.

Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards fulfil important spiritual rôles. They provide appropriate settings for Christian places of worship and as such send out a message of the Church's commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church's continuing love for them and its belief in the communion of saints. In addition they are places of solace and relief for those who mourn. It is notable

also that many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.

17) This Court has an important responsibility in caring for the churchyards of the Diocese. It must ensure that what is placed in our churchyards is fitting and appropriate. Moreover, the memorials placed in churchyards must be fitting and appropriate not just for today but also for the future.

18) The Chancellor's Regulations are an important mechanism for giving effect to that responsibility. As Ch Turner has said (in **Re Wallasey: St. Hilary**):

"[The Regulations] exist not to promote a drab or mindless uniformity, let alone to enforce the personal tastes or preferences of the Chancellor. They serve to create fairness, equality and consistency of treatment for all. They exist to promote peace, dignity and good order in churchyards where it is necessary to balance concerns of the past, present and future and where there will, inevitably, be a spectrum of views about what is fitting. They have evolved over time, the product of the collective wisdom of a range of people, often informed by bitter experience and they are reviewed from time to time to ensure that they continue adequately to reflect local need."

19) Ch. Holden expressed the position thus in **Re Christ Church: Harwood** [2002] 1 WLR 2055 (at 2056):

"There cannot just be a total disregard for the necessary control and management of burial grounds provided for by the normal processes. These are there to protect and maintain the very beauty, dignity and order of the churchyard which have, in many cases, precisely been the reasons which led those left behind to choose it as the final resting place for their loved one. The rules, carefully worked out over the ages, and arising out of thousands of instances of burial and memorialisation, need to be followed because of their proven value even, perhaps particularly, where the circumstances of death are especially poignant and heartbreaking. In the end everyone suffers if the appearance of a churchyard is disfigured or the tranquil beauty of the burial place is jarred by ill-designed monuments and inappropriate memorial inscriptions. With present day technological advance most memorials have the potential to last virtually for ever and great thought has to be given in considering whether or not to allow anything to be erected which may become indefinitely a part of the landscape. ...

"If, ... a departure from the graveyard 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. Such an exception has to be based on strong grounds. As Gage Ch pointed out in In re St Gregory, Offchurch [2000] 1 WLR 2471 when a faculty is sought for a monument which is not in accordance with the graveyard regulations the court has to look for exceptional reasons before granting permission. Such reasons are impossible to set down definitively because much will depend upon the historical, aesthetic and topographical nature and circumstances of

each particular graveyard and pastoral factors will differ from case to case. However, without imposing a mindless uniformity, conformity to the norms of the regulations ought to be aimed at, so that, in the interests of justice and fairness, everyone is treated on the same basis, and the concerns of the past, the present, and the future are all balanced. It is inevitable, and entirely understandable, that those who are mourning will be preoccupied with the loss of their loved one, will wish to memorialise him or her as fittingly as they can, and will not centrally be concerned with the impact of what they propose on the environment of the burial ground, or even on other gravestones near to the site of "their" grave. The overall beauty and tranquillity of a churchyard is only as good as its component elements allow it to be. The rights and interests of private individuals, of the worshipping congregation, of all parishioners, of the local community, and of the Church and society at large all have to be considered in permitting a memorial, which is likely to last for ever, to be placed in a churchyard. There cannot be a carte blanche situation where the family of the deceased has sole right to decide what is, and what is not, appropriate by way of memorial, not least because, as will be explained later, that family does not own the land in which the remains are placed, or on which the memorial is meant to be placed."

20) Particular care has to be taken not just with regard to the appearance of a memorial (including the images engraved thereon) but also in respect of any inscription which is to be placed thereon. Churchyards are consecrated to God and what is set out on memorials therein must be consistent with that consecrated status. Inscriptions must be consonant with orthodox Christian belief. Not only is this because of the purpose of the churchyard but also because inscriptions convey a message to those who visit churchyards. It is important that the message that such visitors receive is one which proclaims (or at the very least is not inconsistent with) the message of hope and faith being given to them by God's Church.

21) It follows that 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. "

15) I remain of the view that those principles are applicable and it is by reference to them that I will determine this petition.

The Position Here.

16) There are already a very large number of non-conforming memorials in this churchyard. The circumstances are such that it would be unfair to regard the fact of non-compliance as being, of itself, a reason for refusing a faculty. In addition the ministry of St. Michael's to a number of traveller families is highly relevant. This ministry is an important part of the work of this church. The members of those families are welcome and valued participants in the life of this church and their pastoral needs are of importance. In those circumstances it is right that account is taken of the particular features of their traveller heritage when the Court is considering what memorials to permit in this churchyard. If the Court were to do otherwise it would run the risk of hindering this ministry. The message of the church is that it welcomes those from traveller families and that it recognises and values their particular and special heritage. The approach to memorials must be consistent with that message.

17) Those are important considerations. They mean that in principle a memorial which does not conform to the Regulations will be permissible if departure from the Regulations is warranted in order to reflect the particular heritage of those families. However, that does not mean that every memorial which is proposed will be acceptable. Each application must be considered on its merits. Account must be taken of what is proposed and of its relation to other memorials in the churchyard together with its impact on the churchyard as a whole.

18) The feature of the proposed memorial which causes concern in this case is its size. In the particular context of this churchyard and the ministry to traveller families the other elements of shape, stone type, images, and format would be acceptable. The difficulty is that what is proposed would be marginally higher

than the maximum permitted and would be twice the permitted width. The combination of those two elements would, indeed, make it somewhat dominant in its location. It is my assessment that the modest excess in height alone would not be unduly problematic but that it becomes so when combined with the substantial excess in width. The photographs show that although many of the other memorials in the churchyard do not conform to the Regulations in various ways they are of a generally consistent height and width and are in line with the Regulations in those regards. If the memorial were to be permitted it would stand out as being significantly larger than those around it. This would be compounded by the presence of the slab proposed. I accept as well-founded Archdeacon Baker's concern that other families whose loved ones are buried in this part of the churchyard and who lie under memorials of standard sizes would feel a legitimate sense of grievance. Those marked by those memorials are equally loved by God and are missed by their families in the same way that David Jones is. It would not be right for their memorials to be allowed to appear in some way secondary to or less important than his.

- 19) I have considered the Petitioner's arguments pointing out that two people will be in due course be commemorated and that the memorial is to serve for two adjoining plots. The fact that the memorial will in the fullness of time commemorate Mrs. Jones can carry little weight. It is not unusual (indeed it is almost commonplace) for married couples or other family members all to be commemorated on a memorial fitting within the dimensions permitted by the Regulations. The fact that the memorial is to serve two adjoining plots is more unusual and it is right that two separate headstones each of a size complying with the Regulations would involve the same amount of stone being introduced as is now proposed. However, I am satisfied that the visual impact of a single memorial of this size will be markedly greater than that of two memorials of the approved dimensions even if such memorials were placed close to each other. The proposed large single memorial will have a dominating effect in this part of the churchyard which two separate memorials would not have. The particular features of these plots would justify permitting some increase in the width of the memorial but an increase to double the usually permitted width for a single memorial would not be appropriate.

- 20) I note that the photographs show that there is a grave in the same row as that of David Jones and about two or three plots along from it where there is a memorial which does appear to be substantially larger than the size permitted by the Regulations. That memorial does detract from the appearance of this part of the churchyard. Its presence does not justify permitting another large memorial. Indeed, if the proposed memorial were to be permitted at this location the presence of two large memorials in reasonably close proximity would compound the impression of dominance and would increase the risk of those buried nearby and commemorated by memorials of standard size being seen as subsidiary and of lesser importance.
- 21) For completeness I should say that it is not suggested that the memorial is of particular artistic merit such as to justify an exception being made on that ground.
- 22) It follows that I have concluded that it would not be appropriate for a memorial of the proposed shape and dimensions to be erected in this churchyard. It would be dominant and commanding in an inappropriate way when seen alongside the existing memorials at other graves in the immediate vicinity of David Jones's grave.
- 23) Accordingly, petition is refused and the faculty sought will not be granted.
- 24) Despite that refusal I wish to make it clear that many features of what is proposed would have been acceptable and that the difficulty came from the size of the proposed memorial. As the memorial is to be on what will amount to a double plot (albeit extending horizontally rather than vertically) and as it is intended that in the fullness of time it should bear a memorial to Mrs. Jones some increase in size from the maximum permitted by the Regulations would be acceptable. I have concluded that an increase of one-third over the normal maximum is the very most which can be seen as appropriate. Accordingly, a faculty will issue authorising Ven. Simon Baker to permit a memorial in Bahama Blue stone, bearing the images and wording proposed, bearing gold lettering, with a slab covering the grave, and with a headstone in the shape of a heart or hearts or in such other shape as Archdeacon Baker concludes is appropriate

provided that the headstone does not exceed 4'4" in height and 4' in width on a base no more than 5' wide.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
26th January 2017