



Faculty – Grade I listed medieval village church – Proposal for memorial falling outside the churchyard regulations – Upright memorial on a cremated remains plot – PCC resolving memorial not suitable for this part of the churchyard – DAC recommending proposal for approval – Objections received from nine residents of the parish (one out of time) but none choosing to become a party opponent – Faculty granted

Petition No: 10923

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Tuesday, 14 February 2023

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

Long Crendon, St Mary the Virgin

THE PETITION OF:

FYONA HILL

This is an unopposed faculty petition determined on the papers and without a hearing.

Objections were received from nine residents of the parish (one out of time) but none of them elected to become a party opponent.

The following cases are referred to in the judgment:

Re Christ Church, Harwood [2002] 1 WLR. 2055

Re St Andrew, Chinnor [2019] ECC Oxf 4

Re St Denys, Stanford in the Vale [2019] ECC Oxf 1

Re St Giles, Exhall [2021] EACC 1, [2021] PTSR 1622

Re St Laurence, Scalby [2019] ECC Yor 3

Re St Mary, Great Chart [2022] ECC Can 2

JUDGMENT

Introduction and background

1. By a petition dated 3 April 2022, the petitioner, Ms Fyona Hill, applies for a faculty permitting the installation of an upright, grey, granite, unpolished memorial in an area of the churchyard of the Grade I listed church of St Mary the Virgin, Long Crendon (in the Archdeaconry of Buckingham) that has been set aside for the interment of ashes to commemorate the last resting place of the cremated remains of her late parents, Mrs Marlene Beryl Watts and Mr Thomas Reay Watts, who sadly died on 3 and 4 February 2021 respectively at the age of 85. Both were laid to rest together on 9 April 2021. A faculty is required because the erection of an upright memorial above an interred cremated ashes plot falls outside the scope of the authority delegated to the incumbent minister by the applicable churchyard regulations. In an appendix to her petition, Ms Hill states that she

... would like to request a modest and in keeping upright memorial stone for my parents for the following reasons:-

(1) Mum and Dad died of Covid, 18 hours apart after 62 years of marriage. Altogether they had been together, as boyfriend/girlfriend and fiancés, since they were 15 years old – i.e. for 70 years.

(2) Although they both had expressed the wish to be buried, owing to the rules around Covid at the time they had to be cremated.

(3) As they are buried together they occupy one plot in the Long Crendon graveyard, rather than two.

(4) They had lived in Long Crendon for over 25 years, and were active and popular members of the community there.

(5) In respect of the layout of the graveyard around them, in my view a modest sized headstone will create no additional difficulties with graveyard

maintenance because the memorial stones alongside are not flat, but raised at approx. 30 degrees which would not allow a mower to mow straight over them. Also, the gravestone immediately in front of Mum and Dad's plot has an upright headstones (George Alfred Winfield and Evelyn Rose Winfield), again preventing a mower mowing directly across the area [see photo ...].

Mum and Dad's headstone in dimensions and colour would very much be in keeping with these, and the other graves around them.

2. On 14 July 2022 the minister completed the Diocese's standard-form questionnaire which accompanies the petition. He had no comments to make about the proposed inscription; and he advised that the proposed memorial would have no adverse impact in relation to the fabric of the church. However, the minister reported that at its meeting on 13 July 2022, the Parochial Church Council (the **PCC**) had resolved that the proposed memorial was "*not suitable*" for this part of the churchyard for the following reasons:

(i) Being positioned immediately (c. 1.2m) behind an existing gravestone, it will be obvious that it marks an ashes plot in a manner which is inconsistent with the other ashes plots in the row; (ii) the PCC feels that the current Diocese of Oxford Churchyard Regulations should be seen to be consistently applied for all villagers, regardless of whether an applicant can afford to risk the faculty fee.

In answer to the question: "*Are there any other similar memorials in the vicinity of the grave? If so, approximately how many?*" the minister responded: "*No. The proposed memorial is in a line of ashes plots marked with tablets and ledger stones.*" To the question: "*Will this memorial hamper the cutting of grass or maintenance of the churchyard generally?*" the minister responded: "*Only marginally, as it will lead to an additional gravestone that needs to be mown around.*" The minister also commented that "*... no request for burial was made to either me or the churchwardens. Such a request would have been permitted, since I continued to conduct burials across the Benefice at all times throughout the pandemic.*"

3. At their meeting on 25 October 2022 the Diocesan Advisory Committee (the **DAC**) considered the proposal for "*the installation of a granite upright memorial to commemorate Marlene Beryl Watts and Thomas Reay Watts in an area of ashes marked with tablets and ledger stones*". The DAC **recommended** this proposal for approval by the court, advising that it was not likely to affect either the character of the church as a building of special architectural or historic interest, or the archaeological importance of the church, or any archaeological remains existing within the church or its curtilage.

4. In response to the usual public notices (which expired on 9 December 2022), objections were received from no less than nine local residents (although one was only received on 19 December, and so was out of time). All of the objectors stated that their names were on the electoral roll, one of the objectors declared herself to be a churchwarden, and four others stated that they were members of the PCC (although all of the objectors confirmed they were objecting in their personal capacity, and not on behalf of the PCC as a whole). In summary, the objections were on the basis that the proposed headstone was not in keeping with that part of the churchyard where it was to be installed, and that permitting it might set a precedent for future headstones, with designs that were "*out of kilter*" with that part of the churchyard. Written notice in accordance with rule 10.3 of the Faculty Jurisdiction Rules 2015 as amended (the **FJR**) was

served on the eight objectors who had responded within the public notice period, with a deadline date for responding of 2 January 2023. Two out of the eight objectors failed to respond to the rule 10.3 notice. The remaining six objectors all declined the invitation to become a party opponent to the proceedings; but they invited the chancellor to take their letters of objection into account in reaching a decision on the faculty petition (which I have duly done). I shall set out the objections in more detail later in this judgment.

5. Acting on my directions, the Registry invited Ms Hill to respond to all of the objections, including the one that was out of time. This she duly did by way of an email dated 19 January 2023. I shall reproduce Ms Hill's response after I have set out the objections. In response to an email from the Registry inquiring whether the petitioner was content for the chancellor to deal with this application by way of written representations, and without a hearing (and, if not, asking for her reasons for objecting to that course), Ms Hill responded (by email dated 24 January 2023) stating that: "*After consideration I think that we would quite like the opportunity of presenting our case and reasoning to the Chancellor in person. I appreciate there may be a cost associated with that, but I would like to ensure I do all I can to ensure the right and best outcome is achieved. For me, on behalf of my Mum and Dad, this is really important.*"

6. Had I been minded to consider refusing this petition, I would have considered it expedient, having regard to the overriding objective in Part 1 of the FJR of dealing with the case justly, to issue directions for the matter to be disposed of at a hearing, to be conducted remotely using the Zoom video-platform. However, since I propose to grant this petition, I will proceed by way of a determination on the papers, thereby avoiding any unnecessary delay, and saving unnecessary expense.

The applicable law

7. There is no right to erect a memorial over any grave without either the permission of the diocesan chancellor, pursuant to a faculty, or the permission of the incumbent minister where the chancellor has delegated authority to that incumbent to grant permission for memorials under churchyard regulations. In principle, the introduction of any item into a consecrated Church of England churchyard requires a faculty; but it is conventional for chancellors to make schemes of delegation, usually by means of what are termed '*Churchyard Regulations*', although these have no formal basis in statute. If a memorial does not wholly conform to the specifications set out in the applicable churchyard regulations, the incumbent will lack any delegated authority to permit that memorial, and it will be necessary to apply to the chancellor for a faculty.

8. The Churchyard Regulations, made by my predecessor as Chancellor of the Diocese of Oxford on 8 November 2016, apply to this churchyard. By regulation 13, a monument in the form of a headstone or similar form of commemoration may only be introduced at the place where the body of the person to be commemorated by the monument is buried. By regulation 23, cremated remains are to be commemorated by a ledger stone, namely a flat stone slab marking the place of interment of cremated remains, which (by regulation 27) must be laid so that its upper surface is flush with the ground. The reason for the general prohibition against '*desk-style*' ledger stones was explained by Deputy Chancellor Rogers in *Re St Andrew, Chinnor* [2019] ECC Oxf 4 (in this Diocese), at paragraph 18:

... there is ... nothing offensive about the desk-style ledger stones which populate this area of the churchyard, though they are generally forbidden

due to the increased difficulty in mowing the grass around them and potential tripping hazards.

However, regulation 4 g of the Oxford Churchyard Regulations expressly states that any *'reference to a matter being permitted or not permitted applies only for the purposes of these Regulations; and it does not prevent any monument or ledger being introduced or removed under the authority of a faculty or other order issued by the Consistory Court'*.

9. Until June 2021, the caselaw disclosed two competing approaches to applications for a faculty where there had been non-compliance with the relevant Churchyard Regulations: one required *'exceptional'*, *'powerful'* or *'substantial'* reasons for departing from the Regulations; the other simply asked whether the proposed memorial was *'suitable'*. In *Re St Giles, Exhall* [2021] EACC 1, [2021] PTSR 1622 the Arches Court of Canterbury (Morag Ellis QC, Dean, Chancellor Turner QC and Chancellor Arlow) considered these different approaches and how churchyard regulations should be used in decision-making. At paragraph 11.8, the Arches Court considered the right approach to be the *'merits-based'* one:

Clearly, any Regulations in place for the parish or diocese concerned will be part of a matrix of relevant considerations, but we do not think that consideration of a faculty petition should start with a presumption against allowing a memorial outside the parameters of the Regulations ...

10. The Arches Court cited with approval the approach articulated in a number of first-instance judgments. I would summarise this approach as follows:

- (1) As is the case with any faculty petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposed memorial.
- (2) The terms and content of the applicable churchyard regulations will, of course, be a relevant factor – often highly relevant, and doubtless, on occasion, determinative. But they will only be one of the constellation of infinitely variable factors which the court must consider on a case-by-case basis.
- (3) The court should approach the suitability of the proposed memorial on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrines of the Church of England in any essential matter.
- (4) Mere non-compliance with the regulations, of itself, can never be the only basis on which to refuse a faculty petition. It is necessary to consider whether the particular memorial in question is inherently desirable, or at any rate not undesirable, whether or not it complies with the standards of the regulations.

The Arches Court noted that this section of their judgment was not essential to the determination of the appeal in the case that was before them; but they expressly stated that they intended it *"to be of assistance to chancellors, clergy and all others involved in administering the faculty jurisdiction in relation to memorials in consecrated churchyards"*.

11. In a characteristically learned judgment in *Re St Laurence, Scalby* [2019] ECC Yor 3, Chancellor Collier QC (in the Diocese of York) traces the development of, and the rationale for, the practice of setting aside specific areas of churchyards for the burial of cremated remains, marked by individual memorial tablets, provided they are laid flush to the ground, and also for

including within churchyard regulations a specific prohibition on ministers permitting upright memorials to mark the burial of cremated remains. The reasons for the Chancellor's unwillingness to authorise upright memorials to mark cremated remains in an area already set aside by faculty for such remains is because such memorials are out of proportion to the size of each plot and might cause a tripping hazard; and also because the management of the ground between upright memorials in narrow rows can be difficult. However, at paragraph 26 of his judgment, the Chancellor made it clear that there will be cases where an application may well be permitted for an upright memorial. In that particular case, the minister and the churchwarden (as petitioners) wanted the Chancellor to authorise the setting aside of an area for cremated remains in the churchyard extension, and to authorise a variation of the standard churchyard regulations so as to allow the incumbent to permit the future erection of upright and 'desktop' memorials to mark interments of cremated remains there. The Chancellor was satisfied that the petitioners had made out a satisfactory case for those proposals; and he granted a faculty accordingly.

12. In *Re St Mary, Great Chart* [2022] ECC Can 2 (in the Diocese of Canterbury) the petitioner wished to install a replacement memorial on his parents' grave. The design included images of a dove, a stairway to heaven, and two swans. The inscription included a verse of poetry written by the petitioner's daughter; and it ended with an x (the symbol of a kiss). There was an objection that the proposed design would not be in keeping with that part of the churchyard where the memorial would be located; and that this might set a precedent for future headstones with designs that were out of kilter with that section of the churchyard. The PCC were supportive of this petition, as was the incumbent; and the DAC had also recommended the design for approval by the court. The Commissary General (Robin Hopkins) granted a faculty for the proposed design of the memorial, subject to a condition relating to the inscription. In the course of his judgment (at paragraph 11), the Commissary General recorded that in assessing the appropriateness of the proposed design, in particular in light of the points of objection, he had derived assistance from the principles discussed in a number of other decisions of the consistory courts of other dioceses. So far as relevant to this present petition (where there is no issue as to the proposed inscription), the Commissary General highlighted (on a non-exhaustive basis) the following examples of such principles and decisions:

(1) There is no right to erect a monument in a churchyard except by permission granted by a faculty (though this is often delegated to the incumbent minister). Headstone wording and imagery must be consistent with the consecrated status of churchyards; and they must be appropriate, not only from the perspective of petitioners, but also (as far as can reasonably be assessed) for future generations. In *Re Christ Church, Harwood* [2002] 1 W.L.R. 2055 at page 2056, Chancellor Holden put it this way:

The overall beauty and tranquillity of a churchyard is only as good as its constituent parts 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 a family of the deceased has the sole right to decide what is, and what is not, appropriate by way of memorial, not least because ... the family do not own the land in which the remains are placed, or on which the memorial is meant to be placed.

(2) Where a proposed design is contrary to the applicable churchyard regulations, the fact that there are other memorial headstones in the same churchyard that are also contrary to those regulations will not be a sufficient justification without more. On the other hand, the presence of other headstones that similarly fall outside the relevant regulations is a relevant consideration.

(3) It is appropriate to give weight not only to the views of the PCC and the incumbent, but also to pastoral considerations.

In giving reasons for his decision, the Commissary General noted (at paragraph 13 (vi)) that whilst he had given weight to the objectors' concern about the risk of the instant faculty setting a precedent for others in this churchyard, each petition for the introduction of a new or replacement headstone would be assessed on its own merits, including by reference to the proposed design, and its positioning in relation to the church and to other headstones. The grant of the faculty in that case did not mean that a faculty would necessarily be granted for other comparable proposals in future.

13. There is one final authority to which I should refer. That is the decision of my predecessor, Chancellor McGregor, in *Re St Denys Stanford in the Vale* [2019] ECC Oxf 1. The petitioner wished to re-locate the headstone at the grave of her son by a small distance sideways, so that it would be aligned with what she believed to be the centre of the head of her son's grave. The vicar and the churchwardens objected on the grounds that: (1) realigning the stone would make it stand out amongst other stones in the churchyard with which it would not be in line; (2) headstones were aligned with those in rows behind them "*for dignity, and creating an orderly environment*"; (3) the petitioner had agreed in writing to the headstone being aligned with the stones behind; and (4) allowing the petition would be seen as creating a precedent. The Chancellor did not consider that the first and fourth objections carried much weight; but the second and third objections did; and so he refused to grant a faculty. The vicar was entitled to require such uniformity of alignment of monuments as he thought fit, within the parameters of the churchyard regulations; and the petitioner had agreed in writing to the monument being placed where it was, even if there had been a mistaken understanding on her part. The court had a discretion whether to grant the faculty sought by the petitioner to re-align her son's headstone. The onus was on the petitioner to persuade the court that it should do so; and she had not discharged that burden.

14. At paragraph 15 Chancellor McGregor said this:

I consider that the second objection – headstones are aligned with those in rows beyond them '*for dignity, and creating an orderly environment*' – is a significant matter. A parish is entitled to maintain a certain standard of uniformity and order in a churchyard; and an incumbent is entitled to determine how that should be achieved in terms of the alignment of monuments. Tom's headstone is aligned with the headstones in the rows behind it. I consider that it is legitimate for the incumbent to require monuments to be aligned in that way as he says, '*for dignity, and creating an orderly environment*'.

At paragraph 17 the Chancellor did not consider that the fourth ground of objection – that allowing the petition would create a precedent – carried a great deal of weight:

I can see that allowing Tom's headstone to be re-aligned in the way proposed could result in other parishioners seeking to align monuments in a different way from that which the vicar is willing to approve. But, as the vicar recognises, each case falls to be considered on its merits and at least so far as the law is concerned, a decision on the facts of one case is not determinative of other cases with different facts.

The objections

15. Having summarised the applicable law, I now turn to the objections and the petitioner's response to them.

(1) Mrs Gay Edwards

Mrs Edwards is one of the churchwardens of St Mary's, having been so during the last interregnum, when she discussed the churchyard, and the regulations, with the then Area Dean. She wishes to object to the installation of a granite memorial stone to commemorate Mr and Mrs Watts in an area of the churchyard designated for ashes, and marked by tablets and ledger stones. Her reasoning is this:

- (a) This stone would overshadow the ledger stones nearby in the row of ashes, which could indicate that those deceased are of more importance than the other interments.
- (b) The churchyard of St Mary's is already under pressure for available space. The incumbent and PCC have worked hard to plan how to accommodate the parishioners who legitimately require sites for interment. The row under question was chosen because it leaves spaces available for further burials in nearby positions.
- (c) The balancing base for a memorial stone impinges on the space around the next ledger stone, further reducing the space available for more ledgers.
- (d) The PCC feel that the Diocese of Oxford Churchyard Regulations should be seen to be consistently applied for all villagers, regardless of whether the applicant can afford the faculty fee.
- (e) The introduction of a memorial stone within a row of ledger stones sets a precedent which upsets the careful planning for use of the available space.
- (f) The incumbent and the PCC spent much time considering the place on the ground, and discussing the validity of the rules, coming to the conclusion that such an erection is without the Churchyard Regulations.

Mrs Edwards did not wish to become a party to the formal proceedings, preferring that her letter of objection should remain on record, for the Chancellor to take into account, when deciding whether to allow the erection of an upright granite memorial stone in an area within the churchyard reserved for ashes, which are marked by flat ledger stones.

(2) Mr Humphrey Lloyd

Mr Lloyd is a member (and treasurer) of the PCC. He objects to the proposal for an upright memorial stone to be placed in the churchyard in an area of ashes marked with tablets and ledger stones because it would not comply with the Diocese of Oxford Churchyard Regulations. It would be inconsistent with neighbouring ashes plots, which have ledger stones. The PCC

debated this proposal at its meeting on 13 July 2022 and concluded that it did not approve. Mr Lloyd considers it important that the regulations are seen to be applied equally to all parishioners, and that a precedent is not set by allowing this proposal. Mr Lloyd was pleased to learn that the Chancellor would take his letter into account when reaching his decision on the proposal and he therefore confirmed that he did not wish to join in the proceedings formally.

(3) Mrs Lesley Charnock

Mrs Charnock objects to the application to install a granite upright stone in an area designated for ashes marked with tablets and ledger stones because she considers that installing an upright stone in this area would be completely out of character. She is not sure if the petitioner or her deceased relatives are, or were, parishioners but clearly those whose relatives have been interred in the churchyard already have been happy with the churchyard rules, which are for flat stones. If the petitioner wishes to have an upright stone memorial, Mrs Charnock is not quite sure why they could not agree to have a plot (should it be possible) in another part of the churchyard. She understands that money has been offered to enable this to happen, which Mrs Charnock does not think should influence anyone. Mrs Charnock would like her letter to remain, and to be considered when a more legal and formal discussion takes place.

(4) Mrs Pamela Lilley

Mrs Lilley, a member of the PCC, objects to the grant of a faculty for the installation of a granite upright memorial in the designated ashes area of St Mary's churchyard. At its meeting on 13 July 2022 the PCC thoroughly discussed this matter and unanimously resolved to uphold the current Diocese of Oxford Churchyard Regulations as they apply to the churchyard. Mrs Lilley objects to the grant of this faculty on the grounds that a precedent would be set, inevitably leading to further applications for unsuitable monuments to be erected. This would make it very difficult, if not impossible, for the incumbent and churchwardens to properly maintain the church and its premises in a decent and appropriate manner, both now and in the future. Mrs Lilley is happy to leave it for the Chancellor to take note of her objection when the matter comes to court, and would not be submitting Form 5.

(5) Mrs Catharine Frances Meek

Mrs Meek is a regular member of the congregation and church choir and has been a member of the church since July 1967. In support of her objection, she cites regulation 13 of the Churchyard Regulations, which makes it clear that a grave may be marked by a monument, with ashes to be marked by a ledger stone. She produces three photographs showing (i) the rows of ledger stones, at the top of the left-hand row of which is the interment in question, (ii) the actual interment, and (iii) a general view of memorials in the area around, with some of the ledger stones in the foreground. She invites the court to note that memorials are almost entirely in limestone, with ledger stones being made of harder stone. Mrs Meek understands that it is the intention of the PCC to continue the left-hand line as ledger stones to the boundary wall. The right-hand line ends at a row of old grave memorial stones. The introduction of a vertical, memorial stone into the area reserved for the interment of ashes commemorated with ledger stones would interfere with the line of this area of interred ashes, and would not conform with the regulations. A granite memorial stone is not sympathetic to the general style of memorials in the graveyard, as Mrs Meek says is illustrated by the photographs. Mrs Meek invites the court to reject the application to erect a memorial stone to mark an interment of ashes in the graveyard at St Mary's Church in order to conform with the rules laid down in the Diocese of Oxford

Churchyard Regulations, and also to prevent the creation of a precedent. Mrs Meek wishes her letter of objection to remain on the record for the Chancellor to take into account when deciding whether or not a faculty should be granted to erect a granite upright memorial for Mr and Mrs Watts in an area of churchyard reserved for ashes marked by ledger stones; and she did not wish to become a party to the formal proceedings.

(6) Mr Alan Neal

Mr Neal is another member of PCC. He wishes to register his objection to the proposed installation of a granite, upright memorial in a specific location within the churchyard of St Mary's. Over the years, the PCC have worked continually to maintain the churchyard as a place of peace and dignity for all by following diocesan guidance, This has involved allocating a specific area for the burial of ashes with the understanding that the space would only be marked by a tablet or ledger stone. The proposal to install an upright memorial in this area, as described in the faculty petition, would destroy the orderliness and symmetry of this space, which is also contrary to the PCC's understanding of the guidelines which they have tried to follow. Mr Neal wishes his existing letter of objection to remain on the record.

(7) Mr Chris Mundy

Mr Munday is another member of the PCC. He wishes to object to the faculty application on the grounds that the area for which the application has been made is specifically set aside for ashes, to be marked with ledger stones. There is a shortage of space in the churchyard and, as a result, a plan was produced some years ago, approved by the PCC, to make the best use of the space available so as to allow as many village residents as possible to be buried in the churchyard if they wished. As part of this approved plan, an area was set aside where there would be rows of ledger stones above buried ashes, providing a uniform, and an attractive, area, but allowing best use of the space available at the same time. Those whose relatives are buried in that area chose to do so on the understanding the area would be kept looking uniform and attractive; and they were not expecting the area to be interrupted by a headstone which disturbs the look of this area of the churchyard. Having approved a plan for the churchyard, this should be adhered to for the benefit of all those who wish to be buried in this area (or their relatives). If this headstone were approved, it would negate the point of having a churchyard plan; and it would also be unfair, and potentially upsetting, for all those who have relatives or friends already buried there on the understanding the area would be kept flat and arranged for ledger stones. For these reasons, Mr Mundy believes that the application should be denied.

(8) Mrs Wendy Willis

Mrs Willis has been a member of the congregation at St Mary's since 1986. She objects to the proposal for the installation of a granite upright memorial to commemorate Mr and Mrs Watts. She believes this request to be inappropriate since it sets a precedent in this lovely churchyard as other commemorations are marked with legitimate flat stones. Aesthetically, it does not conform to present practice; and more importantly it breaks the churchyard rules.

(9) A J S Hooper

A J S Hooper objects to the faculty application for the proposed installation of an upright memorial to Mr and Mrs Watts in an area of the parish churchyard designated by the PCC for the interment of ashes which were to be marked by horizontal tablets set into the ground. A J S Hooper understands that some years ago the PCC, faced with the prospect of the churchyard

soon becoming full, identified a relatively small area between two rows of older graves as being available for the interment of ashes. These plots were to be marked by small plaques set into the ground. There are now 11 tablets set in the ground in two lines, with space for a few more. Not only would the upright memorial proposed by the petitioner completely upset the pattern for the existing tablets, it would take up an undue amount of space, severely limiting the area available for future interments. A J S Hooper asks rhetorically: Surely reasonable rules set by the PCC, as managers of the churchyard, for its layout should not be broken by any petitioner who wants to have special treatment which would have a detrimental effect on others.

The petitioner's response

16. Acting on my directions, the Registry invited Ms Hill to respond to all of the objections, including the one that was out of time. This she duly did, by email dated 19 January 2023, which attached three further photographs of the churchyard which I have reproduced at the end of this judgment. In doing so, I should explain that I have had regard to all of the photographs that have been submitted to this court; but these three are the only ones that were suitable for reproduction in this judgment.

17. Before dealing with the specific points raised by way of objection to her petition, Ms Hill invited the court to note that eight of the nine objections come from members of the PCC, which had the same messages and objections. Also of note is that, from the petitioner's analysis, none of the objections came from any of the families whose loved ones are buried in the vicinity. In respect of the objections from PCC members, these could be summarised into two key areas: First, that an upright headstone will take too much space compared to a tablet; and, secondly, that the headstone will disturb the look, upset the pattern, and go against the plan which the PCC have set down for the churchyard.

18. In respect of the first point, the difference in space is negligible (perhaps a quarter of a foot altogether). More importantly though, this particular grave contains the remains of two people rather than the more normal one. The proposed headstone will take a lot less space than two "tablets" (or ledger stones). Further, owing to the circumstances of the petitioner's parents dying of Covid, their wish to be buried was not possible and so they were cremated. Again, if they had both been buried in coffins that would have taken significantly more space in the churchyard than what is being proposed.

19. Secondly, in terms of the appearance of the churchyard, two of the petitioner's own photographs show that immediately behind Mr and Mrs Watts's grave is a grave with a headstone. So there are historically exceptions; and, to a different eye, a headstone on Mr and Mrs Watts's grave would perhaps be more symmetrical than a ledger stone.

20. The petitioner characterises the suggestion that the headstone will overshadow other graves, and diminish the importance of those buried nearby, as 'silly'. The churchyard is full of gravestones and memorials, large and small; and surely no-one believes that any other graves are overshadowed by others by virtue of the size, or the material, of the headstones or graves.

21. The petitioner states that she has no argument with the PCC and the plan they have put forward for the churchyard, but she believes these should really be seen as a guide and a plan, and not as a set of laws and rules; and, as such, in certain circumstances they can and should be reassessed, such as in the case of Mr and Mrs Watts.

22. The petitioner concludes by making a couple of final points:-

(1) In Mrs Charnock's email there is a suggestion that "*money has been offered*". The petitioner does not follow this comment; but if there is any suggestion that Mr and Mrs Watts's family have offered anyone any financial incentive to support this proposal, that is categorically not true, and they consider it very offensive to make that type of accusation.

(2) Mrs Charnock also expresses herself as unsure as to whether Mr and Mrs Watts were parishioners. The petitioner explains that they had lived in Long Crendon for around 25 years following their retirement. They certainly had visited the church; and, from discussions with the clergy, as such, they had every right to be buried in the churchyard.

Analysis and conclusions

23. An analysis of the photographs supplied by the petitioner (and annexed to this judgment) reveals that:

(1) an upright headstone memorial (commemorating Mr and Mrs Winfield) stands immediately in front of the grave plot where the cremated remains of the petitioner's parents have been laid to rest;

(2) that headstone stands next to an angled ledger stone which is not flush with the ground;

(3) the two existing ledger stones next to the grave plot where the cremated remains of the petitioner's parents have been laid to rest are not flush with the ground; and

(4) there is an upright headstone memorial marking a grave plot immediately behind the grave plot where the cremated remains of the petitioner's parents have been laid to rest.

All of these points tend to weigh against the objectors' concerns that an upright headstone will disturb the appearance, upset the pattern, or go against the plan which the PCC have set out for this churchyard. However, it is also clear from the photographs that permitting an upright headstone in this location will interrupt, and disrupt, the line of ledger stones – some flush with the ground, others wedge-shaped or '*desk-style*' – which presently mark this row of cremated remains plots and their proposed extension towards the churchyard boundary wall.

24. In my judgment, the petitioner has discharged the burden of proof (which lies upon her) of demonstrating why a faculty should be granted authorising an upright headstone memorial commemorating her late parents notwithstanding that their cremated remains lie in a row of plots set aside for the interment of cremated remains. Although the general prohibition against such a memorial, contained within the applicable churchyard regulations, is a highly relevant factor, it is not determinative but is only one of the constellation of infinitely variable factors which the court must consider on the facts of any particular case. Mere non-compliance with the regulations, of itself, can never be the only basis on which to refuse a faculty petition. It is necessary to consider whether this particular memorial is inherently desirable in its proposed location within this churchyard even though it fails to comply with the requirement of the applicable churchyard regulations. I have concluded that it is so desirable for the following reasons:

(1) The ledger stones in this cremated remains area of the churchyard have not been uniformly laid so that their upper surface is flush to the ground. To this extent, there has already been a divergence from the strict requirements of the churchyard regulations.

(2) The proposed upright headstone will not materially hamper the cutting of grass or the maintenance of the churchyard generally (as the minister has acknowledged). The row in which the cremated remains lie is not so narrow as to render the management of the surrounding ground difficult; and an upright memorial will not represent any tripping hazard.

(3) In my judgment, an upright headstone will not look out of place in this part of the churchyard. There are already such memorials in front of, and behind, the grave of the petitioners' parents. I do not accept that an upright headstone in this area would be completely out of character. Nor do I accept that it would destroy the orderliness and symmetry of this part of the churchyard.

(4) I do not accept the contention that an upright headstone would overshadow the neighbouring ledger stones in the row of ashes, or that it might indicate that Mr and Mrs Watts are (or were) of any more importance than anyone else buried nearby. The churchyard is full of gravestones and memorials, both large and small; and no rational visitor to the churchyard could sensibly believe that some graves are overshadowed by others by virtue of the size, or the material, of their headstones.

(5) An upright headstone will not take up materially more space than a ledger stone of the kind that has already been authorised in this part of the churchyard. In any event, as residents of the parish, both of the petitioner's parents had a legal right of burial in the churchyard. Even more space would have been taken up had they been buried in separate coffins in a double-depth burial space; and still more had they been buried separately.

(6) Now that their cremated remains have been laid to rest in this churchyard, there can be no question of exhuming their bodies for them to be reinterred in another part of the churchyard, where upright headstones are permitted.

(7) Notwithstanding the churchyard regulations, it is always open to a person to petition for a faculty authorising a memorial that falls outside those regulations.

(8) As the authorities make clear, because the grant of such a faculty as the petitioner seeks is intensely fact-sensitive, depending upon the particular circumstances of the case and the particular location of the relevant grave, it will not operate as a precedent for any later faculty applications. There is no merit in any argument that this will represent the *'thin edge of the wedge'*.

(9) Since this memorial will stand for many years, and will be viewed by future generations for whom the Covid pandemic may be an historic event, rather than the recent tragedy it has been for so many who have lived through it, the particularly sad circumstances of the tragic deaths of the petitioner's parents, so close to each other, is of limited relevance in determining the instant faculty application. However, it does help to explain how Mr and Mrs Watts came to be buried in a cremated ashes plot. Even with the assistance of an oral hearing, no court is likely to be able to come to any clear conclusion as to whether a mistake was made when Mr and Mrs Watts were buried in their present location within the churchyard. It may be that, on full inquiry of the relevant church authorities in the spring of 2021, their bodies could have been buried elsewhere in the churchyard, in a place where an upright headstone might have been erected consistently with the churchyard regulations. However, there is no reason to reject the petitioner's assertion that she genuinely understood, and believed, that, owing to the sad circumstances of her parents' contemporaneous deaths from Covid, their wish that their bodies should be buried was not possible, and so they were cremated.

Disposal

25. For these reasons, the court will grant the petitioner's request for a faculty for an upright headstone memorial to mark the last resting place of her late parents. In the first instance, the period allowed for this headstone to be installed will be six (6) months from the date of the grant of the faculty.

26. In the usual way, I charge no fee for this written judgment. The petitioner must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with the various objections.

27. In conclusion, I must emphasise that this decision should not be taken as setting any precedent for any future application for a faculty for the erection of any memorial in this churchyard which falls outside the scope of this diocese's churchyard regulations .

David R. Hodge

The Worshipful Chancellor Hodge KC

The Feast of St Valentine

14 February 2023

The flowers and the wooden stick and plaque mark the last resting place of the petitioner's parents





