

Re St Margaret, Lowestoft

Judgment

1. This is the determination of a petition by the Rector and churchwardens dated 31 July 2013 seeking a faculty for the removal of wooden and plastic kerbstones from around certain graves in the churchyard of this Grade I listed church.

Background

2. Several months ago the Rector of this parish, the Revd Michael Asquith, was approached by a parishioner seeking permission to place wooden kerbstones around a family grave. When Revd Asquith explained that he did not have authority to permit such an addition, the parishioner in question raised an understandable complaint that there were an increasing number of graves in the churchyard to which wooden or plastic kerbstones had been added. I should note at this stage that those kerbstones had been added to the relevant graves without proper authority and, therefore, illegally.
3. In response to this conversation Revd Asquith quite properly sought the advice of the Diocesan Registrar, who on 19 February 2013 confirmed that under the Diocesan Churchyard Regulations wooden and plastic kerbstones were not permitted in churchyards. The experience in the parish suggested that the presence of the existing kerbstones were seen by some as setting a precedent which was encouraging others to believe that the addition of kerbstones to their family graves would be permitted. The potential for future pastoral difficulties caused by the inevitable refusal of future requests for kerbstones is manifest. The PCC considered how properly to address this issue and on 12 March 2013 the 17 members present voted unanimously to apply for a faculty to remove all of the existing wooden and plastic kerbstones in the churchyard.
4. Once this decision had been made the petitioners issued a petition asking for permission to remove the kerbstones. The statutory procedure in a faculty application requires the petitioners to display two public notices (one inside and one outside the church) setting out the proposed works for a period of 28 days. In this case, the petitioners went much further than that. They displayed five notices – one inside

the church, one on the parish hall's external noticeboard and three at prominent locations in the churchyard. In addition, a notice was placed in the local press giving notice of the proposed works and a laminated letter was placed on each of the affected graves. The letters explained that the kerbstones had been added without authorization, that Revd Asquith did not have the jurisdiction to give such authorization and that the matter was being placed in the hands of the Diocesan Chancellor. It invited anyone seeking further information about the issue to contact the Rector.

5. The various public notices have elicited responses in relation to the grave of Mr Reginald Nunn. Both Mr Nunn's wife (Mrs Dyer) and son (Mr Glyn Nunn) have contacted the Registry raising concerns about the removal of the kerbstones from around Mr Nunn's grave. Mrs Dyer has also raised a number of other concerns about her experience within the church, but such concerns are, unfortunately, outside the scope of these proceedings. In addition, although no other objections were received at the Registry, one family has contacted Revd Asquith about a grave and one family has removed the kerbstones from their family grave.
6. In light of the responses of Mrs Dyer and Mr Nunn, they were each given the opportunity to file formal objections and become parties opponent in this petition. Instead they have elected to leave me to take their written representations into account in determining this petition, and I do so. I am satisfied that this case should be determined upon consideration of written representation and I order that it shall be so determined.

The objections

7. Mrs Dyer, who is 85 years old, is on the electoral roll of this parish and has been a member of the congregation of the church for over 40 years. Her late husband was buried in the churchyard upon his death in 1978. Mrs Dyer's letter to the Diocesan Registrar dated 24 July 2013 states that the wooden kerbstones were first placed on the grave in 1986 and it seems that they have been replaced over time as necessary. Mrs Dyer has been greatly upset by the suggestion that the kerbstones may need to be removed from her late husband's grave, and by the manner in which this has come to her attention. She raises the entirely understandable question: Why are concerns raised only now, bearing in mind that the kerbstones have been in place for more than 25 years. It is clear from Mrs Dyer's letter that the pastoral relationship between herself and Revd Asquith has been seriously damaged, by this and the other issues she raises.
8. Mr Glyn Nunn writes out of concern for his mother's distress and the impact that this has had on her health. He states that the grave has been visited daily by his mother since his father's death and that the

kerbstones have been maintained annually. He asks that the kerbstones be left in place, at least for the remainder of his mother's life.

The law

9. The Diocesan Churchyard Regulations set out the rules relating to, amongst other things, the erection of memorials within churchyards in the Diocese of Norwich. The Regulations reflect policies approved nationally by the Church Buildings Council. At paragraph 18 the Regulations state:

“No monument shall include any kerb, railings, fencing, chippings of any kind, ... plastic materials ... or any other object or thing unless it is expressly permitted by these regulations.”

The Regulations are important in ensuring a consistent approach throughout the diocese and are in place to ensure the simplicity of maintenance of churchyards which otherwise might be left untended or at least under-tended. For there to be an inconsistent approach without objective justification will inevitably lead to a sense of injustice or unfairness which the Church must endeavour to avoid. It is the pastoral difficulties which follow from this sense of unfairness which the petitioners are seeking to avoid in the future.

Determination

10. I am aware that the kerbstones placed around the graves appear to have been in situ for many years. Certainly, in the case of Mr Nunn they have been in place for more than 25 years. Nevertheless, in each case the kerbstones were placed in the churchyard without proper authority. The passage of time does not mean that that authority is somehow implied. Given the timescales involved, it is clear to me that the failure of previous incumbents to ensure that the Churchyard Regulations have been respected has created problems which the PCC and Revd Asquith should be commended for attempting to address. This is particularly so given the pastoral sensitivities which are inevitably engaged in such matters.

11. I have considered whether the passage of time should mean that the kerbstones in this churchyard should be allowed to remain in place. I have come to the conclusion that it does not. If they were to be allowed to remain, it could create a real and justified sense of grievance in those families who have acted appropriately in seeking permission for the installation of kerbstones, but have been refused. It is clear from the information provided to me that this has happened with at least one family and there is every chance that it will happen again in the future. In addition, there are, it must be assumed, incumbents throughout the diocese who have been appropriately applying the Regulations and refusing families permission for the installation of

kerbstones on graves. Again, those families (and indeed incumbents) could equally feel aggrieved that those who have introduced kerbstones without the proper authority have been treated more leniently than themselves.

12. In light of the above it is my intention to grant the faculty sought but, given the lapse of time here, subject to stringent conditions. The kerbstones in question, as part of the memorials erected to the memory of the deceased, are owned by those who erected the memorials or, where they have died, to the heir-at-law of the person commemorated (see *Re Welford Road Cemetery, Leicester* [2007] 2 WLR 506). I am aware that some families may wish a little time to become accustomed to the idea that the kerbstones must be removed and indeed to remove the kerbstones themselves, rather than leaving the PCC to do so. Given that the public notices were placed around the churchyard on 3 July 2013, and in light of the fact that some families may visit the graves only on special anniversaries, I shall order that the petitioners shall not remove the kerbstones before 31 July 2014. In the meantime, the petitioners shall ensure that laminated notices are placed on the graves affected by this petition until such time as the family of the deceased has confirmed their awareness of this order. The notices shall indicate that it has been ordered by this court that the kerbstones should be removed, and that if that has not been done by 31 July 2014, the PCC is authorized to do so. This should give families the chance to become accustomed to the idea that the kerbstones are to be removed and give them a full opportunity to remove the kerbstones themselves should they wish to do so.
13. I pause here to note that there is no need for the petitioners to place such a notice on the grave of Mr Nunn. Mrs Dyer was clearly distressed by the laminated notice which was placed on her late husband's grave in July and as both Mrs Dyer and Mr Glyn Nunn are informal objectors they should receive a copy of this judgment which will give them full and proper notice of the decision.

The grave of Mr Nunn

14. The petitioners are clearly aware of the pastoral difficulties which already exist between Mrs Dyer and Revd Asquith. It is clear that Revd Asquith would like to heal the relationship if at all possible and he has written to the Registry indicating that he would be content for any faculty granted to permit the kerbstones around Mr Nunn's grave to remain during Mrs Dyer's lifetime. I have considered this possible solution to the present difficulties but have concluded that it would not be appropriate. Although other families have chosen not to make representations about the ongoing proceedings, it is clear from the photographs and information provided to me that at least some of the affected graves are still regularly tended. To make an exception in this case for Mr Nunn's grave would, in all likelihood, create a strong sense

of injustice in those families whose kerbstones are to be removed sooner. Mrs Dyer does, of course, have the same period (of approximately eight months) as the other families in which to become reconciled to the idea of the kerbstones being removed.

15. It is my sincere hope that the conclusion of these proceedings will provide a turning point for those affected by these proceedings, especially Mrs Dyer and Mr Glyn Nunn. The circumstances in this churchyard have been the source of great distress to some. The petitioners seek to ameliorate any future pastoral difficulties in the management of the churchyard and to prevent such a situation from arising again. The church should be a place of healing and reconciliation and I trust that all those concerned will move forward in a spirit of Christian fellowship to ensure that this church continues to fulfil God's purpose in this parish.

I hereby direct that a faculty for the proposed works shall pass the seal subject to the following conditions:

- i. No works shall be undertaken before 1 August 2014;
- ii. The petitioners shall within 28 days of the date of this order fix to each of the affected graves (except that of Mr Reginald Nunn) a laminated notice indicating that this court has ordered that the kerbstones must be removed from the grave, and that if that has not been done by 31 July 2014, the PCC is authorized to remove them.
- iii. The works undertaken by the PCC are to be executed under the direction of the incumbent and completed by 30 November 2014 (or such extended time as may be allowed).

Ruth Arlow
Chancellor

26 November 2013