

In the matter of St Mary Magdalene, Lyminster

And in the matter of Vernon David Madron, deceased
and Cary Dean Madron, deceased

Judgment

1. By a petition dated 7 February 2017, Mrs Margaret Marcelle Madron seeks a faculty for the introduction of a memorial into the churchyard of St Mary Magdalene, Lyminster. It is to mark the grave in which the remains of her husband were interred on 2 March 2016. It is intended that when the petitioner herself dies, her remains will also be interred in this grave. The petitioner also wishes for the remains of their son, who died within hours of his birth in 1966 to be exhumed from where they lie buried, reinterred in this plot, and his name included in the proposed inscription. There is no separate petition seeking a faculty for such an exhumation.
2. The petitioner indicated her consent to this matter being determined in writing on the basis of the material she has placed before the court. However, there were certain matters which required clarification and I invited the petitioner to submit additional information which she did in an email of 19 June.

The proposed memorial

3. The proposed memorial is to be fabricated of polished black granite. As illustrated in the photograph accompanying the petition, it is to have kerbs, also of polished black granite, infilled with grey chippings, and with a black cube of granite to stand as a vase in the centre of the grave. The proposed inscription for the headstone will records the details of her husband and son, with a space for her own particulars to be inscribed in due course.

Misrepresentation in original application

4. The request for the introduction of the memorial used the pro-forma at Appendix E of the Chancellor's General Directions. It is dated 15 August 2016 and signed by the petitioners and countersigned by a monumental mason whose signature is illegible but I assume to be of the firm FA Holland & Son, Funeral Directors of 8 Terminus Road Littlehampton. The signatures affirm the following express representation, directed to the incumbent:
"I/we have read the General Directions of the Chancellor of the Diocese concerning Memorials in Churchyards and claim that you have power under those Directions to permit the introduction of the proposed monument into the Churchyard."
5. This representation was false. It was self-evident that the incumbent did not have power to introduce the memorial because (a) it was to be fabricated of polished black granite; (b) it

was to include kerbs and vases/flower holders and (c) it was to be infilled with grey chippings. Whilst I might be prepared to overlook the shortcoming on the petitioner's part in not fully understanding the declaration she was making, the fault of the monumental mason is egregious. I will instruct the registrar to write to the firm and unless it can provide a signed undertaking that it has read the Directions and that it will take care not to make false representations in the future, I will consider making an order prohibiting the firm from carrying out work in any consecrated churchyard of the diocese of Chichester which is subject to the faculty jurisdiction. Had FA Holland & Son been more professional, much of the petitioner's distress and heartache might have been avoided.

Procedural history

6. The petitioner's request fell during a vacancy in the benefice and a response therefore came from the two churchwardens in the form of a letter dated 15 August 2016. Their response was entirely proper and exactly what I would expect of diligent and responsible holders of their office. They indicated the myriad ways in which the proposal did not conform with the Directions. They noted that the existence of other non-compliant memorials in the churchyard did not amount to a precedent for acting in breach of the Directions, and expressed their understandable reluctance to do something which might prejudice or embarrass the incoming incumbent.
7. On 30 August 2016 the petitioner wrote to the Right Reverend Dr Martin Warner, Bishop of Chichester, describing the nature of the proposed memorial and indicating that its introduction had been refused by the churchwardens. She continued:

“I want my family grave to look smart and tidy with low maintenance as my health is not good and it is not easy for me to keep it tidy as it is.

There are many memorials existing in the churchyard that are of varying colours of polished granite with kerb stones and solid slabs some including numerous vases. I would be grateful if you would afford me the same privilege as others to erect something with clean simple lines similar to the attached picture but excluding some of the vases.”
8. The Bishop of Chichester's office sent a holding reply, whilst the matter was investigated, followed by a substantive response from Dr Warner himself on 7 October. In a fulsome and pastoral letter, the Bishop indicated he had no jurisdiction in the matter, but suggested an alternative material for a headstone and lettering which would comply with the regulations. He further advised the petitioner, again entirely correctly, that were she not minded to accept his suggestion, then the proper course would be to seek a faculty from the Chancellor. This she has now done.

The petitioner's case

9. Due to the paucity of detail in the petition, I sought further information from the petitioner, which she duly provided, on two discrete matters. First she explained that her son had died on the day that he was born (which I assume was 4 April 1966) due to a genetic blood condition. The petitioner herself was very ill spending a month in hospital. Accordingly she was not present when her son was buried. She states:

“My husband was advised by FA Holland to have [their son] buried in a shared grave which greatly upset myself. When I eventually came out of hospital and we discussed

the matter it was decided that whoever was the first to pass away, that Cary would be exhumed and buried with them in the family grave. This was and is the wish of my eldest son also.”

10. As to the proposed memorial itself, the petitioner said this:

“The reason why we wanted this memorial was that it is hard wearing easy to maintain and will stand the course of time. It has clean simple sleek lines and not ostentatious like some already in the churchyard. This is important to myself as I do not enjoy good health with my mobility progressively getting worse as I suffer from a heart condition, chronic obstructive pulmonary disease, severe arthritis, osteoporosis and am currently in remission from metastatic adenocarcinoma. This means that I will not be able to keep the grave tidy as I struggle to do at the moment. This will be exasperated by the fact that the church is no longer going to cut the grass at the rear of the churchyard where the grave is located. Some of my husband’s ancestors on his maternal side are buried in this churchyard and my husband has lived in the parish for more than 70 years having been born in India to a father who was an RAF Warrant Officer posted there during wartime. It was his and my wish to be buried there because it is also in sight of our home for the past 46 years which is just one field away.”

Views of priest-in-charge, PCC and DAC

11. Information provided in the petition by the PCC indicates that were this petition to be allowed, it would make it very difficult for them to apply the Churchyard Regulations with integrity in the future. It also highlights the difficulty that kerbs and chippings present for churchyard maintenance, and grass mowing in particular. Whilst some memorials have been unlawfully introduced in the recent past, they are limited to one particular area in the churchyard and are less in keeping with the historic fabric of the church. The Reverend Thomas Robson, priest-in-charge, has commendably adhered to Churchyard Regulations, notwithstanding the culpable neglect of one or more of his predecessors.

12. The DAC Notification of Advice, dated 15 March 2017 does not recommend the proposal, but its justification is unhelpfully circular in stating nothing more than “the proposed headstone is not compliant with the Chancellor’s General Directions 2016”. The minute of the DAC’s meeting, forwarded under cover of an email dated 15 March 2017, is rather more constructive in assisting the court. It records how black granite was considered inappropriate for the surroundings, and that kerbs and chippings pose certain risks. It commended a light grey granite headstone.

The law

13. I unhesitatingly adopt the clear language which I deployed as Chancellor of the Diocese of Leeds in *Re St John the Baptist, Adel* [2016] ECC Lee 8, and which was approved and applied by Bullimore Ch in *Re St Mary the Virgin, Eccleston* [2017] ECC Bla 4. The Churchyard Regulations in the diocese of Chichester are not to be imbued with the enhanced normativity afforded by some other chancellors to their regulations. McGregor Ch stated in *Re St John’s Churchyard, Whitchurch Hill*, Oxford Consistory Court, 31 May 2014:

“As is the case with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition.”

There is no requirement for petitioners to discharge a higher burden of proof, rebut a presumption, demonstrate a ‘substantial’ or ‘powerful’ reason or show an ‘exceptional’ case. Each petition will be determined 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 doctrine of the Church of England in any essential matter.

Assessment

14. In this instance I do not consider that it would be appropriate for a faculty to issue. The black polished granite is wholly unsuitable, as are the kerbs and integral flower holders. They are not in keeping with the ambience of the churchyard setting and they will pose difficulties for the burdensome responsibility of churchyard maintenance. The unlawful introduction of unsuitable memorials in the past does not justify the current proposal, and I remind the archdeacon of the supervisory jurisdiction that exists and the right to seek a restoration order to reverse breaches of ecclesiastical law. The court will give serious consideration to a petition to remove memorials which have been introduced without authority.
15. I do not consider the arguments such as clean lines and easy maintenance are compelling. Indeed the addition of kerbs and chippings, together with integral and free-standing flower vases, would serve to increase rather than reduce the ongoing burden of maintenance. The upkeep of a simple headstone would be far less labour intensive.

Exhumation

16. I have addressed this petition solely on the suitability of the proposed memorial. I have said nothing on the issue of exhumation which only became apparent when I sought additional information. Whilst I do not wish to add to the petitioner’s disappointment in consequence of my primary determination, I must alert her to the strong presumption against exhumation articulated in *Re Blagdon Cemetery* [2002] Fam 299. There is insufficient material before me to consider the matter. Indeed it is not even clear where Cary’s remain are buried, although I assume they are in the same churchyard.
17. Without prejudicing the determination of any future petition, this may be a case where an exception could be made on pastoral grounds allowing for Cary, who lived for but a moment on this earth, to find a permanent resting place in a family grave alongside, in due course, both his parents. It would be appropriate for this to be marked by a simple upright headstone, suitably inscribed.
18. In the circumstances this petition must be dismissed with costs.