

Neutral Citation Number: [2024] ECC Lin 5

IN THE CONSISTORY COURT AT LINCOLN

In the matter of St Andrew's Church, Rippingale

And the refurbishment of a kerbed grave set and introduction of a new memorial.

Judgment

1. On 6/9/23 Lorraine Cunningham, Director of Set in Stone, emailed the incumbent at St Andrew Rippingale to explain that they had been asked by the family of James and Martha Watson to make safe the family memorial in that churchyard. Ms Cunningham explained that they were looking to put in a reinforced concrete landing slab and refitting the whole kerbed section with a ground anchor to the headstone. They had provided a quotation already to the family and were hoping to start work 'in the very near future'. It was proposed to add one further name to the memorial, but this would not happen until the incumbent had given permission.
2. On 14/9/23 the incumbent replied to this email confirming that he had spoken on 12/9/23 to 'Gabby' – I assume someone on the office of Set in Stone – that any repair to the memorial would require a Faculty, and that a private faculty petition was required with advice from the DAC.
3. He recorded that on 13/9/23 he had gone to the churchyard and there found that the existing headstone and kerb had been removed and there was a large concrete slab installed all without permission.
4. The incumbent notified the Registry who confirmed that it was in breach of ecclesiastical law to embark upon such works without authorisation after consideration of the schedule of works and the DAC having advised the Chancellor who could then consider issuing a Faculty.
5. On 22/9/23 Janet Martin sent an email to Lorraine Cunningham setting out the family history for the care of the family memorial. However, the email does not explain why the work went ahead without receiving any authorisation for the works - especially after the email of 6/9/23 from Ms Cunningham and the reply she received on 14/9/23 from the incumbent.
6. The Petition for the works was dated 6/12/23 and on 8/12/23 the Registry through Mr Diamond emailed Set in Stone with a number of queries including para 2(b) where he asks:

“Given that the works were begun prior to permission being given, I would be grateful for some explanation to the Chancellor as to why the works were begun without permission, please. I suspect that if this is not there from the start, the Chancellor is likely to return it asking for this to be provided at a later date and delay things”.

7. The answer from Set in Stone was as follows:

“As mentioned above the base was badly decaying in all sections, as no changes were being made to the existing memorial and kerbs at this time the work commencing an application had been submitted for the additional inscription of Ralph Kitchen to be added to the memorial tablet with the kerbed area. Normal practice when we find an unsafe memorial we do notify the Vicar and tell him, a message was left on Neil’s phone and emails sent to make him aware of this work – this has never been a problem with any memorial of the clergy not wanting a memorial to be made safe”.

8. I am afraid that this answer did not satisfactorily explain why Set in Stone went ahead with this work without any permission being granted and 16/4/24. Mr Diamond relayed my concerns to Set in Stone asking them for more explanation why the work went ahead. The final reply from Set in Stone (no name is given for the writer of the email) dated 11 July 2024 repeated that the family had found maintenance of the memorial difficult when Ms Martin had to provide care for her late father. There was an application to add Ralph Kitchen’s name to the memorial. The mason had identified that the memorial was unsafe and

“it is standard practice to inform the Vicar when an unsafe memorial is identified. Accordingly, a message was left on Neil’s phone and emails were sent to notify him of the work. Previously there has never been an issue with the clergy objecting to making a memorial safe”.

9. The photograph attached to this email of the current state of the memorial at the point the incumbent required all work to stop, shows that the work being done to the memorial was substantial. The kerbs, chippings and memorials had been removed and a concrete base laid.
10. It is unprofessional for a mason working in a churchyard not to realise that they must have the express consent of the Vicar/incumbent to any works to the memorials in the churchyard before they begin. I find it very surprising that any mason working in the churchyards of this diocese should fail to realise that, and to believe it could be appropriate to embark upon this work without the consent of the Vicar/incumbent or with a Faculty granted. The unnamed author of the

last email from Set in Stone makes a final gratuitous comment that the incumbent's direction that all work should stop caused 'more distress to Mrs Martin'.

11. I am sure everyone regrets any distress caused to Mrs Martin and her family about this, but the cause of this is not the incumbent seeking to ensure that the law is followed but Set in Stone going ahead with this work without any permission. It is hard to credit that an experienced mason could think that such work could be started without the agreement of the Vicar or his/her reference to the DAC and the need for a Faculty.
12. I grant the Faculty for the works as requested, but I do ask that the Directors of Set in Stone undertake a review of the training they give to masons about the Churchyard Regulations and the delegated authority given to the Vicar to authorise memorials, and the requirement for Faculties granted by Archdeacons or the Chancellor for other works in the churchyard. Any health and safety issues should without fail be brought to the attention of the incumbent and their views obtained before any works commence. Any works required on any memorial or memorials outside the scope of the delegated authority to the Vicar, has to be authorised by the Archdeacon or the Chancellor depending upon the significance of the works. In this case, the nature of the work being undertake on this memorial would always have meant that the DAC would need to advise, and a Petition for a Faculty was required to be lodged in the consistory court, advertisement of the works given to give anyone an opportunity to make representations, before I could decide whether to grant a Faculty.
13. Once a memorial is in a churchyard it is a private commemoration but in a public setting. This means that any works to a memorial fall to be considered in the context of the whole churchyard and its effect upon the melded churchyard setting. It is not just a matter for the family what happens to a memorial: the churchyard is a public place and therefore people must be given an opportunity to make representations and be heard about the works proposed, and for the DAC to have an opportunity to advise the Chancellor about the proposal, before a decision is made.
14. I am grateful to the Revd Neil Bullen for his conscientiousness in dealing with this matter and ensuring that due process was observed.

HH Judge Mark Bishop
Chancellor
28th November 2024