

Neutral Citation Number: [2024] ECC Win 4



**IN THE CONSISTORY COURT OF THE
DIOCESE OF WINCHESTER**

15 November 2024

Before:

**THE WORSHIPFUL MATTHEW CAIN ORMONDROYD,
CHANCELLOR**

In the matter of:

Churchyard at St John the Evangelist in the parish of Nursling with Rownhams

**On the petition of:
Mr Sammy Cooper**

The Petitioner in person
The Reverend Graeme Dixon for the PCC of Nursling with Rownhams
The Reverend Canon Jonathan Herbert as court's witness

JUDGMENT

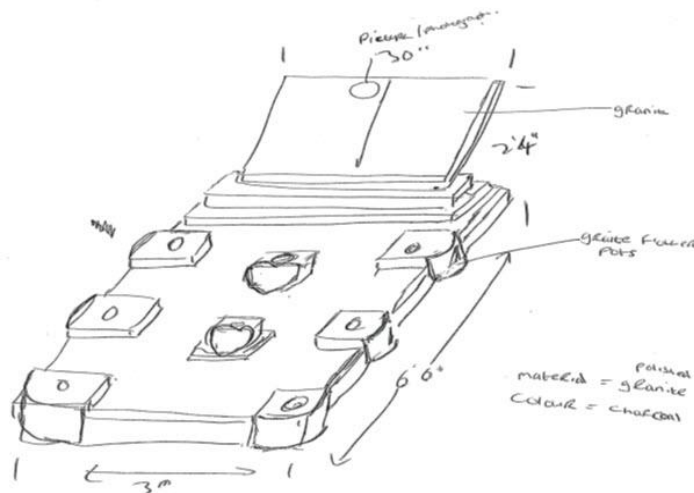
PARTIES AND PROCEEDINGS

1. By his petition dated 29 May 2024 Mr Sammy Cooper (“Mr Cooper”) seeks a faculty to install a memorial on the grave of his father in the churchyard of St John the Evangelist in the parish of Nursling with Rownhams (“the Church”). I will describe the memorial applied for in more detail below, but it is not one that is permitted within the terms of the current churchyard regulations. Those regulations are shortly due to be subject to a fundamental review.

2. The Parochial Church Council (“PCC”) was said in an email of 8 June 2024 to be supportive of the proposals on the understanding that certain modifications were made. Mr Cooper accepted some of these modifications on 22 June 2024 but not all of them. The PCC’s formal position therefore appears to me to be that it objects to the proposals before me.
3. The Diocesan Advisory Committee (“DAC”) considered the proposals at its meeting on 12 June 2024, and recommended refusal. The reasons for that decision were given more fully on a Notification of Advice from the DAC dated 6 August 2024.
4. In the light of these objections and Mr Cooper’s desire to be heard. I gave directions on 2 July 2024 for a hearing at the Church. This occurred on 18 October 2024. I was assisted by appearances from Mr Cooper, and the Reverend Graeme Dixon for the PCC. The Reverend Canon Jonathan Herbert, chaplain to the travelling community in the diocese of Salisbury, was called as a court’s witness to assist me on any particular pastoral or theological issues that I should consider in deciding the case given the acknowledged status of Mr Cooper and his family as Travellers.

THE PROPOSALS

5. Mr Cooper’s proposals were illustrated as follows in the details accompanying the petition:



6. In response to the PCC’s concerns, Mr Cooper confirmed the following:
 - a. The whole memorial would not extend outside of the plot;
 - b. The open book would not be wider than the ledger stone and would not extend over the path (i.e. would not extend outside of the plot);
 - c. There would be no picture or photograph on the book.

7. At the hearing, Mr Cooper further confirmed to me that, in terms of heights, the ledger stone would be 9” or lower; the two plinths supporting the book would each be 4” or lower; the book would be 18”; such that the height of the whole memorial would be no more than 36” at most.
8. There was a debate about the stone to be used, and whether it should be matt, satin, honed, polished or gloss. It has become very apparent to me that these words mean different things to different people, and are capable of causing considerable confusion. However, that is not an issue that need trouble me in the context of this case as after the close of the hearing Mr Cooper helpfully provided me with a sample of the stone for which he was seeking permission (as well as a sample of a finish he said would be unacceptable).
9. Mr Cooper explained that on various points these proposals represented a compromise from what he and his family would ideally have liked. Be that as it may, it is the proposals as modified or clarified that I will now consider.

THE OBJECTIONS

10. As I noted above, the PCC proposed various modifications to the proposals, not all of which were accepted. The following are outstanding and may be taken to represent the PCC’s objections to the proposals I have to consider:
 - a. The sloping book of the size proposed will be extremely heavy and presents a hazard that it may fall;
 - b. The size of the book and its stepped mounting are ostentatious;
 - c. The surface proposed is too highly polished;
 - d. It is unclear whether the memorial could be moved to accommodate a second burial.
11. The DAC’s objections, as communicated in its Notification of Advice dated 6 August 2024, were more fundamental, and related to the fact that the memorial fell outside the terms of the current churchyard regulations:

The Committee does not recommend the works or proposals for approval by the court for the following principal reasons:

The Committee were in agreement that they would not be content for this introduction that clearly falls outside of the regulations which are there to enable a sensitive consideration of an area that is not only a personal space but

a community space which tells a much wider story of the history of the location. The committee felt that the design was incongruous to the setting and surrounding memorials, there was also a concern of the proximity to the church building, the committee felt that the justification provided was not sufficient for going outside of the established churchyard regulations.

The Committee would not recommend the proposed design in this instance and did not feel this was appropriate for the proposed location/setting especially considering the close proximity to the church building.

APPROACH

12. In my earlier decision in *Re All Saints' Churchyard, Bransgore with Thorney Hill* [2017 Ecc Win 3] I reviewed the relevant principles applicable to memorials outside the terms of the churchyard regulations and concluded:

The natural starting point when considering an application for such memorials is therefore to refuse permission for them unless some good reason can be shown for a departure from the stance indicated by the regulations.

13. I was wrong. In *Re St Giles Exhall* [2021] EACC 1 the Court of Arches concluded at 11.8 that:

the right approach is 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

14. I will therefore consider the application on its merits, in the context of the objections.

CONSIDERATION

15. I can deal very shortly with the PCC's concerns as to the construction of the memorial. Mr Cooper had consulted the masons about the stability of the memorial, and whether it could be moved to accommodate a second burial, and been reassured on both points. He explained that the book would rest on supports making it effectively impossible for it to fall in the way suggested by the PCC. I am satisfied that these points have been fully addressed, and present no obstacle to a decision to approve the proposed memorial.

16. The more substantial objections are about the appearance of the memorial, and specifically about the features which take it outside of the terms of the churchyard regulations. I will set out matters counting against the grant of a faculty first, before looking at considerations that weigh in favour of a grant and coming to a conclusion.
17. The mere fact that the memorial is different to the norm does not make it harmful or objectionable, of course. An objection based simply on the fact that it falls outside the terms of the churchyard regulations cannot be sustained. That is the inevitable consequence of the decision of the Court of Arches in *Re St Giles Exhall*. A more nuanced consideration is required.
18. The memorial has clearly been designed with care to respond to the needs of a grieving family. The design draws on elements that are common in churchyard memorials. There is nothing offensive about the combination as far as I can see – although it may not be to everyone’s taste. It does not incorporate any elements (such as coloured gravel or glass chippings, photographs, or unconventionally shaped stones) that are apt to be jarring or discordant when encountered in a churchyard.
19. That said, the design is undoubtedly more elaborate than many of the memorials found in the churchyard, although I would not agree with the PCC’s use of the term ‘ostentatious’. It is also fair to record, as Mr Cooper forcefully pointed out, that it is considerably less elaborate than certain other memorials in this churchyard (in particular, certain memorials from the Victorian period).
20. Furthermore, the stone proposed (whatever word is used to describe it) is also towards the more highly polished end of the spectrum.
21. The plot on which the memorial is proposed to be located is close to the Church, a factor which appears to have been important to the DAC. It is undoubtedly true that the memorial, if permitted, will be seen in close connection with the grade II listed Church. However, it is close to what is effectively the rear of the church. The elevation in question did not seem to me to be particularly important architecturally (and moreover, although I did not hear detailed evidence on this aspect, the majority of the significance of the church as a listed building seems to me to reside in its interior). Furthermore, the plot does not appear to be visible in many public views nor in views taken by many visitors to the church; it would mainly be seen only by those visiting the churchyard.
22. I find accordingly that the introduction of the memorial would cause a very limited degree of harm to the experience of some users of the churchyard, who would find it to be out

of keeping, and also a very limited degree of harm to the significance of the adjacent listed building.

23. I do also have to consider the question of precedent, the wider effect my decision will have. Clearly, in one sense this decision does not set a precedent as each case must be considered on its own merits. However, it would be naïve to suggest that the decision will have no influence on what is to follow, as other applicants are likely to point to the court's decision in this case when seeking to justify their own choice of memorial. If this memorial is permitted, it may be difficult to draw a rational line of distinction so as to refuse other similar memorials in the same churchyard (other churchyards will of course be a very different matter).
24. In the particular case of this Church, and this churchyard, I do not put much weight on these considerations. There are very few spaces remaining to be filled in the churchyard, all to what I have described as the rear of the church. There is accordingly very limited scope for further applications for memorials to cause harm to the churchyard and/or listed building, even considered cumulatively.
25. On the other side of the scales, evidently permitting the memorial would respect the wishes of a grieving family. That in itself might not necessarily be enough to overcome the objections. I do however also have regard to the particular pastoral issues that arise as a result of the cultural background of Mr Cooper and his family. They are Travellers. I accept the helpful evidence of Canon Herbert that, for Travellers, the grave bears a special cultural and religious significance. It is the only permanent 'home' in a traditionally nomadic culture. It is the focus of grief in a culture of large and tight knit family groups. The memorial is particularly important both as a sign of respect to the deceased, but also to protect the sacred space of the grave from incursions, and to identify the final resting place in a culture where not everyone is literate. I observe that the instant proposals can be seen to respond directly to those considerations (e.g. by the inclusion of a ledger stone and flower vases for the use of particular family members) but also, as Mr Cooper said, to compromise on what the family would naturally have wanted (e.g. by not including a picture of the deceased).
26. Canon Herbert also observed that Gypsies and Travellers have faced centuries of persecution and discrimination. That has in some instances originated within the church, but in general Travellers retain more trust in the church than in other institutions. In this context, it is incumbent on the church, if it is to participate in God's mission to all of His creation, to make space for travelling communities. This should include making appropriate allowances for the particular cultural traditions of those communities when it comes to memorials, whilst also bearing in mind the needs of the settled community.

27. In the instant case, it seems to me that space can be made to accommodate the wishes of the Cooper family. The memorial proposed causes only very limited harm to the churchyard and listed building, as set out above. Insofar as it would encourage more similar memorials, that effect is naturally limited by the nature and situation of the remaining spaces in the churchyard.

28. On balance, I am therefore persuaded that there is in this case a clear justification for the grant of a faculty which outweighs the very limited harm that the proposals would cause. I therefore propose to grant a faculty subject to the condition that the memorial must comply with the specifications set out above at paragraphs 5 – 7 and must be in the same stone as the sample submitted.