

**IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER**

**Re: ST PAUL RUSTHALL KENT**

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**J U D G M E N T**

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1. By a petition dated 18th January 2015, the petitioner, David Jeffrey, seeks a faculty authorising the erection of a memorial plinth and headstone of polished black granite to commemorate his father, Robert Ernest Jeffrey, who died on 2nd January 2015, aged 86 years. The lettering sought to be used is block gold. The proposed memorial falls outside the provisions of those permitted by the **Churchyard Regulations 1981**, and thus requires a faculty.
2. Robert Ernest Jeffrey was buried in the churchyard of St Paul Rusthall, Kent, on 20th January 2015.
3. The incumbent, the Reverend Ronnie Williams, and the PCC oppose the petition on the grounds that the proposed memorial contravenes the 1981 Regulations referred to above, and that the PCC are trying to enforce those Regulations. The PCC have resolved that; “future applications for memorials must adhere to the Churchyard Regulations.” They further consider that the proposed memorial is inappropriate. Overall, the incumbent stresses that he and they are trying to follow the provisions of the 1981 Regulations; “in order to have some semblance of orderliness.”
4. It is clear from the letter dated 16th January 2015 (I wonder if the date should not be 2016?) from Mr Jeffrey that relations between himself and the incumbent have, unfortunately, broken down. He is unhappy with the conduct of his father’s funeral service, and feels that he has been the victim of; “a catalogue of disappointment,” so much so that he has complained, inter alia, to the office of the Archbishop of Canterbury. Specifically, he complains that he has been prevented from complying with his late father’s wishes to have a gravestone similar to that of his own parents. As he puts it; “I fail to see why this is such an issue,

surely a precedent (I assume he means precedent) has been set by his parents stone, the exact type requested and is situated a mere 50 yards from my father's grave. The masons have told us that no etched pictorial images may be placed on a stone and that polished granite is prohibited." I cannot adjudicate over the pastoral issues, save to say that it is a matter of sadness that problems have arisen as they have, whoever may be to blame.

5. It is important that I state at the outset that precedent of itself is not automatically a conclusive reason for granting a faculty. In the first place times, practices, and Regulations change. Thus what may be accepted in one generation may not be in a subsequent one. It is noteworthy that the current Churchyard Regulations have been in force since 1981. Next, on occasions it has happened that memorials have been allowed erroneously, or have been erected, in breach of the Regulations. Such cannot be said to create a precedent, though it is not infrequently thought that they do.
6. The purpose of the Regulations is to provide a framework, easily understandable by all, of what is permitted by way of grave stone, or memorial etc.
7. I have said above that the PCC have opposed the petition. The members are unanimous in their opposition.
8. The Diocesan Advisory Committee in their Notification of Advice dated 22nd April 2016 did not recommend the proposed works, but rather supported; "the PCC's desire to ensure that the Churchyard Regulations are followed in future," and noted that they did not want to encourage an exception for fear that such might create, or perhaps be thought to have created a precedent for future applications.
9. The Archdeacon, the Venerable Clive Mansell in his email letter of 21st March 2016 did not support the petition. He stated that it seemed that a previous incumbent wrongfully allowed memorials outside the 1981 Regulations to be erected without a faculty. He stated that to allow the instant proposal would; "set an unfortunate example and exception and (that he) would not recommend it for approval under a faculty."
10. In the light of what has been said above, almost certainly a faculty was not obtained for the grave stone of Mr Jeffery's grandparents. Certain it is that none has been produced or alluded to.

11. Mr Jeffrey's arguments are concisely expressed in his letter of 30th May 2016, which I have referred to in paragraph 4 above.
12. I gave directions on 3rd May 2016, as a result of which all parties have agreed that I should deal with the petition on written representations, and without holding an oral hearing. I agree with this course, and have adopted it, though it does mean that I have not had the opportunity of hearing Mr Jeffrey in person, or of having his evidence tested in cross-examination.
13. The starting point for considering a petition for a faculty to issue for a memorial which is contrary to the Churchyard Regulations is that a memorial that does not accord with the Regulations will not be given lightly. A powerful reason must be shown before a faculty for such a memorial will be given. In **Re St Mary Kingswinford 2001 1 WLR 927** Ch. Mynors summarised the circumstances in which such a faculty could be given thus; "However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the diocese and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted."
14. Clearly grounds one and two recited above do not apply here, nor is it argued that they do. I do not consider that ground four applies, in that whilst Mr Jeffrey wants to comply with his father's wishes, that does not amount to a "powerful reason" allowing me to depart from the Regulations.
15. Insofar as ground three is concerned, a previously erected gravestone which does not comply with the Regulations, and which almost certainly was erected without a faculty cannot as I have stated above create a good precedent. It is not suggested

that the churchyard is full of similar grave stones, albeit that there may be some, and whilst I realise that Mr Jeffrey may consider it unconscionable for him not to be allowed to erect his choice of gravestone, the fact is that the incumbent, the PCC, the Archdeacon and the Diocesan Advisory Committee, all for the same reasons, oppose the petition. I find those reasons good and valid.

16. Accordingly, and for the reasons given above, I regret to say that the petitioner has not established any good and valid, let alone powerful, reasons for me to depart from the provisions of the Regulations.
17. In the premises I direct that the petition do stand dismissed, and that the petitioner do pay the costs.
18. I appreciate that Mr Jeffrey will be unhappy with my decision, and I earnestly hope that even at this stage a compromise can be reached which is acceptable to all concerned. In this context, or perhaps to help achieve this, the Archdeacon, perhaps may be prepared to remain involved.

**John Gallagher**  
**Chancellor**  
**19 October 2016**