

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of St Leonard, Ryton on Dunsmore

AND In the matter of Leslie Elliott, deceased.

C5827/2017

JUDGMENT

1. By a petition dated 9th May 2017, Mrs. Susie Biddle seeks a faculty for the introduction of a memorial into the Churchyard of St Leonard in Ryton on Dunsmore. It is to mark the grave in which are interred the remains of Leslie Elliott. I am not informed of the exact family relationship between the Petitioner and the deceased, only that she is described as a family member.

The proposed memorial

2. The proposed memorial is to be fabricated of polished dark grey granite. Detailed designs accompanying the petition show the proposed memorial to be 42 inches in height, sitting atop a plinth 6 inches in height. The plinth is 36 inches wide and 18 inches deep with five inset steps in the centre of the plinth, flanked on either side by a squat flower holder. The headstone itself would be 36 inches wide at its broadest and 4 inches deep. The principal peculiarity of the design is that it is cut in the shape of a Gypsy caravan seen face on, hence the inset steps on the plinth.

The proposed inscription and embellishment

3. The proposed memorial, not only shaped like a Gypsy caravan, would have engraved on the front face a representation of the double doors of such a caravan with blank windows and the doors flanked on either side by the engraved representation of a lit hurricane lamp. Above the doors it is proposed to be the wording "In loving memory of" in an arc shape. On the left hand door it is proposed be engraved "LESLIE ELLIOTT Died 13th April 2016 Aged 79 years A Dear Husband, Dad, Grandad and Great Grandad" followed by the quotation 'In peace I will both lie down and sleep, for you alone, O Lord, make me to dwell in safety'. Given that the inscription is proposed only on the left

hand door I assume this grave is a double plot and that Mr Elliott's Wife or Partner will ultimately be interred in the same grave. Original plans to seek kerb stones were abandoned at an earlier stage.

4. An added complication is that the proposed memorial is requested to have engraving upon the reverse as well as the front face. Permission is sought to have a representation of the rear window of a Gypsy caravan, with curtains at the window and a suspended cage containing two songbirds visible through the window. It is also requested that below the window be etched a representation of a horse-drawn two-wheeled waggon, viewed from the rear off-side corner. The lettering (and presumably the engravings too) are proposed to be coloured in silver.

Diocesan Advisory Committee advice

5. On 8th June 2017 the petition was considered by the members of the Diocesan Advisory Committee. A notification of advice was issued on 15th June 2017 where by it was indicated that the Committee had not recommended the proposed memorial. The reasons specified were as follows : "the committee were unable to recommend this memorial on account of its large size and unusual design and imagery (for which no justification was offered) and the type of stone proposed.

Public Notice

6. Notwithstanding the advice of the Diocesan Advisory Committee a public notice concerning the Petition was displayed at St Leonard's Church from 29th June to 27th July 2017. No objections have arisen following the display of that notice.

The Churchyard Memorials Regulations

7. In March 2012 the Chancellor issued regulations for Memorials in Churchyards within the Diocese of Coventry. The regulations state that a memorial should be no more than 4 feet high, no more than 3 feet wide, no more than 6 inches thick (and no less than 3 inches thick unless made of slate). The dimensions of the proposed memorial just meet the maximum height and width requirements.
8. As regards the proposed material to be used, the regulations state : "Polished granites, marbles or synthetic stone are contrary to these regulations. Memorials of this kind have become very popular in municipal cemeteries in recent years, but unfortunately these polished stones tend to stand out in a churchyard. Such stone rarely blends well with the church itself, and looks out

of place amongst memorials made from the more traditional kinds of stone. Where, through a lack of adherence to earlier diocesan rules, certain areas of graveyards have become partially dominated by such alien stones, PCCs are reminded that this is no reason to let the practice continue and are urged actively to discourage the use of such alien stones. The fact that memorials of this kind may already exist in a churchyard is no indication that another one will be permitted. However, where there is already in existence 6 (six) or more stones which are of the same material, design and colour, but do not meet these regulations at the date of publication, the incumbent may, with the Archdeacon's consent decide, on pastoral grounds, permit the continuation of stones of the same material, design and colour as those existing to complete a clearly defined area or row". It is further stated that "gilding or silvering of lettering is not permitted . . . without a faculty" and "Other shapes of memorials, such as an **open book** or like a **heart**, are not permitted". The regulations also state that only a single flower-holder should be permitted.

9. As regards the addition to memorials of engravings, the following is said : "The inclusion of symbols, whether in low or high relief can often be visually delightful and a positive contribution to their setting, provide variety of interest and avoiding the repetition of standard catalogue images but it is important to maintain an acceptable standard of design of such symbols. Frequently the motif is the traditional Christian symbol of a cross. A plain cross not exceeding 6" in height may be permitted by the incumbent without a faculty. All other symbols are only allowed by faculty and designs must be fully described on the application form. Sometimes, the engraving is flowers or reflects something of particular interest in the life of the person who has died, such as a dog, a bird, a fishing rod, a tractor, a musical instrument or a motorcycle. Provided the motif is small and well carved, there can be no intrinsic objection. After all, our churches are full of small, often irreverent, but interesting designs, and symbols, which can be seen in gargoyles, stained-glass windows and misericords. A faculty is unlikely to be granted for a headstone dominated by a proposed engraving such as an electric guitar, a teddy bear or a sports car, however much the object in question featured in the life of the deceased individual."
10. In a paragraph headed "General Approach" it is stated in the regulations : "The general approach is that each churchyard should be harmonious in appearance, and it should form a worthy setting for the church in its midst (many of which are listed buildings in conservation areas). Harmony does not mean uniformity but the design and choice of material for a memorial should seek to ensure its

successful integration with the established character of the churchyard. Headstones need not be restricted to a conventional rectangular shape. Attractive, well-conceived new designs by skilled and imaginative craftsmen are genuinely encouraged. Harmony does, however, mean that stones should be compatible with, and appropriate to, their surroundings and that no memorial should stick out like a sore thumb.....A churchyard is not a private place in which anything is acceptable. It is a place where many people have a shared interest in its appearance. Nobody wants to see the appearance of a much-loved churchyard, or part of it, spoilt by the introduction of an inappropriate new headstone or other memorial. That this has happened in various places, even in recent times, cannot be denied. One of the objects now, however, is to help prevent it happening again....”

11. The extract of the potential exception in the regulations as quoted in paragraph 8 is particularly relevant to this matter. With the petition were also sent several photographs showing numerous examples of polished granite headstones within the Churchyard, many with etched designs and gilded or silvered lettering and some with two flower holders. There is also clearly no uniformity in shape or design of the other upright memorial stones. That same point is raised in an e-mailed letter from the Rector of the Parish, the Revd David Wintle, in partial support for the petition on pastoral grounds (albeit he also specifically stated “I don’t have an axe to grind for or against the family’s case”). He affirms the presence of polished granite stones and etched designs on headstones that were erected prior to his incumbency and ‘without faculty or the permission of the Archdeacon’. The Rector, to whom I am most grateful for the further information he has been able to supply (see below) stated “I am not authorised to consider that [the other memorials] constitute a precedent, but the Chancellor . . . may possibly do so when considering the Faculty application”.

Further information now provided

12. Following the meeting of the Diocesan Advisory Committee the Rector has written to both the Diocesan Buildings Development Officer and to the Registrar seeking to furnish further details concerning the deceased and the reason for the proposed memorial. He stated “I think that the application was not helped by the fact that [the family of the deceased] are functionally illiterate and did not make their case explicitly. They were also, in my opinion, let down to some extent by their stonemason.” The Revd Wintle was able to confirm : “Mr Elliott was one of the last true Romany Gypsies to live all the time (not just for show on special occasions) in the old-fashioned gypsy-style of horse-drawn trailer, and therefore the design is relevant to his way of life

and his culture”. The response from the Church Buildings Development Officer makes it clear that the Diocesan Advisory Committee members were not informed of Mr Elliott’s unusual lifestyle, which may have assisted the Committee in understanding the request for this unusual design of memorial.

13. In fairness to the Stonemasons (J.E. Hackett & Son) I should point out that on 24th May 2017 they wrote to the Diocesan Registrar giving some explanation for the design of the proposed memorial. They stated : “The family requested a memorial which reflected Mr Elliott’s life and passions. Not only was Mr Elliott born in a traditional style gypsy caravan, he spent his entire life living in them and restoring them. Although this would not be a traditional shape headstone, the family felt that it would not be out of place in the churchyard, particularly as the grave is located behind the Church away from the currently used burial area.” That letter clearly was not referred to the members of the Diocesan Advisory Committee at their meeting on 8th June.

Previous Judgments that have assisted my considerations

14. In preparing my Judgment I have looked back to a number of previous judgments concerning memorials, in particular by Chancellor Hill, Chancellor Mynors and Chancellor Eyre. I have been assisted enormously by guidance from these experienced Ecclesiastical Lawyers.
15. An important consideration has been the comment of Chancellor Eyre in Newchapel, St James [2012] wherein it was stated : *“The requirement that there be a powerful reason if a memorial which does not conform to the Chancellor’s Regulations is to be permitted is a matter of justice and fairness to those who have erected conforming memorials. There are many families and individuals whose personal preference would be to have a memorial to a departed loved one in a form going beyond the Chancellor’s Regulations. In the vast majority of cases such persons accept the approach laid down in the Regulations and erect a memorial conforming to the Regulations. In doing so they put aside their personal preferences and accept a memorial in a form different from that which they would have chosen if given a free hand. In many instances this will involve acceptance of a memorial which they regard as second-best or otherwise unsatisfactory and such acceptance will often be combined with a feeling of unhappiness and distress. Such people would have a legitimate sense of grievance if others (perhaps more articulate or forceful or with more time, money, or personal skills) were able easily to obtain faculties for non-conforming memorials. Fairness to those who have reluctantly*

complied with the Chancellor's Regulations requires the Court to confine exceptions to cases which are truly exceptional."

16. In *Re St. Mary: Kingswinford* [2001] 1 WLR 927 Chancellor Mynors gave examples of where permission might be given for an unusual memorial :
"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 it is of a type, which may or may not be desirable in itself, of which 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."

17. In *St Mary Magdalene, Lyminster* [2017] ECC Chi 1 the following comments were made by Chancellor Hill :
"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. . . . 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."

Decision and reasoning

18. Given the conflicting nature of the material mentioned in the Petition with the Churchyard Regulations I felt it necessary to perform an unannounced visit to the Churchyard to see whether the proposed memorial was likely to 'stand out like a sore thumb' amongst the other memorials. In fact, as the photographs show, there are a very large number of polished stone memorials throughout the entirety of the Churchyard. Many of these memorials also feature gold or

silver lettering. I am mindful that the regulations enjoin Parochial Church Councils to actively discourage the use of such ‘alien’ stones, but am of the opinion that no offence is likely to be caused by the selection of polished dark grey granite with silver lettering upon the memorial to Mr Elliott. In considering the fairness and justice issues mentioned by Chancellor Eyre it would seem likely that the Family of Mr Elliott would feel an understandable grievance if they were required to abandon their desire for a polished granite stone. I note that the exception within the Churchyard regulations does not strictly apply, because it cannot be said that the other polished stone memorials would be of the “same material, design and colour” as the proposed memorial (unsurprisingly there is nothing that resembles the shape of a gypsy caravan in design) but there are a number of polished stone memorials of what might be referred to as ‘non-standard’ shape.

19. The very real issue I must consider concerns the shape or design of the proposed memorial, and the fact that engraving is sought on both the front and the reverse, which is unusual. In considering what is appropriate I must have regard not only to the character of the Churchyard itself, but also to the reasons why an out of the ordinary memorial is sought. Is there anything truly exceptional about the life of the deceased that would justify the equally exceptional step of approving a memorial that clearly stands outside the Churchyard regulations?
20. I need to look as to whether there are compelling personal or other circumstances suggesting that a faculty should be granted. There can be no doubt that the presence of true Romany gypsies within our communities is becoming a thing of the past. There can be very few people in Europe, let alone in the Diocese of Coventry, who have lived their whole existence in a traditional wooden Romany caravan. It is a way of life that remains in the public consciousness almost exclusively through literature, through drama or as a side-show at public displays, rather than being encountered on the highways and by-ways of England. For that reason I must conclude that there was something truly exceptional about the life of the departed Mr Elliott. It would seem appropriate, if at all possible, to permit acknowledgement of his unusual lifestyle in his memorial.
21. Having lived a truly exceptional life does not of itself guarantee that Mr Elliott may be commemorated by an unusual memorial. There is no doubt that the proposed memorial would be noticeably different to other memorial in the churchyard, but would it ‘stick out like a sore thumb’? I am mindful that the

family of Mr Elliott are but one small element of the grieving relatives who will visit this churchyard in the years to come. I do have to ask myself whether other visitors would look askance at the memorial? Will other people consider the proposed memorial unsuitable or even a monstrosity? On the whole I would hope not. The design is unusual, but not unpleasant, and expresses the intended representation fairly well. The proposed use of miniature inset steps in the plinth is an additional feature that shows a good deal of thought has gone into the aesthetics of this memorial. I look to the categories of unusual memorial suggested by Chancellor Mynors in Re St Mary Kinswinton. The shape of the proposed memorial would seem to fit within the first category, “*a specially designed memorial which may be non-standard, but which is a fine work of art in its own right*”. (I confess that I am not trained in art and others may disagree with my assessment, but I return to the fact that considerable thought has clearly been put into the design of this memorial).

22. The use of the closed doors of the caravan seems appropriate and it was a sensible move to suggest the proposed inscription be placed here. The use of the two hurricane lamps enhances the image that this is meant to represent a gypsy caravan. Although an unusual device to have upon a grave-stone the items are not so large as to dominate the memorial and add a balance to the intended image.
23. The proposed inscription does not offend. The use of the expressions Dad, Grandad and Great-Grandad are not unusual nowadays, when once more formal titles would be expected. In fact the words are useful in suggesting that here lie the remains of dearly loved one. The chosen quotation is not attributed, but those with good scripture knowledge will recognise this excerpt from Psalm 4, which seems wholly appropriate in the circumstances.
24. The Churchyard regulations prescribe that there be only one flower holder on any memorial. Here are proposed two, one on either side of the plinth. However, the same issue applies here as to the engraved hurricane lamps. The use of a pair of flower holders adds balance to the memorial. The use of incised steps at the centre of the plinth prevents the flower holder being placed in the middle of the plinth and a single flower holder to either the left or right of the plinth would look out of place. I am mindful that other memorials in the churchyard have a pair of flower holders, one on either side of the plinth, so it would not be out of place for this memorial to have two similar flower holders. I have had to consider whether to refuse permission for a flower holder at all or whether to permit both that are requested. On the balance I have concluded that

it would be more appropriate to have the flower holders than to refuse permission.

25. Another consideration of balance and aesthetics is as regards the engraving on the rear of the memorial. It is unusual to have engraving on the rear as well as the front of a memorial, but it is not unique. It would again make this memorial appear different to others that surround it, but the entire memorial is acknowledged to be out of the ordinary. The use of the engraved rear window with curtains would re-enforce the stance that this is truly intended to be a representation of a Romany caravan. It would not, in my view, cause offence to permit this extra detail.
26. The one issue that does cause considerable concern is the request for the additional engraving of the horse-drawn waggon on the reverse of the memorial, below the engraved window. No justification has been put forward for the inclusion of this device. It appears to have been added because someone thought the image pleasant and a good representation of an interest within Mr Elliott's life. However, the main reason for this memorial is to pay respects to Mr Elliott's Romany gypsy lifestyle. The shape of the memorial reflects the shape of a traditional gypsy caravan. The other engravings and the inset steps further the imagery of a traditional gypsy caravan. The suggested extra engraving would not be expected on such a caravan. In my view the addition of this extra engraving would actually detract from the intended imagery and as such would detract from the aesthetics of the memorial itself.
27. In the circumstances the petition will be allowed and the Faculty will be granted, save and except that no permission is given for the inclusion on the reverse of the memorial of the proposed engraving of a two-wheeled, horse-drawn waggon.

Glyn Samuel
Deputy Chancellor
20th September 2017.