

IN THE CONSISTORY COURT OF THE DIOCESE OF LEEDS

Churchyard of Shadwell, St Paul

Re Jack Parr (deceased) and Irene Parr (deceased)

**Private Petition for retrospective permission to add
kerbstones and chippings to an existing grave**

Miss Kathleen Parr

Petitioner

PCC of St Paul's Church, Shadwell

Additional Party

**JUDGMENT
(PRIV - PARR 22-85C)**

1. By a petition dated 26th September 2022 Miss Kathleen Parr seeks retrospective permission for the introduction of Kerbing and a pebble in-fill on the grave of her parents in the Churchyard of St Paul in Shadwell. The parents were Jack, who died in 2009, and Irene, who died in 2018. The petition arose because a Churchwarden saw that kerbing and pebbles had recently been introduced onto the grave, without permission and without involvement of any funeral director or monumental mason. On 9th August a letter was written to Miss Parr asking that the additional items be removed from the grave “by the end of 2022”.
2. Miss Parr was upset by the letter from the Churchwarden and made plea to the incumbent, Revd Dave Young, for permission to retain the kerbing and pebble

in-fill. In a very polite response Revd Young indicated that he was not authorised to grant retrospective permission concerning a memorial. (The delegated authority given to parish clergy is to grant permission for memorials that comply with the diocesan churchyard regulations, and that permission must be given before the memorial is carved and installed). He pointed out that a faculty would have to be sought and provided a copy of the Churchyard Regulations for the Diocese of Leeds, indicating the particular passage which might cause some problems where kerbstones and pebble in-fill are being sought. He also warned Miss Parr that seeking a faculty would involve legal costs being incurred.

3. There is a common misconception among the bereaved that the grave of a loved one 'is our grave, so we can put any memorial we like'. It would seem necessary to here repeat the legal position that there is no ownership of a grave by the family of the deceased. That legal position was set out by the Chancellor of the Diocese of Oxford when he gave judgment in 2011 **In the Matter of the Churchyard of St Mary the Virgin, Burghfield**. The relevant points of his judgment were set out at Paragraph 4. "*Although a grave space may be reserved by a faculty issued by the diocesan chancellor (see The Perivale Faculty, de Romana v Roberts [1906] P 332 at 338; Re West Pennard Churchyard [1991] 4 All ER 124), the grave itself is not owned by the deceased or by his relatives whether before or after the burial (see Cripps on Church and Clergy (8th ed., 1937) at 572; Hill Ecclesiastical Law (3rd ed, 2007) at 7.113), even if there is an exclusive right of burial confirmed by faculty after 1964: see the Faculty Jurisdiction Measure 1964, section 8(1). Indeed, there is no right even to erect a monument over a grave without the permission of the diocesan chancellor, although this permission is usually given through an authority delegated to the [clergy]: see Re Woldingham Churchyard [1957] 2 All ER 323.*"

4. It would seem to me important for all people who intend to use a consecrated churchyard for the burial of a relative or loved one to have regard to the following statements:

“First and foremost churchyards are consecrated to Almighty God, Father, Son, and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards can also fulfil important spiritual rôles and can be a powerful part of the Church’s witness to the world. They provide appropriate settings for Christian places of worship and as such send out a message of the Church’s commitment to offering to God the very best products of human artistic skill. They contain memorials to departed Christians demonstrating the Church’s continuing love for them and its belief in the communion of saints.

The circumstances of interment and the memorials in a churchyard can be powerful evidence of the Church’s love for the local community and are an important part of our ministry to the bereaved. Churchyards are places of solace and relief for those who mourn. In addition many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.

Finally, churchyards are an important part of our national and local heritage. Our care for them is part of the Church’s work of stewardship of our heritage and of the created world.

Accordingly, the memorials placed in our churchyards must be fitting and appropriate and they must be fitting and appropriate not just for today but also for the future.”

The statements above appear in the introduction to the Churchyard regulations of Coventry Diocese, where I have the honour to serve as Chancellor. However, they would seem likely to have some important background explanation for why there are churchyard regulations controlling what memorials can be authorised by the clergy throughout almost all of the country (the Diocese of London excluded as there are no open churchyards in that

Diocese, or so I am informed). That does not mean that memorials falling outside the churchyard regulations cannot be allowed, but the circumstances are that a faculty must be sought for such memorials from the Chancellor or his, or her, Deputy.

5. The churchyard regulations for the Diocese of Leeds, updated in 2018, have the following to say about the items Miss Parr has introduced to her parents' grave:

11. For the avoidance of doubt, the following are not permitted: kerbs, railings, fencing, chippings, pebbles and similar materials, and free-standing vases. These create difficulty or danger when mowing.

In the introductory paragraphs to the regulations the following important information is given :

4. The bereaved must understand that by seeking a burial in consecrated ground, they are submitting to the jurisdiction of the Consistory Court which regulates the type of headstone or other marker which may be erected. This jurisdiction exists for reasons which are in part theological and in part aesthetic, since what may be unobjectionable in a municipal cemetery might be considered inappropriate (or even offensive) in an historic churchyard. It is the responsibility of the clergy to bring these matters to the attention of the bereaved at the earliest opportunity, and to inform them of these Regulations, so that their decision to seek an interment in consecrated ground is fully informed. A failure to do so, however traumatic the pastoral situation, is a dereliction of duty and may prove more damaging in the long term.

There is no suggestion in this matter that the parish clergy that dealt with the Parr family when the two burials took place failed to provide the necessary information concerning consecrated ground and the churchyard regulations. The headstone that has been installed is of York-stone, similar to the

headstones in the surrounding area of the churchyard, and the inscription is in keeping with that permitted under the churchyard regulations.

6. Upon receiving the petition it was clear that the leadership team of the parish, both ordained and lay, were opposed to retrospective permission being granted to introduce the kerbing and the pebble in-fill. It was said that the parish leadership did not want to set a precedent within this churchyard for additions to memorials outside that permitted in the Churchyard regulations. Directions were therefore issued inviting further submissions and evidence from Miss Parr, especially as she had suggested there were other kerbed graves with pebble in-fill within the Churchyard. A fuller response from the parish leadership was also requested, including details of any discussion at Parochial Church Council meetings, or equivalent. Both parties (for this was clearly a petition where the Parochial Church Council should be made an additional party) were invited to consider whether there was any middle ground, such as removing the pebble in-fill but retaining the kerbs. Any additional submissions and evidence was required by 11th November 2022, unless an extension was granted, after which the matter would be decided on the papers, unless any party objected to that course of action. The petitioner was again warned that costs over and above the petition submission fee could arise.

Neither party has objected to the matter being decided without a hearing. Miss Parr had even signed a declaration on her petition that she consented to the matter being decided on written representations.

7. I indicated earlier that neither funeral directors nor monumental masons had been involved in the introduction of the kerbing and the pebble in-fill. In fact it now seems clear that Miss Parr and her family had used seven lengths of concrete kerbing stone, purchased presumably from a builders merchant or

equivalent, and had in-filled with similarly purchased pebbles of a generally reddish hue.

8. The position of Miss Parr is that she and her family were upset that the grass upon the grave was not being mowed when the rest of the churchyard appeared to be tended. They thought the grave looked untidy, making it difficult to pay their respects at the graveside. The Family had therefore taken the decision to install the concrete kerbing and add the pebble in-fill, to make the grave tidier. There are some photographs that show the grass on the grave was unmown whilst other areas of the churchyard had been recently mowed. Miss Parr has provided photographic evidence of three other graves in a different area of the churchyard that have kerbing, although none appears to have pebble in-fill as she originally asserted (although an annotation on one photograph suggests there are other kerbed graves even further away from her parents' grave). The three graves photographed are clearly of quite some vintage.
Miss Parr did indicate that she would be prepared to compromise by retaining the kerbing but removing the pebble in-fill. She indicated that the gardeners could use a strimmer on her parents' grave and did not need to rely upon a lawnmower.

9. The parish leadership responded as follows, in a document headed '**response on behalf of PCC**' :-

Having consulted with the churchwardens, the main concern is the kerb edging itself as it is felt that this would hinder the use of a lawnmower in that part of the churchyard. We note that there are earlier graves with kerb edging but this dates from the early 20th century and earlier. None of the graves in the last sixty years or more [has] kerbing and from a maintenance point of view we would not want to set a precedent for having kerbstones introduced to modern graves.

The type of kerbstones used is not of a high quality and does not match the York-stone headstones in that part of the churchyard.

We are also not convinced that kerbing is needed to ensure that this plot is tidy. As outlined in the appendix below, when the ground has settled our preferences would be for the whole area to be grassed over as with all the recent graves. We note that the ground over the grave has been untidy but there has been no directive not to cut the grass on this plot.

Appendix 1 - Comments from the Churchwardens for further detail:

- 1. The applicant was told that any faculty application would not be supported by the PCC and vicar prior to the applicant applying for this faculty*
- 2. There has been no specific directive to anybody working in the churchyard to not cut the grass on the grave.*
- 3. Waiting for ground to settle after last burial before cutting grass.*
- 4. Churchyard workers have never had to dig over a grave to flatten the ground in last 12 years or more. When it has been done it has only been done by the family/friends of the deceased.*
- 5. A grave just to the right of the Parr grave (on the same row and so similar timeframe) can just be seen in her last picture which is also waiting for ground to settle with no issue.*
- 6. No enquiry about the state of grave received from Kathleen Parr or her relatives raising any concerns.*

7. No consultation attempted by the applicant prior to making the unilateral decision and installing concrete edging and pebbles.

8. Not in-keeping with area of churchyard currently being used for burials

9. Edging stones around some historical graves made of much superior materials and of a much superior construction supplied and installed with the headstone by stonemasons,

10. Application confirms they have installed concrete kerb edging which is typically found in DIY outlets

10. The above matters raised by the Parochial Church Council include some points that have a good deal of merit. I have sympathy for the Parr family at the frustration of finding the grave of loved ones seemingly untended, but the correct response should have been to enquire if there was any reason why the grave appeared untended. Instead a unilateral decision was taken to install unauthorised kerbing in an inappropriate material. The concrete kerbing is not suitable in a churchyard of, in the main, York-stone headstones (in fact, it is difficult to envisage any consecrated churchyard where concrete kerbing might be considered appropriate). The other graves in the churchyard with kerbstones are of obvious vintage and are some distance from the area of this particular grave. The pebble in-fill that has been introduced without permission is wholly inappropriate in comparison with the surrounding memorials in the churchyard. Even had I been mindful to permit the installation of York-stone kerbing to replace the concrete I would not do that in the face of opposition from the elected representatives of the parish without very good reason, the burden of proving that good reason resting firmly upon the petitioner. Kerb stones and pebble in-fill cause considerable problems in churchyard maintenance, and the pebbles in particular pose a risk of stones being sent flying by the rotating

blades of a mower. The suggestion that the mower should be abandoned and replaced with a strimmer for maintenance of this particular grave does not find favour. This grave is now very different to all the graves that immediately surround it and that situation should not remain.

- (a) The requested retrospective faculty is refused. The petition is dismissed.
- (b) The petitioner must ensure that the kerbing and pebbles are removed by 16th December 2022. (In default thereof the Churchwardens of the Parish are authorised to assist the family with the removal, by themselves or through others, or may instead request a restoration order from this court).
- (c) This has been an opposed petition with directions issued. The petitioner must pay the costs. I certify that this judgment took two hours to prepare.

Glyn Samuel
Deputy Chancellor
12th November 2022.