



Faculty – Churchyard of Grade II listed village church – Unopposed petition by Commonwealth War Graves Commission for memorial commemorating soldier murdered on active service in Ireland in 1921 – Memorial not permitted by Churchyard Regulations because precise location of burial not known – PCC expressing pastoral concerns about officially commemorating an English soldier who died whilst serving in the armed forces in Ireland in 1921 – DAC ‘not objecting’ to the memorial – Faculty granted*

Petition No: 10907

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Thursday, 28 July 2022

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

St Nicholas, Tackley

THE PETITION OF:

THE COMMONWEALTH WAR GRAVES COMMISSION

This is an unopposed petition determined on the papers and without a hearing.

No objections have been received in response to the display of the usual public notices.

The following cases are referred to in the Judgment:

Re All Saints, Honington [2017] ECC SEI 3, (2018) 20 ECC LJ 112

Re St Giles, Exhall [2021] EACC 1, [2021] PTSR 1622, (2022) 24 Ecc LJ 116

JUDGMENT

1. This is an unopposed faculty petition by the Commonwealth War Graves Commission (**the Commission**) for permission to erect a standard off-white, Portland stone Commonwealth War Graves Commission memorial in the churchyard of this Grade II* listed village church commemorating Private William Sydney Walker who was murdered whilst on active service with the British Army in County Galway, Ireland in 1921 and was buried in the churchyard on 26 February 1921. Because the precise location of his burial within the churchyard is not known, a faculty is required as the memorial is not permitted by the Churchyard Regulations for the Diocese of Oxford since regulation 13 provides that *“a monument may be introduced only at the place where the body of the person to be commemorated by the monument is buried”*. There is already one Commission memorial in the churchyard so there can be (and is) no objection to the size, the materials or the form of the proposed memorial. Although standard Commission memorials do not match those already in the churchyard, the parish recognise that they have their own appeal and they are delighted to have one already in their churchyard. Nor is there any objection to the proposed inscription. At the top of the headstone there will be the words: *“Buried elsewhere in this churchyard”*. Immediately below these words, there will be a representation of Private Walker’s regimental badge, followed by his service particulars:

5374675 PRIVATE

W. S. WALKER

OXFORD & BUCKS. LIGHT INF.

22ND FEBRUARY 1921 AGE 24

There will then be a representation of the Latin Cross, followed by this personal inscription:

IN PROUD MEMORY

OF A VERY BRAVE HUSBAND AND FATHER

2. The Commission were established by Royal Charter in 1917 as the sole organisation charged with the care of the graves, and the commemoration, of those members of the Commonwealth forces who died during the two World Wars. They are responsible for the graves and commemoration of 1.7 million servicemen and women in 153 countries, including 300,000 in the UK. The official war periods are:

First World War: 4 August 1914 to 31 August 1921 (in accordance with the Order in Council that declared the war ended, as required by the Termination of the Present War (Definition) Act).

Second World War: 3 September 1939 to 31 December 1947 (the date agreed by the participating governments to produce a post-war period roughly equal to that of the First World War).

The Commission commemorate people who served in the Commonwealth armed forces whose death occurred during the official war period and was the result either of wounds inflicted or an accident occurring during active service, or disease aggravated by active service. In practice, this means that serving military personnel are commemorated irrespective of the cause, location or circumstances of their death; and military personnel who died post-discharge are commemorated if it is established that they meet the above criteria.

3. Private William Sydney Walker, of the Oxfordshire and Buckinghamshire Light Infantry, had served in France and Belgium before he was shot and killed on 22 February 1921 at Woodford, Co. Galway, Ireland. He was buried with full military honours in the churchyard of St Nicholas, Tackley on 26 February 1921. Private Walker's details were not passed to the Commission by the service authority after the war for commemoration. A case was submitted to the service authority in 2007 for adjudication and the Commission were subsequently informed that Private Walker qualifies for commemoration under the death in service criterion. The burial register for the churchyard does not record a grave reference for Private Walker's burial location and a resulting inspection visit by the Commission has failed to locate the grave. As Private Walker is inadequately commemorated at his burial location, the Commission propose installing a standard war pattern headstone at a suitable location within the churchyard, with a superscription across the top *'Buried elsewhere in this Churchyard'*. Commission policy states that the location for headstones engraved with a superscription should be positioned in a way that does not give the impression of a false grave, namely near to boundary walls or installed at an angle. The Commission have been in contact with Private Walker's grandson, Mr Roland Courtney, who has advised that the family would like a headstone installed to honour their grandfather. It is they have who have chosen the proposed personal inscription for the headstone. The installation will be completed by the Commission's BRAMM/NAMM registered team and the headstone maintained in perpetuity by the Commission. There is one other war grave at this churchyard, that of Private E. W. Bloomfield, who was buried north of the church and whose grave is marked by a standard war pattern headstone.

4. Two other men were killed in the same incident as Private Walker. Both are commemorated by the Commission: Private T. L. Mullett (who served as Private H. Morgan), whose grave is marked by a standard war pattern headstone in Colchester Cemetery; and Private D. J. Williams, who is commemorated at his burial location in All Saints churchyard, Viney Hill with a headstone engraved with a superscription because his actual grave could not be located.

5. The minutes of the meeting of the Tackley Parochial Church Council in September 2021 include the following paragraph:

Commonwealth War Grave Commission have asked for a memorial to William Walker who died in 1921 — he is buried in churchyard. He died in Ireland but not actually as part of WWI. Emotive issue. Having discussed at PCC we are aware of difficulties and wish to seek advice from Diocese. We hope the Diocese makes a good decision.

The Rector (and chair of the Tackley PCC) has offered some more detail to this brief paragraph as follows:

The PCC, with its usual compassion and care for detail, understood a family's desire to have a memorial to an antecedent buried in the churchyard without a lasting marker. At this time of anniversary, and following the years that have

marked the centenary of the Great War, such a desire is understandably strong. However, it was pointed out that there is a difference between a private, family sponsored memorial and a public, officially sanctioned one. The involvement of the CWGC lends a gravitas and an official imprimatur to a memorial which changes its nature. William Walker died not during the Great War but as part of the forces involved in the Anglo-Irish war. In a rural community where our church tries to be a model of ecumenism and where we have Catholics of Irish descent in regular attendance, and even a Catholic priest as part of our worshipping community, there is a concern that an official memorial to the Anglo-Irish war in the form of a commemoration to an English soldier could be felt as an act of exclusion. Given the care that is being taken over public monuments of the past and the implications they have in the modern world, it was felt that great care should be taken lest we create an unwitting sign of discrimination in a place that has worked very hard to be welcoming to all.

The churchwardens recognise that the wording of the memorial does not mention Ireland, and the Rector acknowledges that the CWGC in correspondence point out that memorials commemorate individuals, not conflicts; however the circumstances of Private Walker's death remain, as does the impact of an official memorial.

Ultimately, the PCC felt unable to make a decision on the matter on the issues raised. Compassion for the family involved remains strong. Concern about possible unintended harm done by an official memorial has not been allayed. The PCC felt that the diocese needed to take responsibility for the decision as pastorally it could have serious implications - either way.

The PCC were clear however that if permission were to be given for the memorial to go ahead, it should not be given a prominent place in the churchyard, such as next to a gate or by the church entrance. It was suggested that as there is already a CWGC memorial in the grounds, it could be placed next to that, but slightly further away from the church door.

The Rector has also observed as follows:

The PCC of Tackley wishes to affirm its strong support for all who serve in our armed forces. But they ask the Diocesan Chancellor to consider carefully the appropriateness of erecting an official memorial commemorating a soldier who died in the Anglo-Irish war in 1921 with the particular role of a rural church today in being available to every member of its community without barrier or hindrance. The PCC understands that weighing the pastoral request of William Walker's family through the CWGC and its potential wider pastoral implications to the ongoing mission and ministry of the church in the community is not a simple matter, and thanks the Chancellor for his careful consideration of this question.

6. The Diocesan Advisory Committee issued a Notification of Advice on 25 May 2022 stating that they did not object to the proposal being approved by the court. Their principal reasons for this advice were that they "... recognised that there are sensitivities concerning the Anglo-Irish conflict in which the commemorated soldier died, and that the DAC has no remit for consideration of pastoral

issues". In the DAC's opinion the proposal was not likely to affect the character of the church as a building of special architectural or historic interest.

7. When the petition was first referred to me, I invited the Registry to write to the Commission to inquire whether they could provide any further details of the action in which Private Walker had died. In particular, I wished to know whether any members of the Irish forces involved in it had also been killed. In the light of the PCC's observations and concerns, I also asked for the petition to be referred to the Archdeacon, and I inquired whether the Diocese would have any views on the petition (whilst making it clear that I would make up my own mind).

8. In response to my query, the Commission responded explaining that all their records are commemorative in nature and they would not normally possess specific details regarding a casualty's death but, in this instance, they did have copies of the Regimental Chronicle and a newspaper clipping. These reveal a tragic event. An entry in the summary of the Regimental Chronicle for the First Battalion of the Oxfordshire and Buckinghamshire Light Infantry records (at page 13) that on 22 February 1921 Private Williams, Private Walker and Private Morgan were all "*found murdered by Sinn Feiners at Woodford, Co. Galway*". Under the heading '*Obituary*' (at page 207) the Regimental Chronicle records that all three soldiers

... were found murdered by rebels near Woodford, Co. Galway, on February 22, 1921. They had been missing from Strand Barracks since February 13, and nothing more was heard of them until their dead bodies were found by a farmer at Woodford. Around the neck of one of these was found the following notice: '*Spies. Tried by Court Martial and found Guilty. Let all others beware.*' Their bodies were brought into Limerick, and were subsequently sent to England for burial ... Private Walker, whose home was near Bicester, re-enlisted into the Regiment on August 5, 1919; he was twenty-three years of age when he died.

The newspaper clipping is from the edition of the Independent for 23 February 1921 and reads:

Three "Deserters" shot as spies

DISCOVERY IN CO. GALWAY

A G.H.Q. communique issued last night says:—

"The bodies of three uniformed private soldiers of the Oxfordshire and Buckinghamshire L.I. were found this morning near Woodford, Co. Galway."

"Each murdered man had bullet wounds in the head, and by their side was a note, on which was written: 'Spies. Tried by Court Martial and found guilty. All others beware.'"

February 23, 1921 Independent

The Commission confirmed that they were not aware whether any members of the Irish forces responsible for the deaths of the three soldiers had ever been killed.

9. In response to the comments made about the application on behalf of the PCC, the Commission wished to clarify that their decision to apply for a faculty had not been because of the family's involvement in the case. Wherever possible, the Commission seek to commemorate casualties at their burial location, so an application for a memorial would have been made in any event.

10. In a helpful email to the Registry, in response to my query, the Archdeacon explained that she had consulted the churchwardens to hear their own views directly. Both supported the Rector (as had the PCC) in his view that there might be some sensitivities around this memorial. One of the churchwardens had helpfully proceeded to explain their own personal views in more detail. These were that if either the Commission or the family considered that Private Walker should have a memorial, then he should have one. The churchwarden said that the family were keen to have a memorial but he described them as '*obscure relatives*' by which the Archdeacon understand the churchwarden to mean that they were not all that close to William himself (whose widow had passed away years previously). This particular churchwarden did not think that the memorial would cause any problems locally (although this was hard to judge) but he recognised that the Rector was particularly sensitive to any local concerns in the light of the issues raised by memorials to slavers and similar problems of contested heritage. The PCC were happy to support the Rector, recognising that there might be sensitivities, although the churchwarden personally had no strong feelings about the matter and did not see why it should present a particular problem. The Archdeacon herself did not really see why there should be any fear of possibly upsetting Irish Catholics should they visit Tackley, any more than would be the case with others who might view memorials to soldiers from various wars in which their own countries had been engaged in fighting the British. The Archdeacon had helpfully explained that it was not '*the Diocese*' that would make the decision, but rather the Chancellor who would decide whether or not to grant the faculty. There had seemed to be some confusion about this.

11. The usual public notices have been displayed and no objections to the faculty petition have been received.

Analysis and conclusions

12. Rule 10.6 of the Faculty Jurisdiction Rules 2015 (as amended) confirms my discretion to grant an unopposed faculty petition without further proceedings. Since I have formed a clear view on the merits of the present petition, I am satisfied that it is appropriate to do so in the present case. This will serve the overriding objective of dealing with the case justly, by saving expense and dealing with the case proportionately, expeditiously and fairly.

13. The introduction of a standard Commission memorial into this churchyard will not result in any harm to the setting, the appearance or the significance of this church as a building of special architectural or historic interest or of its churchyard. The questions the court must therefore consider are whether the Commission have shown a sufficiently good reason to introduce their proposed memorial to Private Walker into the churchyard, even though the precise location of his grave is not known, so that the memorial cannot be introduced at the place where his body is buried ; and whether there is any good reason, in terms of pastoral well-being and other considerations or sensitivities relevant to the role and perception of the Church of England in general, and the church of St Nicholas in particular, as a compassionate, caring,

welcoming, inclusive, and diverse religious institution which might militate against the introduction of this memorial. In addressing these issues, I have reminded myself of the guidance to be found in two relatively recent case law authorities.

14. The first is the case of *Re St Giles, Exhall* [2021] EACC 1, [2021] PTSR 1622, (2022) 24 Ecc LJ 116 in the Arches Court of Canterbury (Morag Ellis QC, Dean, Chancellor Turner QC and Chancellor Arlow). There the Arches Court allowed an appeal against a decision of the Chancellor of the Diocese of Coventry (in *Re St. Giles Exhall* [2020] ECC Cov 1), who had granted a faculty for a memorial which included a short inscription in Gaelic, but subject to a condition that there should be an English translation beneath the Gaelic inscription. The Arches Court directed that a faculty should issue permitting the erection of the proposed memorial without any condition for an English translation of the Irish phrase on the memorial, but subject to an agreed condition that such a translation should be entered in the parish records. The Arches Court introduced their judgment with the following statement (at paragraph 1.1):

The church of Jesus Christ is arguably the most international, multi-ethnic, multi-cultural, multi-lingual body on the planet. That is one of its glories and strengths. Reflecting that noble reality in all its facets should be a universal ambition in all the church's work and ministry, however challenging it may be upon occasion to implement it practically, even in respect of memorialisation of the dead and pastoral support to the bereaved.

At paragraph 1.5 the Arches Court explained that:

Because the memorial did not wholly conform to the specifications set out in the Chancellor's Churchyard Regulations, the incumbent of St Giles correctly advised [the petitioner] that she did not have delegated authority to permit it and that it would be necessary for her to apply to the Chancellor for a faculty. In principle, the introduction of any item into a consecrated Church of England churchyard requires a faculty but it is conventional for Chancellors to make schemes of delegation, usually by means of what are termed 'Churchyard Regulations', although they have no legislative status. At that date, the Coventry Churchyard Regulations were silent on the matter of non-English language in inscriptions.

At paragraph 8.7 the Arches Court endorsed, and commended to chancellors and to all others involved in the consideration of memorials within the faculty jurisdiction, the formulation "*To honour the dead, to comfort the living and to inform posterity*" as "*a usefully pithy statement of the purpose*" of a monument marking a grave.

15. The Arches Court also considered the nature and purpose of Churchyard Regulations, and of how they should be used in decision-making. At paragraphs 11.3 and 11.4, the Court agreed with, and endorsed, the following statement of principle, only adding the qualification that if a parish priest declined to permit a memorial which was in compliance with the Regulations in place for the churchyard or diocese, then he or she should have proper reasons for doing so; and that it was essential, in particular, not to infringe article 14 of the European Convention on Human Rights by discriminating against particular applicants on any of the protected grounds:

As their full title makes plain, they are an instrument of delegation pursuant to which the discretion to permit the introduction into churchyards of certain

categories of memorial is devolved from the chancellor to the parish priest. Parochial clergy have delegated authority to allow memorials which fall within the certain specified categories; but they are perfectly at liberty, should they wish, to decline to permit a memorial even though it complies with the Regulations. However, if a priest purports to permit the introduction of a memorial which does not comply with the Regulations, the permission will be a nullity.

The Arches Court addressed the approach to any departure from the categories of memorial permitted by Churchyard Regulations when determining a faculty petition at paragraphs 11.5 to 11.8 of their judgment. The court considered that the right approach was a merits-based one. Clearly, any Regulations in place for the parish or diocese concerned would be part of a matrix of relevant considerations; but the court did not think that consideration of a faculty petition should start with any presumption against allowing any memorial outside the parameters of the Regulations. As with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition. The terms and content of the Churchyard Regulations will, of course, be a relevant factor – often highly relevant, and doubtless, on occasion, determinative. But they will be only one of the constellation of infinitely variable factors which the court must consider, on a case-by-case basis. The court should approach the suitability of the memorial on its own merits, the only constraint being the inability of the court to permit something which was contrary to, or indicative of any departure from, the doctrines of the Church of England in any essential matter. Mere non-compliance with Regulations, of itself, should never be the only basis on which to oppose a faculty petition. It was necessary to consider whether the particular memorial in question was inherently desirable, or at any rate not undesirable, whether or not it complied with the Regulations.

16. The second authority is the first instance decision in *Re All Saints, Honington* [2017] ECC SEI 3, (2018) 20 ECC LJ 112 (in the Diocese of St Edmundsbury and Ipswich). There the Commission had wished to replace a memorial to an airman from the local airfield who, with his fellow crewmen, had died during the Second World War. The crew had all been buried together in the churchyard. The reason for wanting to change the memorial was that the original bore an inscribed cross, whilst the deceased had later been found to be of Jewish descent. Chancellor Etherington QC decided that it would not normally be appropriate to allow in a churchyard a memorial bearing the Star of David, or a symbol of any other religion inconsistent with the doctrines of the Church of England; but he nevertheless determined that there were exceptional circumstances in that case to justify permitting the Star of David to be inscribed on the proposed replacement memorial. Chancellor Etherington QC began his judgment as follows (at paragraph 1):

In this judgment I have affirmed that those burying the remains of a deceased person in an Anglican churchyard within the jurisdiction of this court are subject to that jurisdiction in respect of monuments (by which is meant memorials, headstones, ledger stones and the like) that may be erected and what may be inscribed upon them irrespective of the religious belief, if any, of the deceased or the person responsible for the deceased's burial. I have also affirmed that nothing may be placed upon a monument that is profane, offensive or inconsistent with the beliefs of the Church of England as enshrined in its doctrines. I have concluded that a religious symbol primarily indicative of a faith other than Christianity or of beliefs inconsistent with those of the Church of England as

enshrined in its doctrines may not ordinarily be placed upon a monument and never without a faculty. Therefore, the image of the Star of David, which is primarily indicative of the Jewish faith, particularly when placed upon the monument of a deceased person, is not ordinarily permissible as a symbol to be placed on a monument in an Anglican churchyard under the jurisdiction of this court and never without a faculty. However, and probably very rarely, there may be truly exceptional circumstances that justify a departure from the principle ordinarily applicable. In this case, the facts surrounding the burial of a young south African airman of Jewish descent in the opening days of the Second World War provide that true exception.

17. In the present case, I am satisfied that the Commission have shown a sufficiently good reason to introduce their proposed memorial to Private Walker into the churchyard, even though the precise location of his grave is not known, so that the memorial cannot be introduced at the place where his body is buried. The body of Private Walker was laid to rest in the churchyard. It is fitting that he should be remembered, and that brief details of his military service and death, and of how his family would wish him to be remembered, should be made available for posterity. This will clearly provide comfort for his living descendants even though, sadly, they never had the good fortune personally to know him. It is no fault of Private Walker that the church records fail to record the precise location of his burial. Members of the public viewing the memorial will not be misled about his being buried in that place because the words at the top of the memorial will clearly indicate that Private Walker is buried elsewhere in the churchyard. For this reason, and notwithstanding the Commission's usual policy, I consider that it is appropriate for the memorial to be placed next to the only other Commonwealth grave memorial within the churchyard, but further away from the door to the church, in accordance with the wishes expressed by the PCC

18. I am also entirely satisfied that there is no good reason, in terms of pastoral and other considerations or sensitivities relevant to the role and perception of the Church of England in general, and the church of St Nicholas in particular, as a compassionate, caring, welcoming, inclusive, and diverse religious institution, which might militate against the introduction of a Commonwealth War Graves memorial to Private Walker. Whilst I appreciate the sensitive response of the Rector and the PCC to this proposal, in my judgment it cannot possibly offend any open-minded and right-thinking member of the church congregation or the local community, or any visitor to the churchyard, whatever their nationality or any religious faith. I am satisfied that this is so even though the installation of a standard Commission war grave memorial may convey some impression of official sanction or endorsement of Private Walker's life, and of his death. My reasons are twofold.

19. The first is specific to the particular circumstances of Private Walker. As the churchwardens recognise, the wording of this proposed memorial contains no mention of Ireland at all. No-one viewing the memorial will know that he died there unless they take the trouble to undertake some research into the cause of his death. If they do so, they can reasonably be expected to discover the tragic circumstances in which he lost his life. This was not in armed conflict with the Irish armed or rebel forces, or any of the citizenry of Ireland: he was murdered with two other soldiers solely because of the army in which he had enlisted and in which he served. No-one could sensibly have anything but the most profound sympathy for Private Walker, and the family whom he so sadly, and prematurely, left behind him.

20. The second is more general. As the Rector acknowledges, a war grave memorial commemorates an individual, and not the conflict in which the soldier served and died. In my judgment, there is an unhappy dissonance in receiving the body of a dead service man or woman for burial in a churchyard yet refusing to commemorate them, so as to inform posterity, and comfort those whom they have left behind. Unless the particular service man or woman has committed some war crime, or other atrocity, they bear no responsibility for the conflict in which they were engaged and died. Any such responsibility lies elsewhere. As far as I am aware, no one has ever suggested that any Government minister who has sent soldiers into war should forfeit the right to be commemorated on their death; yet their responsibility might be considered far greater than that of the service personnel who served in the field of conflict. As the Archdeacon has pointed out, there is no sound evidential basis for any fear of possibly upsetting any Irish Catholic who might visit this churchyard and see Private Walker's grave, any more than would be the case with any other foreign national who might view a memorial to a soldier who had fallen in one of the various wars in which their own country might have been engaged in fighting the British.

21. For these reasons, the court will grant a faculty for the proposed war grave memorial as asked. The memorial should be installed next to the only other Commission war memorial within the churchyard, but further away from the door to the church, in accordance with the wishes expressed by the PCC. The period allowed for the memorial to be installed will be six months from the date of the grant of the faculty. In the usual way I will charge no fee for this written judgment; but the Commission must pay the costs of this petition, including any additional fees incurred by the Registry in dealing with this application.

22. In conclusion, I must thank the Rector, the churchwardens, the PCC, the Commission, and the Archdeacon for the time, care and attention that they have given to this faculty application. Their work has certainly contributed to a fully informed analysis and decision..

David R. Hodge

The Worshipful Chancellor Hodge QC

Thursday, 28 July 2022