

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

TONG: ST. BARTHOLOMEW

ON THE PETITION OF SIMON BATES

JUDGMENT

- 1) Simon Bates petitions for a faculty to authorise the erection of a memorial at the grave of his late mother, Joan Bates. The proposed memorial is to be of Portland Stone with a headstone 18" high bearing Mrs. Bates's name (using the surname Garside-Bates); the dates of her birth and death; her age at death; and the word "Irreplaceable". It is proposed that there be kerbs around the grave at a length of 6' and a height of 6".
- 2) The proposed memorial differs from those which the Churchyard Regulations authorise in two respects namely its height (being lower than the normally required minimum height) and in the presence of kerbs.
- 3) Mr. Bates, whose petition is supported by his sister, explains that the design of the proposed memorial was chosen to mirror the memorial to Richard and Eva Garside which is a few yards away from Mrs. Bates's grave. Mrs. Bates was the Garsides' daughter and the Petitioner submits that it would be appropriate for her to have a similar memorial. He also says that the lower height of headstone is in keeping with a "low key" approach.
- 4) I have been supplied with photographs of the churchyard which show that a variety of different stone materials have been used for memorials in the vicinity of Mrs. Bates's grave. The churchyard also contains at least one other memorial with kerbs in addition to that of the Garsides. However, it is to be noted that Mrs. Bates's grave is in the middle of a row of memorials none of which have kerbs.
- 5) The Parochial Church Council supports the proposed memorial. The Diocesan Advisory Committee has considered the matter. It suggested that the kerb stones be lowered so as to be flush with the ground and so such as

to mark out the gravespace but not such as to interfere with mowing of the churchyard.

- 6) The public notice led to letters of objection from Mrs. J. Rudge and Mrs. S. Millington (writing on her own behalf and on that of her sister in law, Margaret Podmore). Neither of these ladies wished to become parties to the proceedings. Their letters make essentially the same two points namely that the approach taken for other memorials in the churchyard has been to forbid the erection of kerbs and also that kerbs would hinder the mowing of this part of churchyard. It is noteworthy that the row in which Mrs. Bates is buried also contains the graves of and (I believe) memorials to Mrs. Millington's brother and sister and of Mrs. Rudge's mother and son. Thus the objections of Mrs. Millington and Mrs. Rudge have the added force of persons who are concerned about the impact on the graves of their family members in the immediate vicinity of the proposed memorial.
- 7) The Petitioner has consented to this matter being determined on the basis of written representations and I am satisfied that the case is suitable for such determination. On 19th November 2013 I directed that the Petitioner be invited to make any further representations he wished by 13th December 2013 and, in particular, that he should set out any representations which he wished to make in respect of the Diocesan Advisory Committee's suggestion. Mr. Bates has chosen not to make any further representations.
- 8) The use of Portland Stone is acceptable (particularly given the variety of stones used for memorials in this churchyard) and the wording proposed for the inscription is wholly unexceptionable. As already stated the proposed memorial differs from the Churchyard Regulations in respect of its height being lower than the prescribed height of 762mm (2'6") and in the use of kerbs.
- 9) In considering the approach to be taken to memorials going outside the scope of the Churchyard Regulations the Court must take account of the nature and purpose of a churchyard. Churchyards are consecrated to 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 worshipping God in the beauty of holiness. 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. 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. Churchyards are also an important part of our national and local heritage. Our care for them is part of the Church's work of stewardship of our environment and heritage. Thus the Consistory Court must ensure that what is placed in our churchyards is fitting and appropriate against the light of those foregoing considerations. Moreover, the memorials placed in churchyards must be fitting and appropriate not just for today but also for the future.

10) Mr. Bates seeks a faculty and so the burden of showing that the proposed memorial is appropriate lies on him. The Churchyard Regulations are not the end of the matter and a memorial departing from the Regulations can be permitted where particular circumstances justify this. However, the Regulations do represent a settled view as to what is normally appropriate in the churchyards of the diocese. It follows that a good case must be shown before the Court will authorise a memorial falling outside the Regulations. Thus a petitioner seeking permission for such a memorial must show that in the circumstances of the particular case there is a good reason for a departure from the norm. Moreover, account has to be taken of the fact that the Regulations are followed in the vast majority of cases. Those who comply with the Regulations and who might well have foregone the opportunity to seek a different style of memorial (and one perhaps more in keeping with their own preferences) have a legitimate expectation that those who are seeking to depart from the Regulations will be required to show a good case for doing so.

Thus fairness to others as well as the need to ensure that churchyards remain suitable for their purpose require the Court to be wary of allowing memorials which go beyond the Regulations.

11) Although the proposed headstone is lower than that normal minimum height I have concluded that the departure from the Regulations is justifiable in that regard. The headstone mirrors that on the memorial to Mrs. Bates's parents which is a few yards away and the use of the surname, Garside-Bates, indicates the family connexion. The desire to have a consistency of style in the memorials to members of the same family is legitimate and can add to the character of a churchyard. Moreover, a headstone lower than the norm will have at most a minor adverse impact on the overall appearance of this churchyard.

12) Whether to permit the use of kerbs is a more difficult question. I have already said that the aim of achieving consistency in family memorials can justify a memorial departing from the Regulations but it will not always do so. Whether it does will depend on the extent of the departure and the nature of what is proposed. The use of raised kerbs on a memorial can hinder the maintenance of the portion of the churchyard containing that memorial. Such kerbs do not, of course, prevent the mowing of the churchyard but they do make it a less straightforward (and accordingly a more costly and more cumbersome) exercise. By hindering maintenance their presence can affect adversely the families of those persons interred in the adjoining area. Moreover, kerbs are readily visible and their presence on one memorial can cause legitimate anger on the part of others who have chosen to have a memorial falling within the scope of the Churchyard Regulations and to forego their own preference for a memorial with kerbs. In this case the desire for consistency in the style of family memorials can be met in large part (though not wholly) by the solution suggested by the Diocesan Advisory Committee of sunken kerbs flush with the ground and not interfering with maintenance. In those circumstances the use of raised kerbs is not appropriate and in that regard the Petitioner has failed to establish a sufficiently good case to justify the erection of a memorial outside the scope of the Regulations.

13) Accordingly, I dismiss the Petition in its current form. However, if the Petitioner so desires a faculty may issue forthwith authorising the erection of a memorial of Portland (or York) stone bearing the proposed inscription with a headstone of the proposed dimensions and with kerbs of the proposed dimensions but sunk into the ground so as to be flush with the surface of the ground.

A handwritten signature in black ink, appearing to read 'S. Eyre', written in a cursive style.

STEPHEN EYRE
CHANCELLOR
30th December 2013

