



Petition No. 9392

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

Date: 31st May 2014

Before :

**THE REVEREND AND WORSHIPFUL ALEXANDER McGREGOR,
CHANCELLOR**

**In the matter of :
St John's Churchyard, Whitchurch Hill
(on the petition of Mr Paul Stevens)**

The Petitioner in Person
Petition determined on consideration of written representations

JUDGMENT

The Chancellor:

1. By a petition * dated 14th October 2013 Mr Paul Stevens applies to the Court for a faculty to authorise the introduction of a monument comprising a headstone and kerbs of dark grey granite over the grave of his late mother and father. The petition is accompanied by a drawing showing the design of the proposed monument and details of the proposed inscription have been provided.
2. The petitioner sought the advice of the Diocesan Advisory Committee (DAC) before submitting the petition and in a certificate issued on 9 September 2013 the DAC indicated that they did not recommend the proposal. They gave the following reason–

The inclusion of the kerb stones in memorials is not recommended due to the fact that they present a maintenance problem for those managing churchyards. Despite the fact that there are other nearby memorials with kerbstones, the DAC remained unconvinced that the inclusion of one more would not increase the difficulty that maintaining this area presents.

The DAC subsequently confirmed that advice in a memorandum addressed to the Chancellor dated 22nd October 2013.

3. The petition came before my predecessor, Dr Bursell, in October last year and he sought the views of the Parochial Church Council (PCC). On 10 December 2013 a letter was received in the Registry from the PCC Secretary containing a resolution passed by the PCC at its meeting on 28th November as follows–

The PCC resolved not to support having any more kerbs as a matter of principle, and therefore will not support Mr Stevens’ request for a Faculty.
4. The Registrar put the PCC’s letter before Mr Stevens by email on 24th December and Mr Stevens replied on 30th December stating that the incumbent had not referred to the principle of not supporting kerbs when they met prior to the submission of the petition, nor had he referred to it when completing the part of the faculty petition in which the incumbent is asked to express views on the proposed memorial. Mr Stevens further stated that the PCC had not made a case for not allowing kerbs in the location in question and that they were not justified in referring to a principle which had not been explained “and which could therefore be viewed as unsound”.
5. The petition came before me for the first time on 2nd February this year when I ordered that it was to proceed under the Faculty Jurisdiction Rules 2013 and gave directions for its determination on consideration of written representations, subject to Mr Stevens agreeing to that course of action. Mr Stevens expressed his agreement in a letter dated 17 February 2014.
6. In response to one of the directions, which required the PCC to provide a written statement explaining the reasons for their resolution of 28th November, the PCC Secretary sent an email to the Registrar on 30 March (approximately a month later than the date specified in the directions). She stated–

... The PCC adheres to the Diocesan Graveyard Regulations in regard to kerbstones which prohibit them save by Faculty. In our letter to [the Registry

* The petition is headed “Application for faculty (permission) to erect a memorial different from those in the approved guidelines”. In this judgment I refer to the application using the conventional term “petition”.

Clerk] dated 4th December we included a signed copy of the PCC resolution from the meeting on 28th November relating to this matter.

The resolution was then set out (see above) and the email continued:

Quite apart from anything else kerbstones make the mowing of the graveyard difficult and really need to be strimmed.

7. That email was forwarded by the Registry to Mr Stevens on 11th April seeking his response, as I had previously directed, but with the time extended to 25th April.
8. Mr Stevens responded by letter dated 23rd April.
9. He began by raising a procedural issue relating to the lateness of the PCC's response to the direction that they provide a written statement explaining the reasons for their resolution. He asked whether their late response would have any bearing on the matter. I do not consider that it has. It appears from the file that there may have been a delay in the Registry sending the directions to the PCC so that they did not receive them until 21st February which was later than I had expected. In any event, any delay on the part of the PCC in responding has not prejudiced Mr Stevens' case.
10. Mr Stevens then addressed matters of substance. He said that there had been no clarification from the PCC as to what the "matter of principle" referred to in their resolution was and that he was still unaware of anything else which was relevant. He then said—

The memorial complies as far as type of stone and colour and is similar to those which surround it. Many of the graves which do not have kerbstones have flower beds planted to the perimeter of the grave area, with kept edges, which could also be seen to make mowing more difficult. These have been allowed during the 45 years I have been visiting the churchyard.

There are many kerbed graves throughout the graveyard and a high proportion particularly in the area where my parents are buried to the left of the entrance gate. My parents' memorial would therefore be in keeping with the character of the church and the graves which surround it. I feel strongly that the PCC should consider the wishes of relatives and accommodate them where it is reasonable to do so.

11. Mr Stevens then referred to certain responses in the part of the petition form where the incumbent is asked to express views on the proposed memorial. Mr Stevens wrote—

I draw your attention to the Incumbent Kevin Davies' response to Question 7 of the Application and whether my parents' memorial will hamper the cutting of the grass, to which he states: "Not really in this instance as there are a number of existing kerbs." With reference to Question 5 and whether there are any other similar graves in the vicinity of the grave, and if so, how many, his answer: "Graves either side of the proposed memorial are kerbed."
12. Mr Stevens concludes, "The memorial is in keeping with the character of the church and I can see no reasonable validation for it not being approved."
13. As the diocesan Churchyard Regulations (made by my predecessor in 2009 and still in force) point out—

The strict burial right of a parishioner is confined to interment in the churchyard. The erection of a tombstone or monument over a grave, though now common, remains a privilege, and strictly speaking no tombstone or monument may be erected in a churchyard without the authority of a Faculty from the Consistory Court ... (paragraph 3.2).

I adopt this as a succinct statement of what is well-established law.

14. The Regulations explain that, in practice, the Chancellor has delegated a limited authority to the incumbent who may normally grant permission for the erection of a memorial that falls within the parameters set out in part 4 of the Regulations. (See paragraph 3.5.) But “[a]pplication may be made at any time to the Consistory Court for authorisation by faculty to erect a memorial or ledger outside the scope of these Regulations. If granted this may be subject to conditions”.
15. Paragraph 4.4 of the Regulations deals with the details of design that can be permitted by the incumbent under the delegated authority. This paragraph provides (among other things) that—

... kerbs, fencing, railings, chains, chippings or glass shades are prohibited save when permitted by faculty, which is unlikely to be granted save in exceptional circumstances.
16. As is the case with any petition for a faculty, 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.
17. The design of, and inscription to appear on, the headstone are not objectionable in any way. The only issue relates to the inclusion of the kerbs.
18. In the petition form, in answer to the question whether there are “any special reasons which the Applicant wishes to give for choice of memorial and/or inscription” Mr Stevens has answered—

The memorial was favoured by my deceased mother and is also the family’s choice. It is maintenance free and similar memorials exist close to this grave. Does not affect grass cutting.
19. Mr Stevens has set out further matters in favour of the proposed design in his letter dated 23rd April, the substance of which I have already set out.
20. I have some sympathy with Mr Stevens. He is seeking to provide a memorial to his late parents of a design that was favoured by his late mother. From the answers given by the incumbent on the petition form, he had no reason to suppose, when he submitted the petition to the Court, that it would be objected to by the PCC. He may well have been disappointed to discover that the PCC were now taking a point about the difficulty that the kerbs would give rise to when mowing the churchyard when the incumbent had stated on the petition that he did not consider that this would be the case.
21. Like Mr Stevens, I am also unclear as to quite what the PCC mean when they say that they are opposed to kerbs “as a matter of principle”. In particular, I do not know whether they intended this to be a separate ground of objection, over and above the

practical considerations involved in maintaining the churchyard. The PCC did not take the opportunity that they were afforded to explain this aspect of their objection.

22. That said, both the DAC – a statutory body whose independent expert advice was available to Mr Stevens before he submitted his petition – and the PCC have raised the issue of the kerbs and the difficulties that kerbs cause in relation to the maintenance of the churchyard. That issue is clearly relevant to the manner in which the Court should exercise its discretion in deciding whether to permit the memorial sought by Mr Stevens.
23. Mr Stevens has in his favour the fact that the incumbent, in answering the question of whether the memorial would hamper the cutting of grass or the maintenance of the churchyard, answered, “Not really in this instance as there are a number of existing kerbs.” That accords with Mr Stevens’ own view of the matter.
24. But the preponderance of the evidence is the other way, with both the DAC and the PCC taking a contrary view to that of Mr Stevens and the incumbent.
25. It is the PCC who are under a statutory duty to maintain the churchyard by virtue of section 4(1) of the Parochial Church Councils (Powers) Measure 1956. Given that it is the PCC which has to maintain the churchyard any views it expresses on the way in which a proposal will impact on the carrying out of that duty should usually be accorded substantial weight. Accordingly, I attach more weight to the PCC’s view on the question of the impact that the introduction of the kerbs would have on the maintenance of the churchyard than to the view expressed by either Mr Stevens or the incumbent.
26. It is also relevant that the view expressed by the PCC accords with the independent expert advice provided by the DAC.
27. I note Mr Stevens’ submission that there are already a number of kerbed graves in the area of the churchyard in question. I have also seen photographs showing this to be the case.
28. I attach very limited weight to the fact that other graves in the churchyard already have kerbstones. First, Mr Stevens has not established that those kerbs were lawfully introduced. Secondly, as my predecessor said in a judgment concerning another petition to introduce a memorial with kerbs in this churchyard, “the PCC is entitled to call a halt to the incursion of kerbs that it regards as out of place” (*In re the Churchyard of St John’s Whitchurch Hill*, 14th April 2004 (unreported)). Thirdly, as the DAC pointed out, even if the existing kerbs already mean that there is an impact on the way in which this area of the churchyard has to be maintained in terms of cutting the grass, the introduction of further kerbs will only increase that impact.
29. I have therefore concluded that Mr Stevens has not discharged the burden of showing that he should be granted a faculty to authorise the introduction of the monument proposed.
30. Given that the proposed headstone is not objectionable in any way, I give permission to Mr Stevens to apply by letter to the Registrar to amend the petition to omit the kerbs from the design of the monument. Any such application must be made within 21 days of this judgment being sent to him. If he makes that application, a faculty will be issued to permit the introduction of the headstone.

31. If no such application is made within the time allowed, the petition is to stand dismissed.
32. I note that there was a reference in the correspondence to chippings being placed within the area of the proposed kerbs. Although these do not form part of the details given in the petition, I take the opportunity to point out that chippings are not permitted unless expressly authorised by faculty. If a faculty is granted as envisaged above, it will not authorise any chippings.
33. The court fees payable under the Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2013 (S.I. 2013/1922) are to be paid by the petitioner. This is a provisional Order under rule 18.1(3) of the Faculty Jurisdiction Rules 2013 and will come into effect after the expiry of the period of 21 days beginning on the day this order is sent to the petitioner unless within that period he makes written representations to the Court as to why the Order should not be made.