

Neutral Citation Number: [2020] ECC Chr 2

In the Consistory Court of the Diocese of Chester

Woodchurch, Holy Cross

And in the matter of a petition of Robert John Britton, Robert Anthony Britton and Carl George Hird for a memorial to Maureen Britton

Judgment

1. Maureen Britton died aged 65 on the 25th June 2019.
2. By a Petition dated the 21st June 2020, the petitioners, respectively her husband, son and son in law, seek permission to commemorate their loved one with a memorial at plot T 58 in the churchyard of Holy Cross, Woodchurch Parish Church, Wirral, where the current Rector is Revd. Christine Broad.
3. The memorial which they request is of lawn design, with kerbstones, to be in black granite and with the addition, within the kerbs, of a Sadshalil Grey 'pathway to heaven' – a curved, raised area running the length of the grave from its foot to the headstone itself.
4. The memorial does not comply with the existing diocesan churchyard regulations (Churchyard Regulations 2007). The proposed inscription is uncontroversial. The height of the headstone is compliant, though its width is some 6 inches greater than that permitted by regulation. The kerbs and the 'pathway' are not permitted.
5. Although the Petition is not as such formally opposed by parties opponent, written objections are before me from the Rector, two churchwardens, four members of the Parochial Church Council (PCC) and a former Churchwarden and now member of the clergy with the Bishop's permission to officiate.
6. My decision is therefore required.
7. The Diocesan Advisory Committee (DAC), charged with providing me with independent and experienced advice on a range of Petitions received, resolved at its meeting on the 18th September 2020 not to recommend the proposed memorial, considering that if the parish wished to seek to uphold and apply the regulations, the committee should support that stance in this case.
8. The opposition has come as an understandable frustration to the petitioners who have, helpfully and sensibly, agreed that I should determine the matter upon written representations.
9. I have considered all the papers carefully and been much assisted by a selection of photographs of the churchyard, a number plainly showing other memorials with kerbs in place.
10. One (photograph 15) was noted to date from 1942. Another (photograph 17) was said to have been installed in the 'last few months'. That surprised me, as I had authorised no such memorial, nor had the Rector any delegated authority so to do.
11. A substantial, and plainly potentially powerful, argument relied on by the petitioners is that the family already has a similar family grave (with kerbs) which commemorates Eileen Britton (1929-2013) and Robert Britton (1924-2016), grandparents.
12. Again, I had no recollection of having given permission for this memorial either.

13. Anxious that I should be in a position fairly and justly to appraise any 'precedent' argument, I caused the Registry and the parish to make further inquiries of their records and invited the response of the petitioners themselves. The results were of interest.
14. An application dated the 11th February 2014 for Eileen Britton's grave was submitted to the then incumbent, the Revd Anne Davis, by Birkenhead Monumental Ltd and countersigned by her, granting approval, on the 4th March 2014.
15. The application was for a compliant memorial. Neither in the accompanying sketch nor in the written particulars is there any reference whatsoever to kerbs.
16. Further, two birds etched on the memorial were no part of that application, nor of the subsequent application (dated 25th July 2016 and approved on the 28th August 2016), from the same contractor, for the addition of Robert Britton's name.
17. The parish holds no further correspondence from the family or the stonemason.
18. The petitioner, Mr Hurd, was good enough to respond on the 17th November 2020 to say that the application had been 'left to Birkenhead Memorials' by the family. The company had advised him that it may take 'up to four weeks' to recover any paperwork from their off-site archive. He added: 'What was confirmed to us was that kerbstones will have been applied for as they had a good working relationship with Revd Davies (sic) who was more relaxed regarding the regulations and approved all applications that they put forward. They also confirmed to us that for the past 18 months they have been advising people they will not deal with Holy Cross Church or the associated graveyard due to difficulties they have experienced with Revd. Broad'.
19. On the present information, I regret to say I consider it likely this grave lacks proper legal authority.
20. Even if Ms Davis had granted permission (which I doubt) she had no authority to do so.
21. As to the purportedly recent grave at photograph 17 (the Dallinger grave), application was made (again, by Birkenhead Memorials) on the 18th December 2015 and approved by Revd Janet Arnold, a curate, on the 20th January 2016.
22. The application and accompanying sketch makes no mention of kerbs and the pro-forma document confirms intended observation of the diocesan regulations. That memorial was the subject of permission for an additional name to be added made on the 3rd July 2019 and approved by Ms Broad on the 22nd July 2019. Again, no reference was made to kerbs. The parish has located no correspondence relating to this grave and the likelihood is that it too is illegal.
23. A thorough search of parish records has revealed no records of approval having been given for any kerbs for any grave in the churchyard.
24. Ms Broad spoke of a recurring problem in the churchyard of families (and stonemasons) adding kerbs to graves without authority. So far as she was aware, no families had been specifically challenged about illegality. She said that, when asked, she (currently) invariably declined permission – as she is bound to do.
25. In their written material the petitioners pointed to a 'heart-shaped' memorial as an indicator of possible inconsistency of the application of regulations, for such graves are (to quote the regulations) 'generally not permitted'.
26. This matter I did recall, for I had granted a faculty on the 14th March 2007 to permit the unusual headstone. I have revisited the papers. There were particular pastoral sensitivities surrounding the death of a young girl aged 17 and, wholly unsatisfactorily, the memorial had

already been manufactured. Ms Davis and the parish supported its approval. The DAC did not object. Memorial Care were the masons involved.

27. Again, no mention was made of kerbs and my grant of faculty did not authorise them. They are nevertheless visible in the photograph (number 12) which I have been sent.
28. This too is, on the face of it, an illegal memorial.
29. It is to the great credit of the present petitioners that they have pursued their request in the proper way and that both 'sides' in the current disagreement have had opportunity to present their competing arguments.
30. Before I turn briefly to those arguments, it is necessary to say a word about procedure.
31. The petitioners have protested that their application was 'shot down long before it began and has never been given a fair chance to succeed'. They assert that 'the only opinion that matters is that of Revd Christine Broad, who seems to hold all the power in this situation'.
32. They regrettably descend further into unpleasantness when they assert: 'we seem to be being punished by a power hungry Reverend who is keen to assert her authority'.
33. I unhesitatingly reject these charges, which betray significant misunderstanding of an incumbent's inability, as a matter of law, to sanction a non compliant memorial.
34. Part of the complaint made arises from the petitioners' perception that the Rector may have, in effect, drummed up opposition from those PCC members who have written to the court.
35. They quote a line from Mr and Mrs Mountford's letter in which they object 'as requested by the Revd Christine Broad'. They suggest 'bias' on the part of PCC objectors, who 'like a good flock' have merely 'followed suit' and echoed the Rector's objections.
36. In fact, having read Ms Broad's letter of the 11th August to the whole PCC, I consider this not to be a point of any substance.
37. Ms Broad (as she was obliged to do) was, I judge, properly consulting the PCC (in advance of its next meeting at the end of September) in order, as she said, to use responses 'to determine the corporate response of the PCC'. I detected no 'pressure' in the tone or content of her letter. The PCC objections properly stand for my consideration.
38. What of the competing contentions?
39. The petitioners, perfectly reasonably and honourably, wish to place the proposed memorial as 'the last nice thing that we can do as a family for Maureen'. They point to the existing grandparental grave which I have mentioned, the proximity of the Dallinger grave to their intended location and the presence of a good many other memorials with kerbs - dating back decades - within the churchyard.
40. They dismiss the opposition of the parish founded upon 'precedent' and 'maintenance' concerns as of no substance in the existing context. They argue for a fair, proportionate and even-handed decision. They suggest that 'over 70% of the graves have either old stone kerbs or newer marble ones' and that all they request is 'a grave with kerb stones, not [to] build the Taj Mahal'.
41. The parish objections, while recognising the reality of past breaches, focus on the need for much needed discipline for the future. They urge the upholding of the regulations. They fear further requests will inevitably follow for non-compliant memorials. They have spoken of (familiar) maintenance and grass cutting challenges and problems related to memorial stability on unstable ground.

42. The Revd Peter Mills, in his objection and plea for 'good order and safety', brings considerable historical perspective (over 55 years' involvement in all) to the affairs of the churchyard.
43. He writes: 'The mishmash of unauthorised kerbstones, chippings and the like, which are clearly apparent in the photographs attached to the petitioners' application, do nothing to help. None was approved or submitted for approval by me. To my knowledge, none has been approved by anyone else since 2001 when my involvement started. I cannot speak about what happened before that date'.
44. The Rector stressed the desire to seek to restore order, facilitate easier maintenance and apply the regulations to bring 'a degree of uniformity' which, it was said, would 'lead to a more aesthetically pleasing churchyard'.
45. The arguments are, I confess, very familiar to me and this is by no means the first occasion in the diocese when such an, admittedly context-specific, decision has been required to be made.
46. Regulations, which exist in one form or another in every diocese, exist to promote good order and consistency of approach and expectation in consecrated churchyards. They emerge following wide consultation and reflect, sometimes, bitter experience of past difficulty and misunderstanding which needs to be avoided.
47. There is no right to erect any memorial except with the permission of a faculty. However, the Chancellor delegates his power to permit an incumbent (the Rector) to approve any memorial, provided it is erected in compliance with the regulations.
48. The Chancellor retains power to approve, by faculty, any memorial which falls outside the regulations.
49. Chancellors have variously articulated the approach to be taken where departure from regulations is sought. Some have spoken of the need for a 'powerful reason', others of the need for a 'substantial reason', still others of the need for 'good reason' (see the discussion by Ormondroyd Ch. in **All Saints Churchyard, Bransgore with Thorney Hill** [2017] EccWin 3).
50. I have approached this petition asking if the petitioners have established, despite the objections raised, a 'good reason' for me to permit the memorial sought.
51. In **St Mary, Kingswinford** [2001] 1 WLR 927 Mynors Ch (at paragraph 38) summarised four circumstances in which he considered non-standard memorials might be approved. The third is the only one arguably relevant here, namely: where a memorial 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'.
52. A similar point was made by Eyre QC Ch in **Eccleshall, Holy Trinity** [2013] where he commented that that churchyard was 'not one of those cases where the number of other kerbed memorials is such that a refusal of this Petition would amount to an artificial exercise in pursuing an illusory goal of conformity to the regulations and by so doing amount to injustice to [the petitioner]'.
53. The mere presence of other kerbed memorials (let alone illegally introduced ones) is not, in my judgment, of itself a good enough reason, apart from these considerations, for authorising a further kerbed memorial.
54. The high point of the petitioners' case is arguably to be found in the presence of a significant number of other kerbed memorials. Against that need to be balanced the parish's concerns about precedent, order and maintenance, of which the petitioners are largely dismissive.

55. The court has always to strike a balance in a case such as this between the heart-felt desires of petitioners for a chosen memorial, the interests of the parish who carry ultimate responsibility for the churchyard, but at the same time weighing considerations of justice and fairness to those who, over the years, have erected conforming memorials, possibly putting aside personal preferences to do so.
56. The right balance is not always easy to strike.
57. I have not been assisted by any precise statistical appraisal of numbers of kerbed graves as part of an overall total. The photographs I have studied do not appear to support the prevalence the petitioners suggest. I have not been persuaded refusal here would be in any way 'unconscionable'.
58. Personal preferences, however strongly held, need to be taken into account but I must also have regard to the wider views of those responsible for the good order and maintenance of the churchyard.
59. The burden is on petitioners to show good reason for departing from regulations which the parish ask me to uphold. They have failed to do so upon the evidence.
60. I found the pleas from Mr Mills and the Rector particularly persuasive here. This is a churchyard into which, regrettably, a significant element of unauthorised activity appears to have crept in recent years. Kerbed memorials invariably make maintenance a more complicated exercise.
61. In any event, a parish is always entitled to say to the Court: 'please uphold our wish to stand by and enforce the regulations'.
62. In my judgment, absent good reason to the contrary, that stance deserves support. There is, as Mr Mills said, something of a 'mishmash of unauthorised kerbstones'.
63. The petitioners' (perfectly proper) plea seeking to add another is not one to which I can accede.
64. I consider the parish here is acting entirely reasonably in seeking to draw a line.
65. I do not for a moment consider this is the product of any unfairness, let alone hostile animus or bias, directed to the petitioners personally from the Rector or any members of the PCC, indeed I reject that suggestion completely.
66. It follows that my decision is to dismiss the petition for the kerbed memorial requested.
67. I appreciate this result will be disappointing to the petitioners. I can understand the frustration they may feel that, at the very least, no past action appears to have been taken against illegally introduced non-compliant memorials.
68. That, ultimately, must be a matter for the parish's judgment and a court's decision. A reluctance to cause distress is always a complicating factor in these situations.
69. The Rector may, of course, give permission to the petitioners for a compliant memorial in the usual way.
70. Alternatively, if she preferred it, I would be willing to determine myself any suitably amended proposals for a non-kerbed memorial.
71. The petitioners must pay the Registry costs of and incidental to the Petition, to be determined by the Court if not agreed

David Turner
His Honour Judge David Turner QC
Chancellor of the Diocese of Chester

23-11-20