

Neutral Citation Number: [2022] ECC Roc 1

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: St PETER & St PAUL SHORNE

J U D G M E N T

1. By a petition dated 29th October 2021, the petitioner, Linda Clark, applies for a faculty authorising the erection of a monument, namely a headstone, in the churchyard of the Church of St Peter & St Paul, Shorne, Kent, to commemorate her late father, George James Richard Clark who died on 19th November 2020, and who was buried at some date thereafter: the petition refers to the date of burial as being 19th November 2020, but that must be wrong.
2. The petition and supporting documentation set out the grounds relied upon in support of the application. The deceased, George Clark, is buried in the same grave as his late wife, Kathleen Clark, who died in December 2012. On the existing headstone she is commemorated as follows: "IN EVER LOVING MEMORY OF A DEVOTED WIFE AND MOTHER KATHLEEN C CLARK PASSED AWAY 26.12.2012 AGE 83 Love Never Dies." The petitioner now seeks to add to the headstone further words and an etching to commemorate the life of her father.
3. The Church of St Peter & St Paul is Grade II* listed under the **Planning (Listed Buildings and Conservation Areas) Act 1990**, and is in a conservation area.
4. Specifically, the petitioner wishes to add a further inscription, an etching of the ship HMS Newcastle, upon which George Clark served, and to introduce a kerbset.
5. I indicated that I was willing to determine the petition on the basis of written submissions under **Rule 14, Faculty Jurisdiction Rules**, as I am entitled to do after consultation; Mrs Clark agreed, and that is the course I now adopt.

6. The words sought to be added are as follows: "IN EVER LOVING MEMORY OF A DEAR DAD GEORGE JAMES RICHARD CLARK WHO FELL ASLEEP 19TH NOVEMBER 2020 AGED 89 MAY YOU REST IN PEACE."
7. Above these words there is sought to be inscribed an image of the ship, HMS Newcastle.
8. The introduction of a kerbside and chippings is sought because the petitioner lives in Essex and cannot visit the grave with sufficient regularity to maintain it properly.
9. I directed that Public Notices be displayed for the required period of 28 days. This has been done, and no objections have been received.
10. The Incumbent, the Revd Ted Hurst, states: "We are happy with the wording, and would not object to the engraved picture - but for the fact that church regulations do not allow them." No objection is taken to the headstone, and he goes on to say: "It is the curbs and chippings that we object to." I will return to this issue below.
11. The DAC in its Notification of Advice dated 24th February 2022 takes much the same stance, recommending the inscription, and raising no objection to the engraving, but suggesting that the engraving of the ship should be at the base of the stone, and that the wording should be tidied up so as to provide uniformity. By way of example, Kathleen Clark is described as having died "AGE 83" whilst George Clark's inscription is proposed to read "AGED 89" (my underlining). The DAC does not recommend the introduction of the kerbstones etc.
12. I approve and allow the proposed inscription and engraving, subject to:
(i) the engraving being located at the base of the headstone, (ii) the precise wording of the inscription being agreed between the petitioner and the Incumbent. I have little doubt that this can easily be achieved, but if I am wrong here the petition will have to be returned to me for my further adjudication, with both parties setting out precisely what wording they seek, and what they have to say to the other party's proposed wording.
13. I now turn to what, in reality, is the only contentious part of the faculty, namely the proposed use of kerbstones and chippings. These are not permitted under the **Churchyard Regulations**. The petitioner seeks permission for such because as stated above she lives in Essex and will not be able to visit the grave as much as she would like. In an email letter dated 4th April 2022 to the Registry she puts it thus: "As I do not

live in the vicinity and work weekdays and weekends it is impossible to visit the grave on a regular basis to maintain it.” She also points out that there are other graves with kerbstones, and questions whether the existence of such in fact hinders mowing and maintenance of the churchyard.

14. The position of the DAC, which is of course an advisory body, is clear: it is against the introduction of kerbstones, both because the use of such is not permitted by the **Churchyard Regulations**, and also because they: “will make the long term maintenance of the churchyard harder for the PCC.”
15. The Incumbent has this to say: “There are currently 11 [similar memorials] with kerbstones and/or chippings etc. but they were installed without permission. We are in the process of asking for them to be removed,” and goes on to repeat the point: “Curbs and chippings hamper grass cutting and are not permitted under Churchyard Regulations.” The Incumbent is fully and properly representing the views of the PCC expressed and approved at a meeting on 29th November 2021.
16. I do not know when the existing headstone was erected, but it is clear that it was not and is not surrounded by kerbstones and chippings. I have no evidence before me to show why it is now that the maintenance problems have arisen for the petitioner. On the face of it they must have existed for a number of years.
17. The central question must be to the effect why should the **Churchyard Regulations** be circumvented. After all, rules are there to be kept; this in turn means that in both law and common sense very good reasons have to be established before an exception can be made.
18. I accept the argument that routine maintenance is more difficult with kerbstones etc. This is one of the reasons for prohibiting their use in the first place.
19. I next need to look at whether there have been other similar exceptions made in the particular churchyard, to which the answer is that there have not. There are other graves with kerbstones etc. but these have been introduced without permission, i.e. in breach of the Regulations. Thus, no exceptions have been made. I regret to say that it does not avail the petitioner to argue that because there are unauthorised breaches, I should allow what she asks for. Moreover, the Incumbent and the PCC are trying to regularise the position by getting the unauthorised kerbstones etc. removed. They should be applauded and

supported by the Consistory Court for their efforts. Were I now to accede to the petitioner's request, a coach and horses would have been driven through the PCC's policy.

20. Indeed, it goes further; to allow this application which would involve my approving an exception to the Regulations would, in my judgement, inevitably lead to an undesirable situation and precedent being created which, in reality, would make it impossible for the Incumbent and/or PCC not merely to have the present unlawfully positioned kerbstones removed, but also in the future to stop anyone else from introducing them.
21. Accordingly, for the reasons given above, I refuse permission for the introduction of kerbstones and chippings. No sufficient reason for their use has been made out so as to justify an exception being made to the Regulations.
22. In summary I direct that Faculty issues, but with the following conditions, namely that;
 - (1) The precise wording on the headstone be subject to agreement between the petitioner and the Incumbent, as referred to in paragraph 12(ii) above;
 - (2) The engraving of HMS Newcastle be at the base of the headstone, as referred to in paragraph 12(i) above;
 - (3) The petitioner must pay the Registry and Court costs of and incidental to the petition, in the usual way. There shall be a correspondence fee (or fees) to the Registrar as I direct.

John Gallagher
Chancellor
22nd July 2022