

Neutral Citation Number: [2022] ECC Bla 4



Faculty – Grade I listed mid-C16 closed village church – Confirmatory faculty for two benches which had been placed in the churchyard by unidentified persons without prior faculty permission or List B approval – PCC fully supportive of proposal – DAC recommending proposal – No objections received – Faculty granted but court counselling PCC to petition to remove any further unauthorised benches – Court warning of adverse consequences of permitting unlawful benches to remain in a churchyard

Application Ref: 2022-075219

**IN THE CONSISTORY COURT OF
THE DIOCESE OF BLACKBURN**

Date: Sunday, 9 October 2022

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

The churchyard of St Leonard, Old Langho

THE PETITION OF:

THE REVEREND TRACY SWINDELLS (Vicar)

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

No objections were received to the petition.

The following cases are referred to in the Judgment:

Re Christ Church, Harwood [2002] 1 WLR 2055

Re St Edmund Churchyard, Kessingland [2020] ECC Nor 4, [2021] PTSR 653

Re St Mary the Virgin Churchyard, Burghfield [2012] PTSR 593

JUDGMENT

Introduction and background

1. The village of Old Langho lies to the south-west of Clitheroe and a little to the west of Whalley in the Ribble Valley. The chapel of St Leonard was built in c 1557 and is a Grade I listed building. The church is no longer used for regular services and is in the care of, and managed by, the Churches Conservation Trust. However, the churchyard (which is not within a conservation area) is still used for burials and remains the responsibility of the Parochial Church Council (the PCC). According to the entry for the church at page 478 of the current volume of *The Buildings of England for Lancashire: North* (edited by Clare Hartwell and Nikolaus Pevsner and published in 2009), the churchyard was extended in the early C20th as a patients' cemetery for Brockhall Hospital, just north of the church, which was opened in 1904 as the Lancashire Inebriate Reformatory (and closed in 1992)

2. This is an unopposed online faculty petition, dated 30 August 2022, by the vicar, the Reverend Tracy Swindells, for retrospective faculty permission for two benches which have been placed in the churchyard by unidentified families without either prior faculty permission or List B approval. One of the benches is whitewashed, 49 x 18 x 36 inches, and bears no memorial plaque. The other is a brown lattice bench, 54 x 20 x 34 inches, and bears a brass memorial plaque with a small heart to either side of the inscription.

3. By rule 3 (3) and Schedule 1 of and to the *Faculty Jurisdiction Rules 2015* (as amended), the introduction and removal of benches in a churchyard may be permitted without a faculty under List B 6 (1): (a) if the archdeacon has been consulted on the proposal to undertake the matter and has given notice in writing that it may be undertaken without a faculty; and (b) subject to: (i) any conditions that are specified in relation to that matter in the corresponding place in the second column of Table 2 in Schedule 1; and (ii) any additional conditions imposed by the archdeacon under paragraph (2) (b) of rule 3 (3). However, permission cannot be granted under List B retrospectively, so full faculty permission is required for these two benches.

4. According to the Statement of Needs, two benches have been placed in the churchyard. One family could potentially be traced via the memorial plaque but the other bench has no distinguishing features. Neither family had approached the PCC before installing the benches in the churchyard, and there is no List B permission to place them there. Consultation between the PCC and the Secretary of the Diocesan Advisory Committee (the **DAC**) and the Archdeacon of Blackburn has identified three possible options: (1) Placing notices on the benches indicating that they should be removed because they have been installed without permission. (2) Asking the families to apply for a full faculty as List B permission cannot be applied for retrospectively and a full faculty is therefore required. (3) The PCC approving the benches and applying for a faculty on behalf of the families who have placed them there. As only one family

can potentially be traced, the PCC have decided that the third option is the most appropriate and pastorally sensitive in all the circumstances of the case.

5. Paragraph 9 of the minutes of the PCC meeting held on 19 July 2022 records as follows:

Unauthorised placement of benches at Old Langho.

Two benches have been placed at Old Langho without List B faculty permission being obtained first. One of the families can be identified via a plaque on the bench but the other cannot. On consulting with the Archdeacon, we were presented with three options: leave a note on the benches requesting their removal, tracking down the families and asking them to apply for a full faculty costing £300 as the list B one cannot be done retrospectively. Or applying for the faculties as a PCC without involving the families. We currently have a policy limiting the number of benches in the church yard which the addition of these two will exceed. The PCC decided to remove the restriction on the number of benches and for pastoral sensitivity to the bereaved families to make the faculty applications as a PCC.

6. By a Notification of Advice, dated 18 August 2022, the DAC have recommended the proposals for approval by the court, advising that they are not likely to affect the character of the church as a building of special architectural or historic interest, its archaeological importance, or any archaeological remains existing within the church or its curtilage. The public notices were duly displayed during the period from 3 September to 3 October 2022 (inclusive) and no objections have been received.

7. Since this is an unopposed petition to which FJR 10.6 applies, I may grant a faculty without further proceedings. However, for reasons that will become apparent, I have considered it appropriate to issue this short, written judgment.

Applicable legal principles

8. Since each of these two benches was introduced into the churchyard without due authority, their continued presence constitutes a trespass. However, removing them from the churchyard and disposing of them would still require a faculty from this court: see the analysis of Chancellor Bursell QC (in the Oxford Consistory Court) in Re St Mary the Virgin Churchyard, Burghfield [2012] PTSR 593, which in my judgment remains unaffected by the later analysis of that decision undertaken by Chancellor Etherington QC (in the Norwich Consistory Court) in Re St Edmund, Kessingland [202] ECC Nor 4, [2021] PTSR 653. Parochial Church Councils have a duty to see that their churchyards are kept generally in such an orderly and decent manner as becomes consecrated ground. In the instant case, the PCC could have petitioned the court for the removal of these two benches; but they have not done so. Rather, the PCC, and the vicar, have chosen the alternative path of seeking retrospective approval for these two benches by way of a petition submitted through the online faculty system. I understand the pastoral reasons for doing so.

9. However, I am concerned about the potential implications of the PCC's decision. It may lead to, or even encourage, the installation, and proliferation, of further unauthorised benches in this churchyard. This would operate to the potential detriment of those who enjoy the churchyard as it is, and of those who might have wished, or might like, to install a bench to commemorate their own loved one but appreciate that the PCC have formulated a policy

restricting the number of benches in the churchyard and, as a result, have chosen, or will in future choose, to abide by that policy for the good of all. As Chancellor Holden observed (in the Manchester Consistory Court) in *Re Christ Church, Harwood* [2002] 1 WLR 2055 (at paragraphs 1 and 2):

There cannot just be a total disregard for the necessary control and management of burial grounds provided for by the normal processes. These are there to protect and maintain the very beauty, dignity and order of the churchyard which have, in many cases, precisely been the reasons which led those left behind to choose it as the final resting place for their loved one. The rules, carefully worked out over the ages, and arising out of thousands of instances of burial and memorialisation, need to be followed because of their proven value even, perhaps particularly, where the circumstances of death are especially poignant and heart-breaking. In the end everyone suffers if the appearance of a churchyard is disfigured or the tranquil beauty of the burial place is jarred by ill-designed monuments and inappropriate memorial inscriptions. With present day technological advance most memorials have the potential to last virtually for ever and great thought has to be given in considering whether or not to allow anything to be erected which may become indefinitely a part of the landscape. And, even where the gravestone is of itself appropriate, there has to be careful consideration of what impact it is likely to have on its surroundings.

A monument is a public statement and those who own the land and those who have the obligation of maintaining it clearly have rights and interests in determining what is put in and on it. Certainly for centuries the law of England has recognised that they have. To say otherwise would in effect be, and I hope that this does not sound too cold or harsh, simply to give to the kindred of the deceased the final say in how the churchyard is to look. Cases vary and this final say could then possibly be given to people who might have little or no real connection with the church let alone the Church, and who might be totally uncaring about what impact on visual amenity, and churchyard upkeep and maintenance, whatever they wanted might have.

The rights and interests of all those whose loved ones have been laid to rest in the churchyard, of all parishioners, of the local community, and of the Church, and of society at large, all have to be considered in permitting a memorial bench, which is likely to last for some years, to be placed in a churchyard. There cannot be a *carte blanche* situation where the family of one deceased person has the sole right to decide what is, and what is not, appropriate by way of a memorial to their loved one. This court has an important responsibility to ensure that what is placed in the churchyards in our Diocese of Blackburn is both fitting and appropriate, and that all those with an interest in the churchyard are treated equally and fairly. This court must bear firmly in mind that those who comply with the law justifiably feel aggrieved when others, who do not comply, are rewarded if the church authorities turn a blind eye.

10. Further, to install a memorial of any particular kind in a churchyard without the permission needed is more than discourteous: it is unlawful. No court in this land, or any other,

can simply pretend that an action, apparently done in deliberate breach of the law, has not actually happened. To ignore what has taken place, and not to act upon it, would seriously undermine the court's jurisdiction and authority and, ultimately, the rule of law, upon which civilised, and democratic, society depends. Further, the court should be conscious that when breaches of the law are allowed to occur without correction, there is a risk that others may feel entitled to follow suit, with an incremental detrimental effect on the whole character of the churchyard. I am prepared to assume that those who placed these two benches in this churchyard, without any prior notice to the PCC had no intention of simply getting their own way, or of riding roughshod over other people's rights and interests. But by permitting these two benches to remain in this churchyard, this court must in no way be seen as suggesting that the loved ones of those who placed them there are any more important than the many others who are buried in this churchyard or, worse still, as indicating how more loving and caring those who placed these benches there were, and are, for their own departed than others are for theirs who rest in neighbouring graves.

Future conduct

11. For these reasons, I would counsel this PCC, and others, to think very carefully indeed before seeking retrospective authorisation for any further unlawful installations of benches within this churchyard, or any other churchyard within this Diocese. In future, in the absence of good and cogent reasons for not doing so, I will expect any PCC to petition for the removal of any unauthorised benches which they may find within their churchyard, leaving it to the person or persons who placed each bench there to petition for its retention, and to justify their conduct in having proceeded without prior lawful authority. I would invite this PCC, and the DAC, the archdeacons and the area deans, to give due publicity to this judgment, so that anyone who may be tempted to introduce a bench into a churchyard without prior List B, or full faculty, approval may appreciate the consequences of their actions. Hopefully, this judgment will act as a suitable warning, and deterrent, to them.

Disposal

12. As for the present petition, had I been provisionally minded to refuse the faculty sought, I would have directed that special notice of this petition should be given to the owner of each bench by directing the petitioner to make efforts to trace, and to give notice of this petition to, the relatives of the person commemorated by the memorial plaque on one of the two benches, and by posting notice of this petition on each of the two benches. However, albeit with some reluctance (for the reasons already stated), I am prepared to grant the faculty sought by the petitioner. The objection to the continued presence of these two benches in this churchyard was not that they contravened the Churchyard Regulations for the Diocese but that they exceeded the number of benches for this churchyard previously set by the PCC. Now that the PCC have decided to remove the previous restriction on the number of benches and, for reasons of pastoral sensitivity to the bereaved families, to make this faculty applications as a PCC, that particular objections has disappeared. Had prior approval been sought for these two benches, this could have been granted by the Archdeacon under List B 6 (1) without the need for any faculty application. Now that a faculty petition has been presented, the DAC have recommended the proposals for approval by the court. The presence of these benches has caused no harm to the setting, the appearance or the significance of this listed church building or its churchyard. Although it could be said that by granting a faculty for their permanent retention there, this court is, in a sense, rewarding those who have introduced the benches into the churchyard for their

unlawful conduct, that conduct has afforded an opportunity for this court to make the true position clear, thereby hopefully deterring any further similar unlawful activities in the future. In this sense, the interests of justice have been served.

13. For these reasons, the court will grant a retrospective faculty permitting these two benches to remain in the churchyard. In the usual way, I charge no fee for this written judgment. The petitioner must bear the costs of this petition (which will therefore presumably fall to be borne by the Diocese in the usual way).

David R. Hodge

The Worshipful Chancellor Hodge KC

The Seventeenth Sunday after Trinity

9 October 2022