

Neutral Citation Number: [2023] ECC Gui 2

**IN THE CONSISTORY COURT OF
THE DIOCESE OF GUILDFORD**

Date: 24 January 2023

**In the Parish of Knaphill and Brookwood
Brookwood Cemetery**

In the matter of a petition for a faculty for the introduction of a monument and surrounding landscaping to commemorate the people whose remains were re-interred from St James' Gardens, Euston

JUDGMENT

1. The former burial ground at St James's Gardens, Euston is part of the construction of the new HS2 terminus station and since 2017 human remains have been carefully archaeologically excavated and exhumed from the site and reburied in Brookwood Cemetery, Woking, Surrey.
2. Pursuant to a 2015 undertaking between the Department for Transport and the Archbishops' Council of the Church of England, HS2 must provide a monument commemorating the persons reburied and identifying the relevant burial ground from which the human remains were removed.
3. Brookwood Cemetery was identified as the appropriate location for the majority of the reburials and Mei Loci Landscape Architects were commissioned in April 2020 to develop the design for the landscape and monument at Brookwood Cemetery.
4. The design of these elements seeks to create a solemn yet striking landscape that captures the essence of St James's Gardens and fits within the historic landscape context of Brookwood Cemetery.
5. Following consultation with Historic England and Woking Borough Council, the design is now presented for approval by faculty. Stuart MacKnight of Mace Dragados on behalf of HS2 Ltd is the petitioner and the petition was submitted on 19 July 2022 with the notification of advice of the Diocesan Advisory Committee recommending approval.

Brookwood Cemetery and St James's Gardens

6. Brookwood Cemetery was conceived by the London Necropolis Company in 1849 with the intention of providing a new principal burial ground for London at a time when space for burial within city limits was at a premium. The first burials took place in 1854. The Cemetery is included on the Register of Parks and Gardens of Special Historic Interest at Grade I. The cemetery is divided into two main areas by a public road crossing the site: the 'North Cemetery' and the 'South Cemetery', which is consecrated.
7. St James's Gardens, Euston was used as a burial ground by the parish of St James's Piccadilly from 1788 to 1853 and then converted into public gardens in 1887. The Eastern end of the burial ground was removed during the Euston station expansion in the late 19th century. The chapel associated with the grounds was constructed in the late 18th century but was demolished in the 1960s. A wide range of people from all backgrounds were interred in the chapel and burial ground including some notable people.
8. The reburial of St James's Gardens' burial population would form part of a long history of London burial grounds being relocated to Brookwood, many of which were relocated via the railway following the demolition of churchyards to make way for infrastructure projects during the mid-19th century.
9. The area of Brookwood Cemetery identified for the reburial of remains removed from St James's Gardens is currently a level open meadow north-east of the Glades House between Cemetery Pales Road and Avenue St Barnabas. It is consecrated and situated in a prominent location within the cemetery. Around it is heavily wooded, with 19th Century giant sequoia trees and coniferous trees and the landscape is said to be a classic of Victorian cemetery with a large collection of a variety of mausolea and structures.

The monument

10. The design of the monument reflects the form of ledger burial stones found at St James's Gardens and also that of the historic shape of St James Gardens. It seeks to symbolically reunite St James's Gardens' burial population with burial plot 62 where remains previously removed from St James's chapel crypt were reburied. Its shape is derived from a representation of the proportions and shape of St James Gardens. As can be seen from the illustrations below, there is a space between the two pieces representing the historic fracturing of the gardens by Cardington Street which cut across it.



11. The full monument will be assembled in interlocking pieces with cuts and joints which fit with the overall design intent of the monument. Where the joints come to a 'point' the stone will be worked from a single piece, creating false joints, in order to minimise any chance of cracking.
12. The pathways to the monument are a permeable resin bound aggregate surface in golden tan with aluminium edging to straight and curved sections of the paths. The circle around the monument itself will have low (450mm) curved walls which wrap around the internal space occupied by the monument. The walling stone is a Portland Stone in an attractive rough block pattern.
13. The monument is large and so is striking in its context, easily viewed but not too imposing in the landscape. It will be made of Portland Stone, sourced from Albion Stone, in Dorset with a subtle leaf pattern on its surface reflecting the trees of St James's Gardens. On the upper face of the main section of monument is a descriptive form of remembrance in Times New Roman lettering:

"This monument was erected in July 2022 to commemorate those formerly buried in St. James' Gardens, Euston between 1790 - 1853. Those buried in the St James's chapel crypt were previously laid to rest nearby."

14. The sides present a more interpretative style of remembrance through poetry. A poem was written by Patricia Hawes of Mei Loci for the sides of the monument which draws on appropriate concepts of the deceased's heavenly spirits and their eternal life with Christ:

"Still hearts buried within the quiet earth, from centuries past,
Their earthly fires no longer kindled,
heavenly spirits now shine bright,
pure white of the moon and stars, in eternal life,
memories left to remain, now solemn and soothing,
amongst the trees old and new, cloaked in vivid colour,
nothing is as certain as the passing of days,
the setting sun and rising moon,
new birth and life, to ashes and dust in death,
remember the past with peaceful reverence,
and to the future with faith, kindness and hope."

15. On 15 September 2021 Woking Borough Council gave formal planning permission (reference PLAN/2021/0607 - Construction of a memorial and associated works including landscaping and engineering operations) and the planning conditions have been complied with. Formal public planning notices were exhibited locally, on site and in the local newspaper in June 2021 and so I waive any requirement for separate public notices under the faculty jurisdiction. Avril Kirby, Cemetery Manager of Brookwood Park Ltd, indicated the cemetery's approval to the scheme by letter and lodging a supporting petition dated 19 July 2022.

16. The petition comes before me on the papers and unopposed. I have a very thorough statement of significance and needs together with further details of materials, design and location required by the planning authority. I have been provided with copies of the various local authority permission, public notices and a letter of support. The matter now comes before me for decision.
17. *In re Welford Road Cemetery, Leicester* [2007] Fam. 15 the Court of Arches noted that 19th century legislation such as the Cemeteries Clauses Act 1847 and various Burial Acts established the framework and contained the powers necessary to enable new land to be set out for burials in cemeteries. A cemetery company was empowered to apply to the bishop of the diocese for consecration of part of the cemetery. It is then sacred and subject to the faculty jurisdiction. The case held that the Local Authorities' Cemeteries Order 1977 conferred extensive powers on a burial authority to manage and improve the cemetery as well as to grant burial rights and rights to erect memorials: article 10. The burial authority has a discretionary power to “put and keep in order any grave or vault, or any tombstone or other memorial, in a cemetery” (article 16(1)).
18. The *Welford Road* case was concerned with the ownership and maintenance of old and potentially unsafe memorials in cemeteries and not the criteria for the introduction of a new memorial. I note its reference to the words “the right to place and maintain” in article 10(1)(b) of the 1977 Order as meaning that the grantee and his/her successor during the period of 99 years has responsibility for the maintenance of the memorial in a safe condition. Article 10(7) provides a burial authority with the power “to agree with any person, on such terms and subject to such conditions as they think proper, to maintain any ... memorial ... for a period not exceeding 100 years from the date of the agreement.”
19. The Church Buildings Council guidance on memorials in churchyards gives assistance on memorials generally. Each memorial is a private commemoration, but within a public setting. The design of each memorial therefore needs to take account of the setting.
20. I also have regard to what was said in *Re Holy Trinity Eccleshall* [2013] by Stephen Eyre Ch. (Lichfield) about the consecrated nature of churchyards and some of those principles have application in a consecrated cemetery. Parts of public cemeteries which are consecrated must be treated and cared for in a manner consistent with that consecrated status. Consecrated cemeteries can, like churchyards, fulfil a spiritual role and contain memorials to departed Christians demonstrating their belief in the communion of saints. Cemeteries like churchyards are places of solace and relief for those who mourn and it is a comfort for the community to know that the character of its setting will be preserved. In determining this petition I must be satisfied that what is placed in Brookwood Cemetery is fitting and appropriate in the light of those considerations. The proposed memorials must be fitting and appropriate not just for today but also for the future.
21. The Diocese of Guildford Churchyard Regulations 2022 do not apply to cemeteries and the proposed monument is something much more substantial and elaborate than is contemplated within the Regulations. However, the provisions on designs of memorials

give some assistance as to what is appropriate in any memorial to the deceased. The Regulations provide:

“Memorials must be of weathering, natural stone or slate or hardwood, so that they harmonise with the surroundings, such as stone traditionally used in local buildings or similar to them in colour and texture. The stone (including the lettering surface) shall not be finished with a polished or reflecting surface. Memorials may not be black, dark grey or red or constructed of synthetic stone or plastic.

...

Memorials may include simple and reverent inscriptions and a small etching or carving in black or white only which must not be inconsistent with the doctrine of the Church of England”.

22. The design of the proposed monument is consistent with the principles behind the Regulations in my view. It departs from the regulations as to size and shape and ledger stones, but those are applicable to a “simple headstone, cross, stone vase or urn” for an individual and not to a large and prominent monument to a large group of deceased.
23. In relation to memorials in churchyards, the Consistory Courts have been willing to depart from local regulations where there is a “powerful reason” as in *Church Lawford St Peter* [2016] ECC Cov 3 or where there is a “specially designed memorial which may be non-standard, but which is a fine work of art in its own right” as mentioned in *In Re St Mary: Kingswinford* [2001] 1WLR 927. Other Consistory Court decisions use the threshold of what is appropriate or suitable in individual circumstances, see: *Re St John the Baptist Adel etc* [2016] ECC Leeds 8 and *Re St. Mary the Virgin Eccleston* [2017] ECC Bla 4.
24. In my judgment the design for both the monument and its surrounding landscaping have taken into consideration the significance and context of both St James’s Gardens (and the souls of those who were formally interred there) and Brookwood Cemetery. The proposed inscriptions are simple, reverent and properly spiritual.
25. The design of the monument is exceptional in form and impact. It satisfies the criteria that Chancellor Mynors mentioned in *Re St Mary: Kingswinford* of a specially designed memorial which is a fine work of art in its own right. The layout of the landscaping around it will encourage contemplation and reflection among visitors to the memorial.
26. In my judgment, the proposed memorial is fitting and appropriate not just for today but also for the future. I regard it as a scheme of the highest quality and find that it is appropriate for a faculty to be issued as described in the petition, the statement of needs and significance and specification of materials and design.

The Worshipful Andrew Burns KC, Chancellor