

Neutral Citation Number: [2023] ECC Dur 2

**IN THE CONSISTORY COURT OF THE DIOCESE OF DURHAM
RE THE CHURCHYARD OF FATFIELD ST. GEORGE
AND RE THE MEMORIAL TO GREGG McGUIRE**

JUDGMENT

Background

1. Gregg McGuire, a keen footballer, was just 13 years old when he was knocked off his bicycle and killed by a speeding motorist. No words can adequately describe the dreadful shock and grief suffered by his family and friends. Gregg's body is buried in St George's churchyard Fatfield, Washington.
2. Gregg's mother, Alison Rudkin, wishes to have a suitable memorial for her son erected at his grave. The petition she presents is necessary because the memorial she proposes to introduce into the churchyard falls outside the diocese's Churchyard Rules.
3. The proposed memorial will measure 4 feet high (including its base), 2 feet 9 inches wide, and 3 inches thick; it would be of polished black granite, with a gold inscription in Roman serif script, mostly upper case. The memorial would be a half ogee shape and would be mounted on a base that measured 3 feet wide by 12 inches, and 4 inches high.
4. In the top upper right quarter of the memorial there would be inscribed:

In Loving
Memory Of
GREGG-LEWIS
McGUIRE
BELOVED SON
BROTHER, GRANDSON
COUSIN, NEPHEW
AND A DEAR FRIEND
BORN 6TH MARCH 2009
TRAGICALLY DIED
16TH AUGUST 2022

5. In the top left quarter of the proposed memorial, alongside the above inscription, there would be an image of a young man with a football at his feet, standing in front of a stairway leading to heaven, with light beams at the top of the stairway radiating out from a heart

shape. The image would measure approximately 1 foot 3 inches wide by 2 feet long and would be laser etched into the memorial and coloured light blue and grey in masonry paint.

6. Across the lower half of the memorial, would be the following inscription:

TO LOSE SOMEONE SO SPECIAL IS REALLY HARD TO BEAR
IT HARDLY SEEMS BELIEVABLE THAT YOU'RE NO LONGER THERE
YOU LEFT US FAR TOO EARLY, BEFORE YOUR TIME IT SEEMS
AND NOW YOU'LL NEVER HAVE THE CHANCE TO FULFILL ALL THOSE DREAMS
HOWEVER HARD IT IS THOUGH, WE'LL TAKE COMFORT IN THE THOUGHT
OF ALL THE MEMORIES THAT WE HAVE AND THE HAPPINESS YOU BROUGHT
YOU ALWAYS LIVED YOUR LIFE TO THE FULL BUT OURS WON'T BE THE SAME
UNTIL THE DAY WHEN WE CAN SEE YOUR SMILING FACE AGAIN

7. There would be an additional inscription on the base of the memorial:

SLEEP TIGHT LITTLE MAN
♥ FOREVER 13 ♥

8. The Vicar of St George's Church, the Reverend Nick Barr-Hamilton, has been offering support to Gregg's family. He wrote a letter to the diocesan registry dated 28th June in support of the petition. He pointed out that the PCC had approved the application unanimously at their meeting on 6th June and requested the court to appreciate the pastoral sensitivity involved with the petition. He drew attention to the torment the family had suffered, with substantial press coverage being given to the criminal proceedings and consequential conviction and imprisonment of the driver following Gregg's death. The Vicar wrote:

"The headstone is the final part of the process [the family] are having to go through in laying Gregg to rest. I had initially hoped we would not have to go through the faculty process as the headstone shape itself is not dissimilar to many others we have in our churchyard, but I appreciate that the inscription they have asked for is longer than most. The picture, while larger than some, in context is, I feel, fitting for a Christian churchyard (a young footballer at the steps of heaven)."

The Churchyard Rules

9. The relevant parts of the diocese's Churchyard Rules state:

"Monuments or tomb stones conforming exactly with the following provisions may be introduced into a churchyard with the written permission of the Incumbent (or Priest-in-Charge, Team Vicar or Rural Dean where the benefice is vacant)..."

- Rule ii) A headstone shall be no more than 1200mm (4 feet) high measured from the surface of the ground, 900mm (3 feet) wide and 150mm (6 inches) thick and no less than 750mm (2 feet 6 inches) high, 500mm (1 foot 8 inches) wide and 75mm (3 inches) thick. Slate memorials may be thinner than 75 mm (3 inches) but no less than 38 mm (1¼ inches).*
- Rule vii) Except as stated in (viii) below, monuments may be of hardwood or natural indigenous stone or slate. Stones other than those traditionally used in local buildings, or stones in conflict with the stone of the church, may not be used. The stone shall not be mirror polished in any way so as to reflect.*
- Rule viii) A monument shall not be of black, blue or red granite nor of all polished granite of whatever colour nor of white marble, synthetic stone or plastic.*
- Rule ix) A monument shall not includeany picture, portrait or photograph...*
- Rule x) Every monument shall be simple in shape. In particular (save by leave of a Faculty) a monument shall not be in the shape of a cross, heart or book.*
- Rule xi) Inscriptions must be simple and reverent and any literary quotation must be appropriate to its use within the context of a Christian burial ground. All inscriptions shall be inscribed or in relief; they may be painted a shade lighter or darker than the natural colour of the stone but may not be leaded or gilded. No plastic or inserted lettering may be used.”*

DAC Advice

10. The Durham Diocesan Advisory Committee considered the petition at its meeting on 23rd July of this year. It decided that it could not recommend the petition for approval, explaining its reasoning thus:

- *The DAC were very aware of the pastoral issues around the application for this memorial.*
- *However, memorials could well be in place for many years and need to ‘speak’ over the years and not just the present.*
- *The text is far too detailed and would be very difficult to read due to the size of the font required to fit it on to the headstone. This difficulty would become worse with the passing of years.*
- *It was suggested the family produced a life sized cardboard example to see how legible the text would be in what is likely to be a congested space.*
- *The proposed image would fade over time. A smaller and simplified image in relief may be more appropriate, if allowed by the Chancellor.*

- *The proposed black polished granite is outside of the churchyard rules.*
- *A different stone in line with the churchyard rules would be acceptable.*
- *The churchyard rules are there to maintain consistency not just within the particular churchyard, but across the diocese too.*
- *Observing the churchyard rules ensures fairness across the Diocese.*
- *The churchyard rules are produced to safeguard families. Observing them avoids unnecessary time and the extra costs associated with complex headstones being incurred.*

11. The diocesan registry sent a copy of the DAC's advice to the Vicar, the PCC and to Gregg's family so that a response could be provided. The Vicar responded by email on 26th July. He expressed surprise at the DAC's advice, and pointed out that many memorials in St George's churchyard over the years had not complied with the Churchyard Rules:

“St George's churchyard has numerous headstones of polished black granite already so this cannot be a reason to reject the application. As I understand it, Fatfield's churchyard has a special dispensation for all kinds of stone shapes and types owing to its history (for whatever reason as it was before my time) which has seen many many headstones outside the churchyard rules setting precedent for others to have similar items.”

He acknowledged the DAC's point about the size of the lettering on the poem, and indicated that he would liaise with the family on this issue and encourage them to produce a life size mock up to illustrate what it would look like.

12. A full-size cardboard mock up was subsequently produced using a template provided by the stonemason. By letter of 20th August the Vicar wrote again to the diocesan registry on behalf of the family, responding to the DAC's objections. He emphasised again the pastoral considerations, and the special circumstances and history pertaining to St George's churchyard. He wrote that the family had seen the full-size mock up of the inscription and *“we are all in agreement that the headstone is big enough to accommodate the inscription at the proposed letter size and it is perfectly legible from a distance”*. In his letter the Vicar makes no specific mention of the size of the image of the young footballer at the steps of heaven. He referred to another headstone with regards to its shape and size and long inscription that also fell outside the Churchyard Rules but which had nonetheless received a faculty at least 10 years before, in similar circumstances where a young man had been killed in a car accident caused by criminal activity.

The relevant principles to be applied

13. The right of burial or interment in a churchyard does not include a right for a memorial to the deceased to be erected. Permission must be obtained beforehand, either from the

incumbent in reliance upon the Churchyard Rules or by way of faculty granted by the Consistory Court. As in any case, the burden of persuading the court is on the petitioner.

14. The starting point for deliberation, in accordance with the judgment of the Court of Arches in Churchyard of St Giles, Exhall [2021] EACC 1 at paragraph 8.7 is to consider the question “*What is a monument over a grave? What is it there to do?*” The Court of Arches approved the pithy statement in answer to that question that it is “*To honour the dead, to comfort the living and to inform posterity*”, and it commended that summary to chancellors and all others involved in the consideration of memorials within the faculty jurisdiction.
15. When considering a petition for a memorial, the effect of the Churchyard Rules needs to be taken into account. The diocese’s Churchyard Rules aim to ensure that churchyards are kept in decent order for the benefit of everyone, including future generations, and to ensure respect for those who have died. The approach the court should take when considering petitions seeking permission for memorials that do not comply with the Churchyard Rules is set out in Churchyard of St Giles, Exhall at paragraph 11.8, where the Court of Arches held: “*We consider that the right approach is the merits-based one. Clearly, any Regulations in place for the parish or diocese concerned will be part of a matrix of relevant considerations, but we do not think that consideration of a faculty petition should start with a presumption against allowing a memorial outside the parameters of the Regulations.*” The Court of Arches approved the analysis of Chancellor Hill in St John the Baptist, Adel [2016] EEC Lee 8, that “*The terms and content of the Churchyard Regulations will, of course, be a relevant factor – often highly relevant and doubtless on occasion determinative. But they will be one of the constellation of infinitely variable factors which the court must consider on a case-by-case basis.*” The Court of Arches also approved the statement of principle that the suitability of a memorial was to be approached “*on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of any departure from, the doctrine of the Church of England in any essential matter*”.
16. The court will take into account pastoral considerations, but such considerations are not determinative. They are part of the matrix of relevant considerations, as explained by Chancellor Bursell in Re The Churchyard of Quarrington Hill [2016] ECC Dur 1:

“The consistory court, being a Church court, has always been concerned to act pro salute animae – that is, with regard to the pastoral effect that any of its decisions may have – but that concern embraces a concern not only for the individual petitioner but also for all those who may be affected by its decisions. In this context it is worth quoting the words of Chancellor Holden in Re Christ Church, Harwood [2002] 1WLR 2055 at 2056:

“The overall beauty and tranquillity of a churchyard is only as good as its component parts allow it to be. The rights and interests of private individuals, of the worshipping congregation, of all parishioners, of the local community, and of the Church and society at large all have to be considered in permitting a memorial, which is likely to last for ever, to be placed in a churchyard. There cannot be a carte blanche situation where a family of the deceased has the sole right to decide what is, and what is not, appropriate by way of memorial, not least because...the family do not own the land in which the remains are placed, or on which the memorial is meant to be placed.”

Analysis

17. A churchyard is the setting for a parish church. It needs to be a place where parishioners and members of the public can be quiet. It should be a space where people can pray, remember and reflect, without distraction from objects that are unsightly, not in keeping, or otherwise inappropriate. It is a shared place, shared by mourners and non-mourners, all of whom have an interest in its appearance. In every case a balance must be struck in respect of the particular wishes of a grieving family, the interests of other families whose relatives are buried there, the interests of worshippers at the church and the interests of all other visitors to the churchyard.
18. The proposed memorial for Gregg comes within the Durham diocese’s Churchyard Rules with regard to size, and so no objection can be taken to its dimensions. However, the type and colour of the proposed stone, the polished finish and the gilded lettering do not conform to the Churchyard Rules, but as the Vicar rightly points out, many other memorials in St George’s churchyard likewise do not comply. St George’s churchyard, for historical reasons which pre-date both the Vicar’s incumbency and my tenure as Chancellor, has been treated as an exceptional case. It is a churchyard that I have visited in the past, and which I revisited for the purposes of this case. Over a period of time permission has been given for memorials that do not fit within the restrictions of the Churchyard Rules, so that now there are many black granite memorials with gold lettering and polished finishes. To ensure fairness to the family of Gregg, the proposed memorial in terms of its shape, the type of stone, the colour of the stone, the polished finish and the colour of the lettering, should be permitted, and a faculty can therefore be granted subject to certain conditions.
19. I bear in mind the desperately sad circumstances of this case, and the deeply held wishes of Gregg’s family to provide a memorial to him which they regard as suitable and fitting. I must also have regard to the overall effect upon the churchyard that the proposed memorial would have, and remember the three basic purposes of a memorial as summarised by the Court of Arches in Churchyard of St Giles, Exhall, namely, to honour the dead, to comfort the living, and to inform posterity.

20. The inscription in the lower part of the memorial expresses the family's understandable grief and refers to the unfulfilled dreams, and it also states the hope they have of seeing Gregg again. There is nothing in the inscription or in the image of the young footballer at the steps of heaven which departs from the doctrine of the Church of England. But, as the initial letter in support of the memorial recognises (see paragraph 8 above), the inscription is long and the image is large. The inscription from "TO LOSE SOMEONE.." to "...YOUR SMILING FACE AGAIN" consists of 90 words – more than that if all the contractions are removed and the contracted words separated. I realise that the inscription's inclusion on the memorial may serve the purpose of comforting the family, but it achieves very little of the third purpose of informing posterity about Gregg – that purpose is already amply satisfied by the inscription higher up on the memorial which informs the reader about Gregg's name, the dates of his short life, his relationships, and that his death was in tragic circumstances. The reminder from Chancellor Tattersall in Re The Parish of St James Uldale [2017] ECC Car 1 is pertinent: "*....it should be remembered that the wording on a memorial will be read not just by those who knew the deceased but also by those who did not and in many ways the message conveyed to those who did not know the deceased is more important than the message conveyed to those who did know him or her.*"
21. The mock up of the proposed memorial produced by the family shows it to be completely covered by inscriptions and the image. The overall effect is of a very crowded memorial. In so far as the family point to a nearby memorial as setting a precedent for the long inscription (see paragraph 12 above) I do not accept that that particular memorial does create such a precedent. The word count for the inscription on the lower half of that other memorial is less than one third of what is proposed for Gregg's memorial.
22. I agree with the DAC's assessment that the 90-word lower inscription would be difficult to read, a task made harder by the script being in upper case rather than lower case. Something much simpler and shorter needs to be drafted to replace what is proposed; if carefully done, it should be quite possible to convey a powerful message that the family can be satisfied with.
23. I am also concerned by the proposed size of the image of the footballer at the steps. A coloured image that size would be too conspicuous; it would be significantly larger than images on other memorials. It needs to be significantly reduced in size so that it would not occupy roughly one quarter of the proposed memorial. I agree with the DAC's fears that the image could fade over time – the larger it is, the more noticeable the fading would appear. Furthermore, an image that size would set an unfortunate precedent for churchyards elsewhere in the diocese. If the image were made smaller, it would still be able to convey the message of hope in the life hereafter, and acknowledge Gregg's passion for football.

Conclusion

24. A faculty may be granted for the proposed memorial to Gregg, but subject to the following conditions:

- (i) The image of the footballer at the steps of heaven must be significantly reduced in size,
- (ii) The 90-word inscription on the lower part of the memorial must be redrafted to achieve a much shorter inscription, and it is to be written predominantly in lower case script.
- (iii) The revised design and drafting are to be submitted to the court for approval before any faculty can be issued.

Adrian Iles
Chancellor of the Diocese of Durham

2nd October 2023