

Neutral Citation Number: [2024] ECC Sal 3

In the Consistory Court of the Diocese of Salisbury

In the parish of St Andrew Kinson

In the church of St Andrew

In the matter of: The memorial to Justin Ashley Bowler

Introduction

1. Justin Ashley Bowler (“Jutty”) died, aged just 40, on 29 June 2022. He is buried in the churchyard of the grade II*-listed church of St Andrew, Kinson – a pretty 13th century church on the northern edge of Bournemouth, overlooking the River Stour. His widow Jenny wished to mark the grave with a fitting and unique memorial. In circumstances set out below, a memorial has been installed which falls outside the Churchyard Regulations, and which therefore should have had prior approval by way of faculty.
2. This petition, issued after the event, is for a confirmatory faculty. The petition has been subject to the usual period of public notice, without any response. The petitioner has indicated that she is content for the petition to be dealt with on the basis of written evidence and representations.

History

3. It appears that the petitioner, with the assistance of Hoare Banks stonemasons, consulted the then-incumbent (who has subsequently left the parish to return to his native Australia) on a proposed memorial design. The design was outside the Churchyard Regulations, most notably in its shape and carvings: it was in the form of a heart, with a carved cherub resting in the top of the heart, and carved roses to either side at the base. The main inscription would be across the heart, with a memorial inscription on the base, below the heart. After discussions with the incumbent and consideration of other stones already in place in the churchyard, the incumbent proposed a compromise: a memorial stone in a more traditional shape, with an ogee top, but with the proposed heart, cherub, roses and memorial inscribed on it. He even went as far as to cut and paste some images together, including the image provided by the petitioner, to give a broad impression of what it might look like. While I appreciate the pastoral care which had gone into developing the compromise design, it should have been clear to the incumbent that a memorial stone to the proposed design would still have fallen outside the Churchyard Regulations, and would still have required a

faculty, even if there are existing stones in the churchyard with some of the features of the proposed design.

4. The stonemasons worked up the design into the image which accompanies this petition. It shows a lighter-coloured background, with a darker-coloured heart covering the majority of the surface; the resting cherub broadly identical to that seen on the earlier design; rather stylised roses up the angled sides of the lower half of the heart; and the memorial inscribed on a scroll (again, in the darker colour) at the base. Although I do not have copies of any relevant correspondence, I accept that the incumbent and the parish administrator approved a memorial to that design. It appears that at no point were they offered the written description of the proposed design which now features in the petition for a confirmatory faculty.

The finished memorial stone

5. The stone as manufactured has several features which, while not at odds with the design image, are not readily apparent from that image.
6. First, the inscription face of the stone is not flat; the background is cut away so that the heart and scroll stand significantly proud of the background (I estimate, by about an inch or so). Secondly, the cherub and heart are not incised into the stone, but rather carved in three-dimensional relief so that they too stand proud of the background. Thirdly, the cherub and roses are coloured using gradations of darker grey than the light grey granite of the stone, including the use of a significantly darker colour to pick out detailed features of the carvings. The colour palette used for the colouring sits very uncomfortably with the grey of the granite, leading to an impression (which I accept is a false impression) that the cherub and roses have been made of a different material and stuck onto the stone. Likewise, the scroll has certain features picked out in white paint.
7. Fourthly, the difference between the heart and scroll on the one hand, and the background on the other, is not that they are a different colour but that they are finished in different ways. The background has quite a tooled, textured finish, where as the heart and scroll are smooth and clearly reflective. I raised enquiries of the stonemasons as to the finish on the stone. They told me that it was not actually polished, but honed (as set out in the confirmatory faculty), and produced evidence that the stone supplied to them was described as honed.

8. Be that as it may, I observed, and was able to record photographically, the fact that the finish is sufficiently reflective to show a clear and sharp reflection of sufficiently brightly-lit objects. While being careful not to set myself up as an expert, my brief research on several stonemasons' websites suggests that it is a key feature of honed surfaces that they are non-reflective (some websites noting that this feature renders the finish particularly suitable for churchyards where polished surfaces would not be permitted). Whether the finish on these parts of this particular stone is described as "honed" or "polished", the fact remains that the surface is sufficiently smooth to produce a clear and sharp reflection.
9. While I accept that the stonemasons in fact took the approval of the incumbent, following his part in the development of the design, as sufficient authorisation for the memorial, they should have been alert to the fact that the features of the stone identified above, and which were not apparent from the image and therefore were known to them alone, would have meant that a faculty was or might be required for the stone which they proposed to make.
10. I should add that while the size of the stone is within the Churchyard Regulations at 3'6" high, its context is a churchyard dominated by stones which are smaller, typically around 2' to 2'6" high. Those other stones also tend to be of a darker and more harmonious colour than the pale grey granite used here. This, coupled with its dominant position immediately adjacent to the main path from the gate to the church, with its engraved face fully visible to anyone entering the churchyard, does give the stone an incongruity which stems from more than just its newness.

Disposal of petition

11. As a general principle, a confirmatory faculty should only be granted if a faculty would have been granted for the work if one had been sought at the appropriate time, before the work was carried out. It requires exceptional circumstances to diverge from this principle; and the mere fact that work has been carried out without authorisation, and expenditure incurred, is not a relevant factor in this consideration.
12. I am satisfied that, had a faculty been sought prospectively for the installation of this memorial stone, it would not have been granted – for the reasons set out above. However, it may well have been possible, with goodwill on all sides, to create a design based on the design image which would have been acceptable. There is such goodwill;

the petitioner and the stonemason have both turned their minds, in the spirit of compromise, to whether there are alterations to the present stone which might make it more acceptable. I commend them for that.

13. It is clear that pastoral reasons can be sufficiently compelling to warrant the grant of a confirmatory faculty for a memorial in circumstances where a prospective faculty would not have been granted. For a recent example where the pastoral reasons included, as here, the involvement and approval before the introduction of the memorial of those in positions of responsibility in the parish, see *re Middleton, St Mary* [2022] ECC Lee 3.
14. Accordingly, respecting the positive and well-meaning pastoral relationship which led to the present unfortunate situation and the concomitant potential for pastoral harm if the petition is refused, I grant the confirmatory faculty sought.
15. This faculty is subject to conditions, which arise out of (but go slightly further than) the compromise proposals referred to above. Compliance with these conditions is mandatory if the memorial stone is to remain in place.
16. First, all colouring apart from the lettering must be removed from the memorial. This includes both the painting of the cherub and angels, and also the white line-painting on the scroll.
17. I have seriously considered imposing a condition that the uppermost surface of the memorial be treated in some way to render it less reflective. In the end, I have decided against that condition – not because I harbour any doubt that the stone is too reflective, but out of concern that such treatment may result in a visibly flawed surface, or that to address the issue in situ and after the lettering has been incised and coloured may result in damage to the finished lettering.
18. Such works are to be carried out within three months of the grant of the faculty. If they are not carried out within that timescale, the Archdeacon is at liberty to apply for a restoration order which, if granted, would require removal of the stone. I set this out expressly not because I doubt the goodwill of the petitioner and the stonemason to comply, but simply so that all parties are aware of the seriousness with which the condition must be treated.

19. Secondly, I impose as a condition one matter which the petitioner has in her petition already undertaken to do. The petition form includes provision that by signing the form, the petitioner confirms that “no additional articles will be introduced (other than the memorial itself) to, or removed from, the church or churchyard”. It was apparent during my visit that this was not, in fact, being complied with. Leaning on the stone or displayed along the length of the grave there were objects including: a large white metal or plastic letter ‘J’; two flower vases additional to the two already set into the base of the memorial (which were unused); what appeared to be Christmas decorations including baubles and wreaths (this being in late January); windmills; a butterfly on a stick; and a poem printed on a card.
20. These and any such further items as may have been placed on the grave must be removed, and no such items may be placed there in the future. By this faculty I authorise those undertaking churchyard maintenance to remove and dispose of any items left on the grave after a period of three months following the grant of the faculty and at any time thereafter.

Postscript

21. I wish it to be clearly understood that this decision is taken on its own very particular set of facts. It is not to be taken as setting any sort of precedent that memorial stones with any one or more of the features identified above will be permitted in this churchyard in the future.
22. Further, incumbents are reminded that their authority to approve memorials only extends to those within the Churchyard Regulations as they apply at the relevant time. Even in such a case, they are not obliged to approve any particular memorial, in which case the applicant is free to petition for a faculty. If the incumbent is in any doubt as to whether a proposed memorial is within the Regulations, they may seek the advice of the Registry or ask for a decision of the Chancellor.
23. Finally, stonemasons must understand that while the assistance they offer to the bereaved is valuable, it is no part of their role to seek to persuade an incumbent into permitting any particular memorial to be introduced into a churchyard. They are independent professionals who are expected to understand and respect the faculty jurisdiction and the rules and practices concerning memorials in churchyards. They are ultimately responsible if a memorial which does not comply with the Regulations is

installed in a churchyard without a faculty, so they must be prepared to exercise their own professional judgement.

24. As I have had cause to do more than once recently, I repeat the words of Hill Ch in *re Holy Trinity and St Jude, Halifax* [2023] ECC Lee 3:

“12. It cannot be restated often enough that those whose business includes work on church buildings or in churchyards of the Church of England must be familiar with the process and procedures of the faculty jurisdiction and have a firm grasp of the principle that unless a faculty (or other authorisation) has been obtained, any work done will be unlawful. As I observed in *re All Saints, Buncton* [2018] ECC Chi 1, at paragraph 80:

‘... contractors should always, invariably and without fail obtain a copy of the relevant faculty (or other authorisation) before they commence any works ...’

13. ... Those who embark upon works on church property without reading and digesting the content of the relevant faculty do so at their own peril, and must live with the consequences, sometimes draconian, that can follow.”

David Willink
Deputy Chancellor

17 April 2024