

Neutral Citation Number: [2024] ECC Chr 2

In the Consistory Court of the Diocese of Chester

And in the matter of Ellesmere Port, St Lawrence Stoak

And the matter of a petition by Jean Andre (Andy) McAlister and others for a confirmatory or retrospective faculty

Judgment

1. By a petition (and supporting letter) dated the 2nd April 2024, Mr Jean Andre (Andy) McAlister, Mrs Shirley McAlister and Mr Peter McAlister seek permission to retain in place upon the grave of Jayne Louise McAlister in the churchyard of St Lawrence, Stoak, a wedge-shaped plinth placed there by Mr Andy McAlister in, no doubt, entirely well intentioned circumstances, but, regrettably, without permission or authority.
2. The incumbent, Churchyard Coordinator and Parochial Church Council (PCC) object to the retention of the plinth and it has, thus, become necessary for me to determine the petitioners' request.
3. Andy McAlister is the father of Jayne, Shirley McAlister her mother and Peter McAlister her brother. Jayne died on the 15th January 2015 aged 43.
4. I have no doubt the family continues to feel her loss greatly. The grave is plainly of importance to them all and appears well tended and cherished.
5. Mr and Mrs McAlister describe themselves as being in their 'late seventies/early eighties'. They were, I believe, married in the church.
6. I have considered it entirely appropriate to determine the matter upon written representations, a course with which, so far as the Registrar has been able to discern, no one is unhappy.
7. I have excellent photographs of the grave and its setting, and the papers and correspondence available give me, I believe, a sufficiently full picture of the issues to determine the matter fairly.
8. On a date which is not entirely clear to me, Mr Andy McAlister self-installed the plinth in question, on a concrete base, on the plot immediately in front of the memorial to Jayne. No stone mason was apparently involved.
9. Correspondence discloses an undoubted (and, I feel sure, innocent) misunderstanding on Mr McAlister's part that he had 'purchased' the grave.
10. That is never the case in a consecrated churchyard. Whilst the memorial installed belongs to its owner or 'heir at law', the 'plot' or ground in question does not, and express permission for any addition to be placed on the plot, such as, for example, kerbs, chippings, flower receptacles, or, as here, an additional plinth, is always required. The land remains part of the churchyard.

11. The plinth is of black, shiny, material, broadly matching the memorial itself in colour. It is 89 cm wide, 30.5 cm across and 10.3 cm high at its back, reducing to 5.1 cm at the front. Photographs show free-standing vases with flowers on, or near, to it.
12. Mr McAlister has been entirely candid as to his intentions. He has envisaged (full) burial of his wife's remains, when the time comes, in the same grave as Jayne, then the addition of his (cremated) remains (his ashes) below the plinth, with a suitable inscription being added to it.
13. The Registrar has, in sensitive correspondence, sought to explain to Mr McAlister the issues relating to reservation of grave space or spaces and has, rightly, pointed out that the positioning of the plinth does not, in itself, serve to bring about the perfectly reasonable, even worthy, desire manifested to create a 'family grave'.
14. No applications have, as yet, been made for reservation. They could, no doubt, be considered in the usual way, were they to follow.
15. There is, so far as I am aware, no (physical) obstacle to full burial of Mrs McAlister's remains in the grave, and it would be surprising if there was not room too for Mr McAlister's cremated remains. Certainly, the existing memorial appears to me to have ample space remaining to bear suitable words commemorating both Jayne's parents, if that was their wish.
16. At its meeting on the 13th May 2024, the Parochial Church Council (with one abstention) voted unitedly to oppose the petition.
17. On the 24th May 2024, the Diocesan Advisory Committee (DAC), the body appointed to advise and assist me with local, specialist and, as required, expert knowledge in connection with faculty applications, did 'not recommend' I grant the petition.
18. Unsurprisingly, in a case such as this, that decision was influenced, no doubt, by the opposition of the parish and its leadership.
19. The parish had set out its opposition thus: 'Our opinion is that if we agree to these applications [I interject to note that the owner of a nearby memorial had at one point mounted an almost identical application, which has since been withdrawn] it will set a precedent for any further applications. We realize that there are some headstones and additional stones that have slipped through the net over the last years but we are trying to get on top of such matters which appears to be the case with the McAlister stone. Mr McAlister appeared to be under the impression that he could add stones and other accoutrements to his daughter's grave without permission which in turn has led [another named individual] to think he could do the same.'
20. In subsequent correspondence, the parish has characterised its 'main objection' to be that what had occurred is not 'in line with current Diocesan Churchyard Regulations' and, as a parish, that they are 'currently trying to bring the churchyard back into line with these Regulations'.
21. Some reference is made to additional grass cutting difficulty and to the continuing risk of setting a precedent for memorials larger than those generally permitted.
22. Mr McAlister, to his credit, has not sought to argue much beyond the candid aspirations he holds for the future, which I have set out above.

23. He considers the grass cutting difficulty to be somewhat overstated and disputes risk of precedent, or any negative impact upon surrounding graves.
24. Diocesan Churchyard Regulations are approved by Chancellors in each diocese and exist, principally, to enable clergy and the public to understand what, generally, may be permitted without faculty or special permission.
25. They exist to try to create clarity and consistency as to what may be appropriate to a churchyard setting, fairness as between families wishing to have loved ones buried and practicality for volunteers and others charged with tending and maintaining churchyards as worthy and peaceful places of rest.
26. There is no doubt that the addition of this particular plinth, though well intended, falls foul of the regulations in this Diocese.
27. It is an unauthorised addition which plainly extends the 'footprint' of the memorial which has, otherwise, been accepted and approved.
28. Should it now be authorised retrospectively?
29. I regret to say that I have concluded it ought not to be approved.
30. Chancellors have, in recent years, taken differing views as to the approach to be taken where things outside the scope of regulations are sought. Some have required 'exceptional circumstances' to be demonstrated by petitioners seeking departure from regulations.
31. The current preferred approach seems to be that favoured by McGregor Ch in **Re St John's Churchyard, Whitchurch Hill (2014)** : 'As is the case with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition'.
32. That said, and mindful there may be no presumptive preference for what is in the regulations, their existence is, of course, a relevant factor – often highly relevant and, doubtless, on some occasions determinative. They have been prepared and publicised for good reason. Others have 'played by the rules' and may expect those who follow to do likewise.
33. My task is to try to strike a balance between the petitioners' request, which I can readily understand, and the position of the parish clergy and PCC whose policy is, commendably, to try to secure compliance with Churchyard Regulations.
34. For the petition is the fact the plinth is already in place and secured, it is not unsightly or dramatic in impact and the churchyard maintenance implications are fairly limited.
35. Against the petition is the parochial opposition, the concern about a potentially troubling precedent (for which there is already some evidence), some maintenance inconvenience and the commendable desire of the PCC and ministry staff to enforce the Regulations as they stand.
36. In this case, in reality, what I determine the petitioners' are anxious to achieve is really 'grave reservation'. That is not an unworthy goal, but to seek to achieve it by this means is, I judge, not appropriate.
37. What the petitioners seek is potentially capable of realisation by other means which need not require departure from regulation. The grave appears to be sufficiently

capacious to achieve what the family desires, the existing memorial certainly is sufficient to accommodate further names and details.

38. In the light of these considerations, I regret to say the petitioners have failed to discharge the burden upon them of showing this plinth should remain, or to displace the parish's perfectly justifiable desire to uphold the letter of the Regulations.
39. It follows that the petition is refused.
40. I know this will be a disappointment to Mr Andy McAlister in particular. I hope I have said enough to provide some reassurance that the 'family grave' he desires may well be capable of fulfilment in any event.
41. I believe Mr McAlister to be an honourable person. I know that, for example, he may recently have removed mole deterrent equipment at the parish's request. He must appreciate he now has a clear responsibility to remove, or arrange for the removal, of this unauthorised plinth and its concrete base.
42. I expect him to make the necessary arrangements.
43. It would, frankly, be extremely disappointing if it became necessary for the parish, in this case, to have to seek any further or more coercive order to that end.
44. The petitioners must, in the usual way, pay the costs of and incidental to the petition but not, of course, for the cost of this ruling for which no fees are sought.

19th October 2024

David Turner

His Honour David Turner KC

Chancellor of the Diocese of Chester