

Faculty – Churchyard of Grade II listed rural church (1628, with west front and tower added c. 1722) – Opposed petitions for (1) a retrospective faculty authorising the installation of a double-width grave area comprising sandstone coping stones, York stone flags, and interspersed pebbles, and (2) the reservation of a full burial gravespace adjoining the grave of the petitioner’s late husband – Sufficient space remaining in the churchyard for up to 30 years’ burials – PCC resolution that from 18 January 2022 no new applications for the reservation of grave spaces in the churchyard would be considered – PCC unanimous in opposing both petitions – Rector becoming party opponent – Whether either petition should be granted – Faculty for double-width grave area refused – Faculty for grave reservation granted*

Petitions No: 66 and 67 of 2023

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

Date: Sunday, 3 November 2024

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Michael & All Angels, Hoole

And in the Matter of:

Petitions requesting: (1) Retrospective Permission for the Erection of a Non-compliant Memorial at the Grave of Mr Michael Redshaw; and (2) The Reservation of a Grave Space for Mrs Lisa Redshaw

Between:

Lisa Victoria St Clair Acland Redshaw

Petitioner

– and –

The Reverend Ann Templeman

(Former Rector and Chair of the Parochial Church Council)

Party Opponent

This is an opposed petition determined on the papers and without a hearing.

The following authorities are referred to in the judgment:

Re Christ Church, Harwood [2002] 1 WLR 2055

Re St Giles, Exhall [2021] EACC 1, [2021] PTSR 1622

Re St Paul, Caton-with-Littledale [2023] ECC Bla 6, (2024) 26 Eccl LJ 239

JUDGMENT

Introduction and background

1. The church of St Michael and All Angels, in the rural settlement of Much Hoole, is a Grade II* listed church dating from 1628, with a west front and tower added c. 1722. It is rightly described by Pevsner as “*small, but uncommonly interesting*”, and is renowned for its association with Jeremiah Horricks, the C17 astronomer who recorded his observations of the transit of Venus at a house nearby and is commemorated by a monument in the church. It is well worth a visit. To whet the appetite, I have annexed to this judgment a photographic image of the west end of the exterior of the church, viewed from the south.

2. These two related faculty applications have generated a vast number of emails, email attachments, and related documents. It is unnecessary for me to set them all out in detail. The petitioner, Mrs Lisa Victoria St Clair Acland Redshaw, is 62 years of age. She resides in the parish of Hoole, close to the church of St Michael & All Angels, at Dobson Farm. Her name appears on the church electoral roll; and she plays a prominent role in the life of the parish church, where she leads the Flower Group. Mrs Redshaw is the widow of the late Michael Andrew Redshaw (**‘Mike’**), who died suddenly on 5 May 2020. This was particularly difficult for Mrs Redshaw and her two adult sons because of the sudden nature of Mike’s death, at a relatively young age, during the height of the first national coronavirus lockdown. Additionally, since her husband’s death, Mrs Redshaw has been diagnosed with cancer. The stress from which she has been suffering has led to her having to undergo tests for a transient ischaemic attack (or **TIA**). Mrs Redshaw’s own parents and grandparents are all buried in the churchyard. Indeed, her sister, Mrs Jane Bamford, has recently reserved a single depth grave space for her own burial in due course, pursuant to a faculty that I granted on 22 June 2022 (under Petition No 43 of 2022). It is

therefore readily understandable that, in the immediate aftermath of her husband's death, and the difficulties associated with arranging his funeral during the national COVID lockdown, Mrs Redshaw was keen to ensure that Mike should be buried in St Michael's churchyard. After experiencing what Mrs Redshaw describes as "*distressing difficulties*" in locating a suitable grave space, it was determined that an additional grave plot could be created near the grave of her late father, Mr Thomas Bracewell. At that time there was a dead and rotting tree in this part of the churchyard, surrounded by a memorial bench and paving. Mrs Redshaw arranged for this to be removed, at her own cost, so that Mike could be laid to rest two weeks after his death, on 19 May 2020 in the newly created grave plot. To the east of this plot, and the memorial bench, is a rectangular area laid out as a Memorial Garden, with ledger stones surrounded by grey pebbles, approached by a path running west to east, and separating Mike's grave space from Mr Bracewell's grave. Annexed to this judgment are two photographic images of part of the southern section of the old churchyard (with the Church Lodge in the background). The first, which looks west towards Liverpool Old Road, shows Mike's grave space on the left, with Mr Bracewell's grave marked by the obelisk-shaped memorial to its right. The second, looking in the same direction, but taken from a point further down to the east, shows the Memorial Garden, with Mike's grave space in the background.

3. The national lockdown restrictions remained in place and only began to be relaxed in early July 2020. This was the first time that Mrs Redshaw began to consider arranging a memorial for Mike's grave. There is a dispute as to precisely when Mrs Redshaw first received a copy of the Churchyard Regulations for the Diocese of Blackburn. In a written statement, a former churchwarden, Mr Walter Davidson, relates that he was at home on Thursday morning, 30 July 2020, when he received a phone call from Mrs Redshaw, inquiring if there were any rules and regulations regarding the churchyard. He informed her that there was a leaflet with the relevant information in the church. He took a copy to Mrs Redshaw's house and he handed it to her personally. He has an entry in his diary confirming this. At paragraph 9 of a witness statement dated 26 April 2024, Mrs Redshaw states that Mr Davidson delivered the parish's guidance leaflet to her towards the end of 2020. However, the precise date does not really matter because Mrs Redshaw accepts that she took no immediate action to progress any memorial for Mike's grave as she was still seeking to resolve a related issue concerning the reservation of an adjoining grave space. What is clear, however, on her own evidence, is that Mrs Redshaw had the Churchyard Regulations for the Diocese of Blackburn in her possession before she took any steps to lay out the site of Mike's grave in its present state and condition.

4. Since Mike was laid to rest, Mrs Redshaw has been anxious to secure rights for her family to the one remaining grave space to the south, adjoining an unpaved access strip which runs west to east alongside the hedge that forms the southern boundary of this part of the churchyard. At one time, the parish understood Mrs Redshaw to be asserting that because of the presence of tree roots, it had not been possible to dig Mike's grave to a sufficient depth to accommodate her human remains when her own time should come. I do not understand Mrs Redshaw currently to maintain this position. She is right not to do so. First, it would be inconsistent with a petition (No 64 of 2021) that Mrs Redshaw presented on 13 September 2021 seeking to reserve a double-depth, full burial plot in the adjoining grave space for her two adult sons, Alexander and Charles (then aged 32 and 26), both of whom were serving in the armed forces. That petition was later put on hold, and then superseded by Mrs Redshaw's present petition. This seeks to reserve the same plot for her own full body burial after the earlier petition on behalf of her two adult sons failed to secure the support of the PCC. At a meeting held on 17 January 2022, the

PCC rightly expressed their concerns at such an unusual application, made on behalf of two young men, when faculties for the reservation of grave spaces are normally granted only to applicants over 50 years of age, and are only valid for 25 years (even though extensions can be applied for). The relevant minutes record that: *“In the circumstances, the PCC does not feel it can either approve or disapprove the faculty application as this is a complicated and difficult matter and feel this is a decision which should be made solely by the Chancellor.”* It was implicit in this earlier petition that Mrs Redshaw’s own preference at that time had been to be interred with her late husband in his existing grave, thereby impliedly recognising that there was no physical impediment to this course. Secondly, the parish have produced a signed letter, dated 2 April 2024, from the gravedigger, Mr Stephen Martindale, addressed *“To whom it may concern”*. This confirms that he *“dug a double depth grave for the burial of Michael Redshaw at his funeral on May 20th 2020 in the churchyard of St Michael and All Angels Hoole. The grave was certainly double depth. There were no tree roots in the grave.”* There is no reliable evidence to contradict this statement. On the evidence, I am satisfied that there is no physical impediment to Mrs Redshaw’s human remains being laid to rest in Mike’s existing grave when her own time comes.

The petitions

5. It is against this background that I come to Mrs Redshaw’s present petitions. The first in point of time, No 66 of 2023, and dated 13 October 2023, seeks a retrospective faculty authorising the introduction of a monument in St Michael’s churchyard in accordance with the particulars contained in or attached to the petition. The reasons for applying for a retrospective application for a double-width memorial are said to be:

(1) That following Mike's passing on 5 May, and his subsequent burial on 19 May 2020, Mrs Redshaw had mistakenly believed that she had paid for a double-width grave space, and she had assumed that this had been granted as no-one indicated otherwise until after the work to Mike's grave had been completed. Recognising her error, she had included a supplementary petition seeking to reserve the adjacent grave space.

(2) That there had been a conspicuous absence of communication concerning the condition of Mike’s grave. Mrs Redshaw claims to have carried out the work wholly in the knowledge that everyone had been informed, and that all necessary permissions had been granted. Mrs Redshaw asserts that:

Regrettably, in the aftermath of my husband's burial in May, when I was most in need, no-one provided me with pertinent information regarding the grave site and the associated regulations. The absence of this crucial information, coupled with the lack of proper guidance from the vicar and churchwardens, led to needless distress, unwarranted expenses, wasted time and effort, and additional actions undertaken by all parties involved and the reason that I am now seeking this faculty to be able to leave my beloved husband's final resting space undisturbed in a respectful grave space.

The petition proceeds to describe the layout of the two gravespaces as follows:

The double width grave is delineated by a series of sandstone coping stones, selected to match the stone used in the construction of the church's walls. These coping stones enclose the perimeter of the grave, serving both as a practical border and a visual connection to the church's timeless style.

The sandstone coping stones have been chosen for their texture, colour, and design to create a cohesive and complementary look with the church. Their earthy tones and weathered appearance evoke a sense of tradition and

continuity, ensuring that the grave doesn't disrupt the visual harmony of the churchyard and matches as closely as possible to those used in the construction of both the church and the churchyard wall.

Interspaced between the sandstone coping stones are York stone flags, which mirror the colour and character of the newly built lodge path (inside of the churchyard) and the path running parallel to the grave. The York stone flags are renowned for their durability and timeless appeal, making them the perfect choice for both functional and aesthetic purposes, offering a serene and inviting atmosphere for reflection and remembrance.

To address the challenge of grass growth in certain sections of the plot, and to create the space needed due to three separate attempts to dig a space, each resulted in the discovery that it was not an available space and by removing the dead tree (a growing safety hazard and a benefit for all, as shown below with how the space appeared prior to the burial of Michael Redshaw).

Therefore, matching pebbles have been thoughtfully chosen to fill these spaces. These pebbles not only serve as a practical solution but also contribute to the overall design by adding a subtle variation in texture and colour. This combination of pebbles and stones complements the church's natural surroundings and ensures the grave remains attractive and well-maintained throughout the year.

In Summary: sandstone coping stones, York stone flags, and interspersed pebbles, meticulously planned to maintain the church's historic and aesthetic continuity. It creates a serene and visually pleasing area where loved ones can gather to pay their respects, in perfect harmony with the church and its surroundings. This design respects tradition facilitates ease of maintenance, and ensures the grave area remains an enduring tribute to the memory of the departed.

The petition includes a number of illustrative, coloured photographic images. Mrs Redshaw proceeds to expand upon the rationale and justification for the design and choice of materials, and the way in which they “*seamlessly integrate with the surrounding church landscape*”. Accompanying this petition are the signatures and details of some 84 members of the local community who are said to support her petition.

6. The second petition, No 67 of 2023, and dated 28 October 2023, seeks a full burial space next to Mrs Redshaw’s husband and father. In support of her application, Mrs Redshaw states that this space sits within a part of the churchyard that was only made possible due to the spiritual work of Mrs Redshaw’s father, and the space did not exist, and was only made possible, with her son's hard work in removing a rotting tree and all major roots the day before they buried her husband, as the three prior spaces they had been offered as options all ended up being occupied. The petition relies upon the following grounds:

As a devoted member of the church community and someone who holds deep sentimental value for this sacred place, I believe that being interred in the churchyard would be the most meaningful and fitting final resting place for me.

First and foremost, my desire to be buried in the churchyard stems from the profound love and unbreakable bond I shared with my beloved husband and father. Their presence and influence in my life have been immeasurable, and being laid to rest beside them would symbolise the eternal unity and cherished memories we built together. It would bring me immense solace and comfort to know that even in death, our souls will remain connected and at peace within the sacred grounds of Saint Michaels and All Angels.

Furthermore, my longstanding commitment to the church and its mission has been unwavering. As a dedicated member for over four decades, I have actively participated in various church activities and have been an integral part of the community. From organizing and arranging special events such as Easter, harvest, remembrance and Christmas celebrations to providing assistance wherever needed, my involvement has been driven by a deep sense of

loyalty and devotion. Therefore, being buried in the churchyard would serve as a profound testament to my lifelong dedication and gratitude towards Saint Michaels and All Angels.

Moreover, the churchyard holds significant sentimental value for my family. It has served as the final resting place for my grandparents and my father, who played a pivotal role in the development and preservation of Saint Michaels and All Angels. His tireless efforts in securing the church bells, and his collaboration with Lord Lilford to the construction of the church wall and lychgate have left an indelible mark on the church's history. Benefited by all who have a loved one buried in St Michael's, made possible by my father's help in donating land from Dobson farm to allow many more generations within the parish to have St Michael's as a final resting place. One in which I hope to be buried in alongside my ancestors and my father, I would be honouring their legacy while perpetuating the deep-rooted kinship we share with Saint Michaels and All Angels.

Additionally, my role as the head of the church flowers has allowed me to contribute to the spiritual and aesthetic ambiance of Saint Michaels and All Angels. Through my dedicated efforts, I have sought to enhance the church's beauty and create an environment conducive to worship, reflection, and remembrance. Choosing to be buried in the churchyard would not only celebrate my personal commitment to Saint Michaels and All Angels but also inspire future generations to value and sustain the church's vibrant community.

Lastly, as the Christmas season approaches, I am reminded of the joy and significance this time holds for our congregation. Being laid to rest in the churchyard would ensure that even in death, I continue to be a part of the cherished Christmas traditions and celebrations at Saint Michaels and All Angels. It would be a testament to the love and devotion I have for this church and the profound impact it has had on my life.

In light of the aforementioned reasons, I kindly request your approval to be buried in the churchyard of Saint Michaels and All Angels. I firmly believe that this decision aligns with my deep love for the church, my active involvement in its activities, the generational ties my family has with the church, and my father's significant contributions, particularly towards the preservation and renovation of the church bells.

Thank you very much for considering my request. Should you require any additional information or documentation to support my case, please do not hesitate to contact me. I eagerly await your favourable response, hoping that you will grant me the opportunity to find eternal peace and tranquillity among the sacred grounds of Saint Michaels and All Angels.

7. In the section of the petition completed by the Rector, it is said that the churchyard will be full in about 30 years. I note that in the petition previously presented, in September 2021, on behalf of Mrs Redshaw's two sons, the corresponding section states that the churchyard will be full in approximately 20 years' time (i.e. in about 2041). That is consistent with what was said in relation to a full burial reservation petition presented at about the same time by a married couple (one of them a member of the PCC), who were then in their late sixties and early seventies. The PCC had approved that application on 6 September 2021; and I granted a faculty on that petition in January 2022. The discrepancy between those two estimates of the churchyard's remaining capacity is unexplained. However, given Mrs Redshaw's age (62), I proceed on the basis that granting a grave reservation in her favour is unlikely to interfere with the rights of other members of the congregation and residents of the parish to be buried in the churchyard.

The Parochial Church Council's objections

8. At the same meeting (on 17 January 2022) at which the PCC agreed to leave it to the Chancellor alone to decide the reservation application made on behalf of Mrs Redshaw's two adult sons, the PCC unanimously resolved that "as from 18 January 2022 no new applications for the reservation of grave spaces in St. Michael's churchyard will be considered". The reason given is "due to the

limited space in the churchyard". I commend the PCC for addressing the increasingly prevalent problem of limited spare capacity, which affects so many of our parish churches, in a way which has the potential for making the workload and burdens facing the Chancellor a little easier. I note, however, that this resolution was passed at a time when this particular churchyard apparently still had room for a further 20 to 30 years' burials. I also note:

(1) That the PCC had recently resolved to support an application for a grave reservation by one of its own members (albeit someone of such an age that the capacity of the churchyard might not present any future impediment to their burial in any event); and

(2) That, shortly thereafter, the PCC also supported a reservation petition (No 43 of 2022) by Mrs Redshaw's sister, upon which I granted a faculty on 22 June 2022; albeit that this petition had been known to be impending, had been discussed with the Rector, and the PCC had agreed that they would not wish to stand in its way, before they went on to pass the resolution not to support any future reservations. Indeed, the minutes of the relevant PCC meeting (on 28 March 2022) record as follows:

This relates to an application to reserve a grave space by Mrs Jane Bamford, which had already been discussed at standing committee. It was noted that, notwithstanding the decision made by the PCC in January 2022 to close new applications to reserve grave spaces, there is correspondence in this matter dating back to December 2021. The space identified is adjacent to other family members on both sides. There are no further applications by anybody to consider.

The proposal that the application by Mrs Bamford for a faculty can proceed was passed by a majority (with eight in favour, two against, and four abstentions). It is the earlier resolution not to support any further grave reservations that informs the attitude that the PCC have taken towards Mrs Redshaw's present reservation petition.

9. The relevant extract from the Minutes of the PCC Meeting, held on Monday 22 January 2024, and signed by the Rector and Chair of the PCC, the Reverend Ann Templeman, reads as follows:

FACULTY APPLICATIONS

There are two Faculty Applications from Mrs. Lisa Redshaw.

1. Petition 67 of 2023

Mrs. Redshaw is seeking a Faculty for the reservation of a burial plot in the churchyard. She is requesting a plot next to her husband's grave.

(i) It is the unanimous view of the PCC that a Faculty application is not necessary as Mrs Redshaw can be buried with her husband in his grave as it is a double depth grave space.

(ii) Mrs. Redshaw has a legal right to be buried in the churchyard already as she is a resident of the Parish.

(iii) Furthermore, it was agreed at the PCC meeting held on 17 January 2022, that Faculty applications for grave spaces in the churchyard would no longer be accepted.

It was resolved unanimously not to approve this Faculty application.

2. Petition 66 of 2023. The second application is for a retrospective Faculty to authorise the work on the grave of Mrs Redshaw's husband Michael Andrew Redshaw.

Mr Redshaw was buried on May 20th 2020 in the churchyard

Mrs Redshaw's application is not accurate:

She was given a copy of the Churchyard Regulations by the then churchwarden Mr Davidson in person on 30/07/2020 (he has a diary note about this.) He stressed to her that as stated in the booklet she would need the incumbent's written approval before any work could be undertaken on the grave or headstone/memorial erected.

While the incumbent and new churchwarden were on holiday in 2021 Mrs Redshaw without seeking any permission organised a contractor to put kerbs round the grave making it double width and added stones and pebbles and a large planter, thus breaching the regulations in 4 respects.

The double width grave is currently a very obvious and troubling breach of the principle of fairness — there are no other double width graves in the churchyard for burials post 2014. Indeed permission has not been given for any other grave to breach the 2014 regulations in this way in our otherwise green churchyard.

The PCC are unanimous in their view that the principle of fairness should be paramount in matters pertaining to the churchyard. This has been discussed by incumbent and churchwardens, then by the Standing Committee and now the whole PCC.

The PCC are unanimous in objecting to the request for a retrospective faculty for the work already undertaken without permission.

A note from the Rector to the Registry after the discussions at the meeting of the PCC on 22 January records that:

Michael Redshaw was a loyal and effective member of the PCC and the PCC held him in great esteem. They would like to accommodate the requests of his widow if appropriate. However they do not regard Mrs Redshaw's request for the retrospective faculty as appropriate for reasons set out in the PCC minute. This was the unanimous view of all the PCC and wish to object to the faculty application.

10. Consistently with this decision, and in accordance with rule 10.3 of the Faculty Jurisdiction Rules 2015, as amended (the **FJR**), on 12 and 13 March 2024 the Rector and Chair of the PCC, the Reverend Ann Templeman submitted Particular of Objection to both faculty petitions in Form 5. She thereby became a party opponent to both petitions.

11. In relation to the petition seeking retrospective permission for the erection of a non-compliant memorial at the grave of Mr Michael Redshaw, the objections are that:

- (a) the grave is double width;
- (b) the grave has stones, kerbs and pebbles; and
- (c) the parish have a green churchyard – all other graves since 2014 are grassed over. There is also a large planter.

The grounds of objection are:

- (1) All the above features breach the Churchyard Regulations of 2014. No other grave in the churchyard since 2014 breaches any of these rules.
- (2) Permission was not sought or given by the incumbent to create this memorial. Mrs Redshaw was given a copy of the parish leaflet with the graveyard regulations in July 2020 by the churchwarden at the time. The memorial was not created by a memorial mason.

(3) The size and features of the grave breach the essential principle of fairness whereby the same rules should apply to all families remembering loved ones.

12. In relation to Mrs Redshaw's petition seeking to reserve a grave space for herself, the grounds of objection are that:

(1) Mrs Redshaw already has a grave in Hoole churchyard as her husband's grave is a double depth grave with space for her.

(2) The PCC of Hoole St Michael voted on 17 January 2022 not to accept any future reservations of grave spaces

(3) Mrs Redshaw is a resident of the parish and therefore already has a legal right to be buried in the churchyard.

13. More details of the objections to both petitions are to be found in the PCC minutes of 22 January 2024 (previously cited) and the further representations submitted by the Rector and the churchwardens on 12 March 2024. These state as follows:

In respect of Petition for Faculty numbered 67 of 23 – Reservation of a grave space:

1. *Mrs Redshaw describes herself as a devoted member of the church, stating that her longstanding commitment to the church and its mission is unwavering.*

Response: Mrs Redshaw is indeed a longstanding member of our congregation. She has been on the electoral roll for many years, as indeed was her late husband Mr Michael Redshaw. Mrs Redshaw and other family members have contributed in many ways to the church over a long period of time. She is resident in the parish, and has every right to be buried in the churchyard.

2. *Mrs Redshaw states that she wishes to be buried near her husband, and seeks to reserve the plot next to his.*

Response: This wish can easily be accommodated without the need for a further grave space. The PCC has been assured that the grave of Mr Michael Redshaw was dug as a double depth grave, as is normal practice by our gravedigger. There is therefore no impediment to Mrs Redshaw being buried with her husband in the existing grave.

3. *Mrs Redshaw explains that the grave of her late husband is adjacent to other family members – including her father – and that this area of the graveyard is consequently of great significance to her. She adds that the space was created through the hard work of her son who removed a tree.*

Response: Due to restrictions on space, the PCC resolved on 17 January 2022 that Faculty applications for grave spaces would no longer be accepted, and this of course predates Mrs Redshaw's current application by over two years. However, Mrs Redshaw's emotional ties with this part of the graveyard are entirely understandable, as a number of family members are indeed at rest here. This is why the site of Mr Redshaw's grave was initially suggested, and why removal of the dead tree was undertaken by the family after several alternative possibilities were found to be unsuitable.

4. *In conclusion, the PCC is unanimous in its position that it is not necessary to grant an exemption to their resolution passed in 2022 regarding reservation of grave spaces in the churchyard, as Mrs Redshaw's wishes can be fully respected without the need for the space next to her late husband being reserved (please also see PCC minutes dated 24 January 2024).*

In respect of Petition for Faculty numbered 66 of 23 – Retrospective permission for a non-compliant memorial:

1 Mrs Redshaw's petition relates to a double width grave which was created on her behalf some months after the death of her husband, and which breaches Churchyard Regulations 2014 in relation to size, style and materials used. She states in her application that she mistakenly believed she had paid for a double width memorial, and assumed it had been granted.

Response: *Mrs Redshaw was assigned a grave space for her late husband following his death in 2020 in the Covid pandemic. The PCC has been assured that this was a standard double depth grave. Double width graves are not permitted in our churchyard.*

2 Mrs Redshaw states that she discussed the creation of the double width memorial with Mr Hawthornthwaite, whom she knew to be a previous churchwarden. She says she was not advised to speak to either the Rector, Revd Ann Templeman, or the churchwarden at the time, Mr Davidson, or to seek their guidance, and they did not contact her.

Response: *It is extremely unusual and regrettable that Mrs Redshaw did not access advice in the same way as other bereaved families normally do, and did not obtain proper permission to undertake the work on her husband's grave.*

(a) Firstly, funeral directors and memorial masons will always advise families to discuss proposals for gravestones with the incumbent when they feel ready to do so, and they give them copies of our guidance leaflet. This has routinely happened at St Michael's for many years, and is advice that is followed by all bereaved families.

(b) Secondly, the Churchyard Regulations 2014 and parish guidance leaflet are clearly displayed in the church porch, which Mrs Redshaw accesses regularly, and which is a familiar and easily accessible point of reference for many families.

(c) Thirdly, Mr Davidson's clear recollection is that (following a telephone conversation with Mrs Redshaw) he also personally delivered a copy of the Churchyard Regulations to Mrs Redshaw at her home on 30 July 2020 prior to the work being undertaken; he has a diary note to that effect.

(d) Finally, a meeting took place between Mrs Redshaw and Revd Templeman in the churchyard, accompanied by Mrs Elphick, churchwarden, and Mrs Redshaw's sister, Mrs Bamford, at which it was confirmed that a double width grave, kerbs and pebbles were non-compliant with churchyard regulations. (Please see notes from Revd Templeman dated February 2024 for further details).

3 In the section of the petition headed 'to be completed by the memorial mason', Mrs Redshaw has attached a number of photographs of the memorial, emphasising in some detail that the materials used have been chosen to complement existing stonework in the churchyard, and referencing other graves that she feels are similar in style to that of her husband.

Response: *The descriptions supplied in this section are Mrs Redshaw's own, and are made without the specialist knowledge normally provided by a memorial mason.*

(a) The assessment of whether this monument is in sympathy with others in the churchyard is therefore subjective. The graves in the photographs showing features similar to those on Mr Redshaw's grave all predate 2014 by some years, and would be neither proposed nor accepted under current guidelines. These graves do not constitute more than 10% of the graves in the churchyard.

(b) The petition includes information from Mr Brian Parkinson, who apparently completed the work on the grave, including an undertaking to indemnify the PCC against liability in regard to the quality of the work.

Response: *Mr Parkinson is not known to us as a memorial mason, and the value of any undertaking given is therefore unclear.*

(c) Mr Parkinson, through his electronic signature on p .30 of this retrospective petition for a non-compliant memorial, has undertaken to ensure that the already completed non-compliant work on the memorial will comply with the churchyard regulations! This is not possible.

4 In conclusion, it is important to stress that Mr Michael Redshaw was a committed and highly regarded member of the PCC at the time of his death, and the need for a fitting memorial is not in dispute. The PCC did however express the unanimous view that the existing memorial is not in sympathy with others in the churchyard, and permission would not be given to any family for a memorial such as this. It is this principle of fairness, that the same rules should apply to all families, that was of paramount importance. Please refer to the notes of Revd Ann Templeman dated February 2024, and the minutes of the PCC meeting held January 2024 (both already submitted) for further details.

The progress of the petitions

14. The public notices for each of the two petitions were duly displayed between 14 January and 11 February and between 21 January and 18 February 2024 respectively. Apart from the objections submitted by the PCC, no further objections have been received.

15. On 18 March I made my first directions order. This:

- (1) Provided for both petitions to be case managed and determined together.
- (2) Required the petitioner, within 21 days, to send to the Registry, and serve upon the party opponent, a reply to the particulars of objection to both petitions in Form 6, stating the petitioner's case in respect of the matters raised in those particulars.
- (3) Identified the issues on which the court required evidence as:
 - (a) The circumstances in which the non-compliant memorial was created;
 - (b) The objections recorded in the PCC minutes of 22 January 2024 and the further representations sent by the incumbent and the churchwardens on 12 March 2024; and
 - (c) The grounds of objection to each petition raised by the party opponent in the particulars of objection.
- (4) Provided a timetable for the service of witness statements; and specified that they must each be signed and dated by the witness, and verified by a statement of truth.
- (5) Required each party to send to the Registry, and serve on the other party, a written statement setting out their views (with reasons) on whether, having regard to the overriding objective in Part 1 of the FJR, it is expedient for the two petitions to be determined on consideration of written representations, instead of by a hearing; and whether they would wish the Chancellor to inspect the churchyard.

This Order was sent out to the parties on 20 March, so the time for service of the completed Form 6 was 9 April 2024.

16. At about the end of March the petitioner instructed specialist solicitors practising in the field of ecclesiastical law to assist in the preparation of her response to the particulars of objection. This led to a request for an extension of time for compliance with my directions, which was duly granted. On 26 April 2024 the petitioner made two separate witness statements, with a total of five exhibits, responding in detail to the objections raised by the party opponent. These seek to address the issues identified in my first directions order. I do not propose to

summarise the contents of these witness statements in any detail, although I have borne all that is said firmly in mind. However, I should draw particular attention to the following:

(1) In her statement on the non-compliant memorial petition, Mrs Redshaw agrees that, following the principle of fairness, the same rules should apply to all families with loved ones interred in the churchyard. However, she claims that Mike's grave plot is unique within this churchyard:

Aside from the historic graves with kerbs sets, no other grave is formally defined on three sides. However, Mike's grave has two adjoining paths and the access strip for maintenance of the boundary hedges and for the mower to reach the large extent of churchyard beyond. Thus, it was inevitable that it would be so defined by these paths and the kerb edges simply enhance the edges of these paths. Removal of the kerbs will not alter the fact that any grave in this particular area of the churchyard will be edged rather than forming part of a large lawned area.

Under the heading 'Possible resolution', Mrs Redshaw says this:

41. This entire situation has arisen due to the lack of guidance and accurate information provided to me after my husband's death, almost four years ago. To the best of my knowledge, I had gained all necessary authorisations and I was not informed otherwise prior to commencing the work to tidy up the ground above Mike's grave.

42. It is entirely inappropriate to consider the edging and paving around the grave to represent any form of memorial for Mike. Mr Brian Parkinson, who completed the work on the grave, did not do so as a stonemason but as a general contractor. To my mind the work he undertook was simply ground works which would enable a fitting memorial stone (in accordance with the Churchyard Regulations) to be erected in Mike's memory in due course.

43. Where other graves in the churchyard could simply be grassed over to 'match' their neighbours, grass does not grow in this area and to introduce such would not have been in keeping with what was there before or the adjoining Garden of Remembrance, which is also covered with flat stones and small chippings, not grass.

44. Ultimately, there was no precedent for what should occur after a burial in this section of the churchyard and, at the time, the ever changing COVID 19 pandemic precluded any 'usual practice' or lines of communication in the parish from being followed.

45. I have already indicated to the Incumbent that I have no problem altering the groundwork carried out around Mike's grave but I do seek compensation for the work which I carried out in good faith and for the parish to meet any additional costs incurred in altering the same. The lack of accurate information has caused unnecessary distress to myself and my family and resulted in significant expense and wasted time, effort and stress.

46. For completeness, the planter which sits on Mike's grave is not affixed to the ground in any way and can simply be removed. This is not intended to be a double width memorial or a memorial at all. I simply arrange for flowers to be planted to mark the grave until the matter of the reservation of the additional grave space is resolved.

47. There was never any intention for this 'domestic planter' to be used as a memorial for Mike's grave. As such, it does not, nor ever will, bear any inscription. This is a temporary fixture solely used to place plants inside until an approved memorial can be erected.

48. As I have already stated, the work carried out here was purely groundwork not the introduction of a memorial. The Oxford dictionary defines a memorial as 'a statue or structure established to remind people of a person or event'. Stones which bear no inscription do not aid remembrance whatsoever.

49. *I trust that the Chancellor in reaching his decision will be mindful of all the unusual factors which led to work which was done to the ground surrounding Mike's grave together with my subsequent cancer diagnosis. All of which have prevented me and my family from being able to properly grieve for Mike and be able to consider a suitable memorial for his grave.*

(2) Mrs Redshaw's second witness statement addresses the events which occurred after May 2021 (a year after Mike's death), and specifically relates to her petition for the reservation of the grave space adjoining Mike's grave. She explains that she submitted a faculty application in her own name to reserve the 'spare grave' next to that of her late-husband in place of her two sons, so that they could also have the possibility of being buried with the two of them. For clarity, she understood that the vacant plot she was applying for lay between the strip of land used by maintenance vehicles and Mike's grave. Responding to the objections raised by the PCC (but combining points (i) and (ii) as similar issues arise), Mrs Redshaw says this:

A faculty application is not necessary as a legal right of burial exists

20. *It is my understanding that, where there is a desire to reserve a grave space in a particular location in any churchyard, this can only be done by faculty granted by the Chancellor. Any informal arrangements have no legal force and may lead to disappointment and distress if the Incumbent at the relevant time does not exercise their discretion to allow a burial within a certain grave.*

21. *My immediate future is uncertain. I am currently awaiting another operation to treat my cancer and the stress resulting directly from the issues surrounding Mike's grave has resulted in an increase in high blood pressure, meaning I have now had to be tested for a TLA. It is therefore vitally important for me and my children that formal arrangements regarding my final resting place are made.*

22. *I seek to make such arrangements to prevent any unnecessary distress for my family, particularly my sons, who experienced the trauma of trying to agree a resting place for their father just days before his funeral. I need to be certain that my own family will be able to honour my intention to be buried in the adjacent grave to Mike without experiencing any further hurt or upset.*

23. *I accept that as a member of the church, who has been on the electoral roll for many years and resident in the parish, I do indeed have a legal right of burial in the churchyard.*

24. *If, as is the current belief, Mike's grave is double-depth, there would be no impediment to me being buried in that same grave. However, this very much presupposes that I outlive both of my sons. Were anything to happen to either Charles or Alexander, I would have no hesitation in agreeing to their burial being in the same grave space as their father.*

25. *I have already indicated that both of my sons have high-risk occupations. On the basis that there is a 'spare grave', I would not wish for this to be utilised by another family and thereby prevent me being laid to rest with my husband and wider family in due course.*

26. *Whilst the PCC is confident that my wishes can be fully respected without the need for the space next to my late-husband being reserved, I cannot agree for the reasons already given.*

Faculty applications for grave spaces in the churchyard are no longer accepted

27. *I have taken the above reason to mean that the PCC has determined not to support any further reservation of grave spaces. However, it remains within the gift of the Chancellor to exercise his discretion and grant a faculty to reserve a grave space in exceptional circumstances, whether or not this is supported by the relevant PCC.*

28. *I also accept that the PCC resolution on 17 January 2022 predates my current application by almost two years. However, it does not predate the application submitted by my sons for the very same grave space. To deny my application on this basis alone would be incredibly harsh.*

29. *I am aware that Mrs Jane Charlotte Anne Acland Bamford lodged a faculty petition to reserve a grave space in this churchyard in March 2022 and this was granted on 22 June 2022 This was after the decision taken by the PCC on 17 January 2022 that no more reservations would be accepted.*

30. *I believe that mine is an exceptional case, given the trauma of losing my husband and subsequent cancer diagnosis. Further I have strong emotional ties with this part of the churchyard, as a number of my family members are at rest or have also reserved grave spaces there.*

31. *For the reasons stated in my statement relating to the non-compliant memorial, I also believe that there is not really a 'spare grave' next to that in which Mike has been laid to rest ...*

33. *... the width of Mike's grave is thus less than a standard double grave. If the land adjoining Mike's grave were to be utilised by another family for burial, leaving a minimum 300mm (1') gap, the two graves (and any associated memorials) would likely be uncomfortably close to each other. However, the same area of land could potentially accommodate up to four full burials if it were solely to be used as a family grave.*

...

35. *... were anyone to be buried next to Mike, they would have to be positioned under the access strip used for maintenance purposes.*

37. *Accordingly, in recent weeks I have concluded that I have been trying to reserve a grave plot which in reality does not exist other than as a family grave.*

38. *To use this particular part of the churchyard as a family grave could actually free up more space for the parish to use over the next 30 years. Were myself and my two sons to all be interred with Mike, this could leave more graves available for other families in the parish.*

Possible resolution

39. *In light of all the above comments. I maintain my desire to have formal arrangements in place regarding the use of Mike's grave and the adjoining 'spare grave'. To permit this unique area within the churchyard to become a family grave would give me the reassurance I seek for both myself and my sons.*

40. *The PCC's policy was no doubt intended for the unused, grassed area of the churchyard and not this older section of the churchyard. As such, it would be possible to make an exception which would not impact any other subsequent desire for others to reserve a grave space.*

41. *Additionally due to the size of the grave falling between a single width and a double width it would be too close a proximity for non-family members to occupy it. Therefore permitting a family grave in this space would seem appropriate.*

42. *For my peace of mind and to finally have some closure after almost 4 years since Mike's death, I trust the Chancellor will now determine whether it is appropriate to grant a faculty for my own burial in the adjoining 'spare grave' in due course. If so, this would naturally have the effect of creating a family grave in which my two sons could also have their remains interred in due course.*

17. The Rector has submitted a five page response, dated 25 May 2024, which she has prepared in consultation with one of the present churchwardens and the former churchwarden, Mr Walter Davidson. This is to be read in conjunction with the responses and witness statements

previously submitted. The response asserts that Mrs Redshaw's statements are inaccurate in a number of respects, and that in several key instances she has changed her position from that set out in her previous statement. The party opponent is pleased to note that, contrary to her previous statement, Mrs Redshaw now accepts that she did receive detailed guidance on her responsibility to obtain written approval from the Rector before commencing any works. The parish guidance leaflet stresses the necessity of obtaining the Rector's written permission, and also specifically mentions that kerbs and pebbles are prohibited. The parish have no reason to believe that grass would not grow over the grave. They note from Mrs Redshaw's own statement that stones and flags were laid "*as a practical solution to address the challenge of grass growth*". Neither the Rector nor the churchwardens were informed about any work to the grave, and certainly none of them gave their approval to this. They have carefully checked the chronology and in reality work on the grave was carried out in April 2021, when the Rector was away on holiday, and Mrs Elphick, one of the churchwardens, was also away from the parish. The Rector emailed Mrs Redshaw on 9 May 2021, straight after she had received advice from the Archdeacon. Mrs Redshaw's discussion about the width of the grave is said to be new to the parish. There is no standard grave width in the churchyard; there are a number of different grave widths. Mrs Redshaw's suggestion of a family grave is said to be "*problematic*". There are no recent family graves in the churchyard. This would be a radical departure from all reservations in recent memory, would establish a very controversial precedent, and is certainly not within the remit of the PCC. The Rector and the churchwardens are pleased to see that Mrs Redshaw reiterates her offer to remove the non-compliant groundwork of her husband's grave. However, they are very clear that it is not appropriate for the parish to be expected to pay for this work because it was not authorised by the Rector. By way of compromise, however, they would hope to be able to arrange for volunteers to undertake this work if Mrs Redshaw were in agreement. The party opponent notes that although Mrs Redshaw has submitted this faculty application for retrospective permission for the erection of a non-compliant memorial, she now maintains that the unauthorised work she has undertaken is not a memorial at all, but merely "*groundworks*". Groundworks, however, are not necessary for the erection of a single headstone, which is the only form of memorial permitted. The parish look forward to receiving an application for a single headstone in memory of Mr Redshaw which complies with the Churchyard Regulations. The parish have now put together a timeline of disputed events by pulling together their various conversations and emails, and this is reproduced in their written response.

18. In relation to the reservation petition, the party opponent's response points out that although Mrs Redshaw now concedes that there is no impediment to her being buried in her husband's grave, she would appear to retain a wish to secure the adjacent burial plot on behalf of her two sons – albeit in her name, and potentially for her own use. In relation to this development, the previous concerns entertained by the PCC continue to be relevant, and are even more acute now since both sons are married and no consideration would appear to have been given to where their respective wives might wish ultimately to be buried when their time comes. In relation to Mrs Redshaw herself, she now appears to agree that there is appropriate provision within her husband's double depth grave. Regarding the PCC's decision in January 2022 not to support any further reservations of grave spaces, Mrs Redshaw accepts that this pre-dates her current application by nearly two years, but she refers back to the application made on behalf of her sons in late 2021. The following points are considered relevant:

(1) Emails from July 2021 are said to have made it clear that Mrs Redshaw should start any application for a faculty by family members as soon as possible, due to the shortage of graveyard

space and the likelihood of future restrictions. She did make an application shortly before January 2022, and it was considered at the PCC meeting on that date.

(2) The PCC were also advised of two additional impending applications for faculties to reserve grave spaces – one by Mrs Jane Bamford (Mrs Redshaw’s sister) and one by another, unrelated parishioner. Both of those applicants had discussed matters with the Rector, both met the relevant criteria, and both were considered to be straightforward. Therefore, the PCC agreed that they would not wish to stand in the way of either application before moving on to consider the proposal not to support future reservations.

(3) Unfortunately, Mrs Redshaw’s application on behalf of her two sons did not fall into this category, and in fact she decided to advise the Diocesan Registry that she was not proceeding.

Mrs Redshaw’s statement goes into some detail about the width of the space next to her husband’s grave, and concludes that the plot *“in reality does not exist other than as a family grave”*. The parish point out that new graves are usually allocated on a *‘next in line’* principle in the newer part of the churchyard. They *“can therefore reassure Mrs Redshaw that it is most unlikely that any of the very few remaining grave spaces left in the older section of the graveyard would be offered to anyone outside Mrs Redshaw’s family in the foreseeable future”*. However, *“family graves”* of double width are not permitted, and the PCC would consequently consider this to be an issue beyond its remit. Mrs Redshaw’s wish to be buried with her husband in the same grave would, of course, continue to be respected. The parish consider that it is important to repeat that the leaflet advising of the Churchyard Regulations applies to the whole of the churchyard, and is applied without exclusions, so that all are treated equally.

19. In an email to the Registry dated 25 May the Rector indicated that the parish would prefer this matter to be dealt on the written representations they had submitted. Shortly thereafter, the court acceded to a request from Mrs Redshaw’s solicitor for a short *‘pause’* in the proceedings in the hope of achieving a mediated resolution of this matter out of court. Reference was made to the escalating costs that Mrs Redshaw might continue to incur as she continued in the contested faculty process, and the ongoing strain on her health. Discussions were being facilitated by Mrs Redshaw’s daughter-in-law, Megan. Unfortunately, these discussions between the parties broke down, apparently due to a lack of trust on the part of Mrs Redshaw. At about this time, the Rector retired, and the incumbency is currently vacant. However the Reverend Ann Templeman continues, as the party opponent, to oppose the petition on behalf of the parish.

20. On 24 September 2024, I made a second directions order, as follows:

1. The petitioner and the party opponent are to write to the Registry, within 14 days after service of the court’s directions order, setting out their respective views (with reasons) on whether they are content to proceed on the basis of written representations, rather than by way of a hearing.

If both parties are so content, they are to send to the Registry, and serve upon the counter-party, any written representations upon which they may wish to rely in support of, or in opposition to, the petitions, within the same period of 14 days after service of the court’s directions order. If both parties are content to rely upon the material they have already submitted, they should notify the Registry and the counter-party accordingly.

2. If no response is received from either party within the period of 14 days after service of the court’s directions order, the Chancellor will proceed to determine the petition on the papers which are then before the court.

3. *If any objections to the written representation procedure (as detailed above) are received, they will be referred to the Chancellor for him to give further directions.*

21. On 3 October 2024 the party opponent submitted her final update on the two petitions, as follows:

JUNE 2024 – PRESENT

I received an email from Megan Redshaw on June 4 2024 asking to meet to discuss possible resolution of proceedings concerning Michel Redshaw's Grave. The Registrar confirmed that she had in writing from Lisa Redshaw's solicitor that Megan had officially taken on the role of seeking a compromise which would not involve legal proceedings. I readily agreed to meet and in the course of several meetings we came to a compromise that we hoped would be acceptable to both sides: The proposal was that Lisa Redshaw would remove the kerbs, stones, etc which were contrary to the 2014 Churchyard Regulations and that the churchwardens, PCC and Incumbent of Hoole St Michael's would then withdraw their objection to Lisa Redshaw's application to reserve the adjacent grave space for herself. Unfortunately it seems that this proposal is not now acceptable to Lisa Redshaw. (Lisa is not prepared to remove the kerbs, stones, etc until she is guaranteed the adjacent grave space). We do not have any alternative to offer and hope that if legal proceedings prove necessary, the conclusion will be as or similar to the compromise originally proposed.

22. On 7 October, the Registry sent an email to Mrs Redshaw, as follows:

*Megan had explained to the court, on your behalf, that the compromise cannot be accepted because Reverend Ann will not support the grave space reservation **until after** the non-compliant aspects of the grave have been removed. The matter is, therefore, proceeding to be considered by the Judge. The directions order is attached again for convenience, this is from the Judge and he requires you to:*

- 1. Provide any more evidence which you may wish to submit in favour of your application for a grave space reservation*
- 2. Confirm whether the matter can be considered by the Judge on written representations or should a formal hearing be convened to consider the matter.*

You are required to respond by 10 OCTOBER 2024.

If you do not respond it will be assumed that the answer to 1. is 'there is no more evidence' and 2. 'the matter can be considered upon written representations and without a hearing'

The Reverend Ann Templeman has received the same directions order, and she has answered:

- 1. With a final submission attached, which I provide to you now for consideration*
- 2. That she is happy for the Judge to consider the matter on written representations rather than at a hearing.*

23. Mrs Redshaw responded by email on 9 October attaching a document which reads substantially as follows (after correcting obvious errors):

1. The grave space

We have done everything Rev Templeman has suggested for us to do to acquire the grave space next to my husband. We applied for the grave space for a family member's name on the Rev Templeman's suggestion, but they thought applicants were too young so it was not granted, so we were advised to apply to faculty for it: petition 64 (I think the application is still open).

I was then advised to apply in my name, but by the time we applied (after being diagnosed with cancer and going through chemo) there had been a mortarium on grave spaces being reserved, so it was refused again, on the grounds of the mortarium, but I know for a fact that in 2023 Mrs. Bamford was granted a grave space after the mortarium on grave plots (I know this 100 % because she is my sister).

All my children and I want is to be buried with and next to my husband as he died way before his time, and we miss him very much and want to be always together.

2. The grave misunderstanding

Due to the grave misunderstanding which I agree the grave would look much better without the kerbs and should look like the cremation plots which are next door it would make it all look very smart, but as I have said all along I am quite happy to go to soil but as I discussed with the Rev Templeman in 2021 when I met with her and the churchwarden, we need to decide on the ground (grave site) first. Attached letter was their response, and we have been trying to resolve it ever since. It's a little bit like building a church the grave site, you can't build a nave in a church without building the church first, just as you can't finish the top of the grave i.e. soil/chipping till you have decided on the ground (grave site) itself.

Unfortunately, it's been the worse four years of my life after my husband's death, the sadness and my poor health, for my family has been awful, I would have liked to have found comfort in the church, but sadly instead I found a war zone on every front.

Mrs Redshaw concludes her email thus:

I look forward for this sad turn of events being laid to rest and I can organize my husband's headstone which is so overdue, thank you for your assistance in this matter.

24. The final contribution comes from the party opponent, in an email sent on 9 October 2024 from the Departure Lounge of Heathrow, Terminal 5. It reads:

We have been through everything Lisa has raised here before.

When I wrote the email in 2021 Lisa had maintained that her husband's grave was not a double depth grave with space for her because of the tree roots. I suggested she approached the grave digger to verify her claim in writing. In fact he refuted her claim in a written statement which you have; apparently it is a normal double depth grave, the same depth as Lisa's father's

Lisa did not go on at that point to apply for a faculty for a grave reservation for herself; instead as you know she applied for a double depth grave for her 2 sons which she later withdrew.

The Chancellor may be interested to know that according to Megan Redshaw who was appointed by Lisa to negotiate a compromise, only one of Lisa's sons - Charles (married to Megan) - wishes to be buried in the churchyard next to their father.

You will be pleased to know that Lisa attended our Farewell Service with her mother and sister on 29 September looking well on her return from holiday in China.

25. After attending Diocesan Synod in Fulwood on the morning of Saturday 19 October 2024, I made an unannounced visit to the churchyard at Hoole that afternoon. I was there for about 50 minutes, from shortly after 2.00 pm. It was a clear and sunny afternoon. The former churchwarden, Mr Hawthornthwaite, was working in the churchyard. Although I spoke to him, I did not identify myself; nor did I explain the reason for my visit, or mention these faculty petitions. I viewed the grave of Mrs Redshaw's late father, Mr Thomas Bracewell (1925-1993),

the site of Mike's grave, and the Memorial Garden behind it. I also walked round the old part of the churchyard, extending from Mike's grave to the church building and the boundary with Liverpool Old Road. I counted some ten kerbed graves, all of which pre-date the present Churchyard Regulations, which were introduced in 2014. One single-width grave space, with white and grey stone chippings within stone kerbs, bore a wedge-shaped ledger stone commemorating a late Patroness and Patron of this living, who had died in 2002 and 2010 respectively. I also observed a double-width grave space bordered by stone slabs surrounding a few stone chippings overlaid with a raised flat ledger stone commemorating the Reverend Edmund Neal Dunne, who served as the Rector from 1881-1920, and his son, the Reverend Charles Dunne, who succeeded him as Rector from 1920 to 1939, and other family members. I also viewed a double-width, kerbed grave with stone chippings and an upright memorial commemorating four members of the Wiggans family, who had died between 1914 and 1971. From my observations, it is clear that neither a double-width grave, nor a kerbed grave with stone chippings and either a flat ledger stone or an upright memorial, is entirely without precedent within this churchyard. However, none would appear to have been introduced into this churchyard since the present Churchyard Regulations were introduced in 2014.

The legal framework

26. In this section of my judgment, I will consider, first, the law applicable to the petition seeking retrospective permission for the erection of a non-compliant memorial at the site of Mike's grave (although it now appears that Mrs Redshaw has never intended the planter which sits on Mike's grave to be a double-width memorial, or, indeed, any memorial at all); and then the law applicable to the petition seeking the reservation of a grave space for Mrs Redshaw.

27. The family members who pay for a funeral thereby acquire no rights of property in the deceased's grave space, as distinct from any memorial that may be erected or installed to commemorate the deceased. In principle, the introduction of any memorial or other artefact into a consecrated Church of England churchyard requires a faculty; but it is conventional for diocesan chancellors to make schemes of delegation to the incumbent minister, usually by means of what are termed '*Churchyard Regulations*' (although until very recently these had no formal basis in statute). There is therefore no right to erect a memorial over any grave without either a faculty granted by the diocesan chancellor (or their deputy), or the permission of the incumbent minister where the chancellor has delegated authority to the incumbent to grant permission for memorials under churchyard regulations. If a memorial does not wholly conform to the specifications set out in the applicable churchyard regulations, the incumbent will lack any delegated authority to permit that memorial, and it will be necessary to apply to the chancellor for a faculty. A Working Party set up by the Standing Committee of the Ecclesiastical Judges' Association has recently been looking at the many variations in the churchyard memorial regulations across the different dioceses of the Church of England with a view to bringing them more up to date, and also eliminating unnecessary differences of detail. Their report, published in October 2024, is the subject of ongoing discussions with various interested bodies.

28. The Churchyard Regulations made by my immediate predecessor as Chancellor of the Diocese of Blackburn have applied to this churchyard since 2014. Until June 2021, the case law disclosed two competing approaches to applications for a faculty where there had been non-compliance with the relevant Churchyard Regulations: one required '*exceptional*', '*powerful*' or '*substantial*' reasons for departing from the Regulations; the other simply asked whether the proposed memorial was '*suitable*'. In *Re St Giles, Exhall* [2021] EACC 1, [2021] PTSR 1622 the

Arches Court of Canterbury (Morag Ellis QC, Dean, Chancellor Turner QC and Chancellor Arlow) considered these different approaches, and how churchyard regulations should be used in the consistory court's decision-making. At paragraph 11.8, the Arches Court considered the right approach to be a '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 ...

29. The Arches Court cited with approval the approach articulated in a number of first-instance judgments. I would summarise this approach as follows:

- (1) As is the case with any faculty petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposed memorial.
- (2) The terms and content of the applicable churchyard regulations will, of course, be a relevant factor – often highly relevant, and doubtless, on occasion, determinative. But they will only be one of the constellation of infinitely variable factors which the court must consider on a case-by-case basis.
- (3) The court should approach the suitability of the proposed memorial 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 doctrines of the Church of England in any essential matter.
- (4) Mere non-compliance with the regulations, of itself, can never be the only basis on which to refuse a faculty petition. It is necessary to consider whether the particular memorial in question is inherently desirable, or at any rate not undesirable, whether or not it complies with the standards of the regulations.

The Arches Court noted that this section of their judgment was not essential to the determination of the appeal in the case that was before them; but they expressly stated that they intended it 'to be of assistance to chancellors, clergy and all others involved in administering the faculty jurisdiction in relation to memorials in consecrated churchyards'.

30. Four further themes seem to me to emerge from the authorities on petitions for non-compliant memorials:

- (5) Any proposed memorial must be appropriate, not only from the perspective of petitioners, but also (as far as can reasonably be assessed) for future generations. In *Re Christ Church, Harwood* [2002] 1 WLR 2055 at page 2056, Chancellor Holden put it this way:

The overall beauty and tranquillity of a churchyard is only as good as its constituent 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.

- (6) Where a proposed design is contrary to the applicable churchyard regulations, the fact that there are other memorial headstones in the same churchyard that are also contrary to those

regulations will not be a sufficient justification without more. On the other hand, the presence of other headstones that similarly fall outside the relevant regulations is a relevant consideration, not only because of the need for consistency of approach and fairness, but also because this will impact upon the overall effect of the proposed memorial upon the appearance and the amenity of the particular churchyard.

(7) It is appropriate to give weight not only to the views of the PCC and the incumbent, but also to pastoral considerations.

(8) Whilst it may be appropriate to accord some weight to any concerns expressed about the risk of any faculty setting a precedent for other memorials in the churchyard, each petition for the introduction of a new, or replacement, memorial should be assessed on its own merits, including by reference to the proposed design, and its positioning in relation to the church and to other memorials. The grant of a faculty in any particular case does not mean that a faculty will necessarily be granted for other, comparable proposals in the future. So far as the law is concerned, a decision on the facts of one case is not determinative of other cases with different facts.

31. I set out my understanding of the principles which should govern the determination of any petition seeking a faculty for the reservation of a grave space in my recent judgment in *Re St Paul, Caton-with-Littledale* [2023] ECC Bl 6, (2024) 26 Eccl LJ 239, at paragraphs 10-13. I concluded by identifying two consistent themes which seemed to me to run through all of the authorities:

First, where a PCC have adopted a policy governing the reservation of gravespaces that is considered to be reasonable and fair, it would not be right to override that policy unless there is an exceptional reason for doing so. Secondly, where the remaining space within the churchyard is limited, it will not usually be right to extend the duration of any reservation faculty beyond the period for which the churchyard is likely to continue to have space for burials.

The second of these restrictions is appropriate because of the risk that such a reservation will prejudice the rights of those parishioners or worshippers who would otherwise be entitled to be buried in the churchyard. However, given the present age of Mrs Redshaw, and the remaining capacity of this churchyard in terms of future burials, this second restriction has no real relevance to the instant case.

32. I turn now to consider the applicable Churchyard Regulations.

The Churchyard Regulations

33. The current Churchyard Regulations for the Diocese of Blackburn, made by my predecessor, Chancellor Bullimore, came into force on 1 January 2014. The Introduction states:

*Although many people have a right to burial in the churchyard of the Parish church, there is no corresponding right to erect a memorial to the deceased. **Permission is always required.** It would, however, be heavy handed to insist that everyone wanting to erect a memorial to a family member or friend should obtain permission through the faculty jurisdiction process, when most proposals for memorials are uncontroversial.*

These Regulations are therefore framed to cover those applications that are not going to raise issues of concern about size, material, design or any other feature. If an application meets the criteria laid down in the Regulations then the Parish Priest has the authority to give permission for the memorial to be erected.

The preliminary purpose of the Regulations is to specify when the Parish Priest may give permission to erect a memorial under his or her delegated authority, so that there is no need to proceed by faculty.

If an application falls outside the criteria laid down in the Regulations then the Parish Priest has no authority to grant it and accordingly a faculty must be sought from the Diocesan Chancellor. *However there are bound to be cases that are borderline, or where for some reason, strict adherence to the Regulations may be inappropriate; in such cases the Parish Priest is required to consult with the Archdeacon as to what is to be done.*

Where a proposal is plainly outside of the Regulations the applicants should proceed by petition for a faculty. Further information about how to make an application for a faculty can be obtained from the Parish Priest.

Paragraph 2.1.1 (headed ‘*Who grants permission*’) states:

Nothing is to be erected or placed, or works undertaken nor any rights or way-leaves granted, in churchyards without the authority of a Faculty; or, in such cases as are mentioned in 3 below, without the written consent of the Incumbent.

Paragraph 2.3 (headed ‘*Reservation of Grave Space*’) states that:

Grave spaces are reserved only by Faculty ...

Section 3 addresses the subject of monuments in churchyards. Paragraph 3.1 states that:

Neither the fact a grave space has been reserved, nor the exercise of a right of burial, allows a monument to be erected without permission.

Paragraph 3.2 (headed ‘*Consent*’) states:

It would obviously be inconvenient and expensive to require all those who want to erect a memorial to apply for a Faculty. Therefore, Incumbents are hereby given authority to consent in writing to the erection of gravestones, tombs and monuments complying with the regulations given below. Those who erect monuments not in compliance with these regulations and without a Faculty, whether or not they have obtained the Incumbent’s consent, may be required to remove them and to pay the costs of the proceedings compelling them to do so.

It is implicit in paragraph 3.3.1 (in a section of the Regulations addressing ‘*Materials*’) that a memorial needs to be made of stone, and “*needs to be in harmony with the church building*”. Paragraph 3.6.3. expressly states that:

The following are not permitted: *kerbs, railings, plain or coloured chippings, free-standing containers of any kind ...*

Paragraph 3.7.3 (in a section of the regulations dealing with ‘*Inscriptions*’) explains that:

The object of epitaphs is ‘to identify the resting place of the deceased, to honour the dead, to comfort the living and to inform posterity’.

By paragraph 3.7.1, an inscription

“... must be consistent with Christian beliefs and must read well now and be appropriate in the future”.

The Regulations do not address the subject of the width of a grave space. Nor is this a topic that is considered or addressed in the recent report of the Working Party of the Ecclesiastical Judges' Association into Churchyard Memorial Regulations.

Analysis and conclusions

34. I am satisfied that it is just and expedient, in furtherance of the overriding objective of the FJR, to determine these two faculty petitions on consideration of written representations. This will save expense, and enable them to be dealt with proportionately, expeditiously and fairly. The party opponent, who has now retired as the Rector of this church, expressly consents to this course. Although the petitioner has not expressly consented to it, she has raised no objection to this course, whether within the time stipulated by the court's directions, or at all.

35. Mrs Redshaw considers that the court cannot properly consider the issue of the appearance and condition of Mike's grave until it has first determined her petition to reserve the adjoining grave space because the potential for the creation of a double-width family grave is clearly relevant to the question of how that double grave space should be laid out. That ignores two relevant considerations. The first is that Mrs Redshaw is seeking to reserve the adjoining grave space for her own future burial. Any reservation faculty will be personal to Mrs Redshaw, and will not be capable of assignment to any other member of her family. Should Mrs Redshaw choose to leave instructions to her personal representatives that she wishes to be buried in Mike's grave when her time comes, then the adjoining, reserved grave space will not automatically become available to either of her two sons or to any other member of her family. They would need to present their own, separate reservation petition, or seek a variation to (on this hypothesis) the existing reservation faculty in favour of Mrs Redshaw in order to facilitate their own burial in the reserved grave space in place of Mrs Redshaw. In short, the adjoining grave space will not be a reserved space for the Redshaw family, but for Mrs Redshaw alone. There will not be a '*Redshaw family*', double-width grave space, but two grave spaces, one containing Mike's human remains and the other reserved for Mrs Redshaw's future burial when her time comes. The second consideration is that approaching the reservation application without regard to the petition for a retrospective faculty to permit the existing, non-compliant arrangements for the layout of Mike's grave involves the risk of considering the reservation application on a false basis, by reference to what is already there on the ground, rather than on how this area of land should look after both petitions have been determined, and any resulting faculties implemented. Both petitions have to be considered together holistically, or '*in the round*'.

36. I have no hesitation in finding that the existing kerbs, or sandstone coping stones, that surround both Mike's grave and the adjoining grave space, and the stone flags and the pebbles and chippings that have been laid or deposited within them, together with the planter that has been placed in this area, should all be removed. The whole area should be relaid as grass, at Mrs Redshaw's expense. My reasons are as follows:

- (1) These works are contrary to the Churchyard Regulations.
- (2) They were carried out without any lawful authority.
- (3) They extend beyond the area of Mike's grave into an adjoining grave space to which Mrs Redshaw had no claim at the time the works were implemented.
- (4) Before Mrs Redshaw carried out these works, she had been provided with a copy of the Churchyard Regulations. These made it clear that none of these items were permitted without a faculty. Even if they were permitted without a faculty, they would first have required the Rector's permission. No such permission was ever sought, still less obtained, despite Mrs Redshaw's involvement in the activities of the church, with its attendant opportunities for contact with the Rector, the churchwardens, and PCC members. Making all due allowance for the difficulties

caused by the COVID pandemic and consequent restrictions, this is not a case of mere inadvertence on the part of Mrs Redshaw.

(5) It would be unfair to others who have commissioned memorials for their loved ones in compliance with the applicable Churchyard Regulations retrospectively to sanction and permit such a wholesale departure from their requirements. It might tend to encourage others to disregard their requirements in the future.

(6) The PCC are firmly opposed to the maintenance of these works. Although Mrs Redshaw has produced a considerable number of signatures in support of her original petition, the court has no details of the circumstances in which these came to be obtained or the underlying motivations of the signatories. They cannot be allowed to prevail against the considered views of the elected PCC, as expressed in their reasoned resolutions.

(7) Judged on their own merits, and without reference to the Churchyard Regulations, these works are inherently unsuitable and undesirable in the context of this beautiful rural churchyard. They are out of keeping with other individual grave plots within the churchyard. What may be appropriate for a Memorial Garden, containing the cremated remains of a number of unrelated individuals, is not a relevant or appropriate comparator for an individual, or even a family, grave space. These arrangements run the risk of creating a perception that one individual, or family, is being elevated above others when all are of equal worth in the eyes of God.

(8) In her latest representations, even the petitioner has agreed that *“the grave would look much better without the kerbs”* although she goes on to say that it *“should look like the cremation plots which are next door”*.

37. Mrs Redshaw has suggested that she has *“no problem altering the groundwork carried out around Mike’s grave but I do seek compensation for the work which I carried out in good faith and for the parish to meet any additional costs incurred in altering the same. The lack of accurate information has caused unnecessary distress to myself and my family and resulted in significant expense and wasted time, effort and stress.”* The Rector and the churchwardens have been pleased to see Mrs Redshaw reiterate her previous offer to remove the non-compliant groundwork of her husband's grave. However, they are very clear that it is not appropriate for the parish to be expected to pay for this work because it was not authorised by the Rector (or, indeed, by way of faculty). By way of compromise, however, they say that they would hope to be able to arrange for volunteers to undertake this work if Mrs Redshaw were in agreement. Whatever voluntary arrangements the parish may choose to put in place, I have no doubt that the cost of restoring Mike’s grave plot, and the adjoining grave space, to grass must be borne by Mrs Redshaw since these works were undertaken by her without any lawful authority. I find that there was no lack of accurate information available to Mrs Redshaw.

38. I turn then to the reservation petition. I approach this on the footing that the grave space that adjoins Mike’s grave will be returned to grass; and that Mrs Redshaw is seeking to reserve the space for her own future burial.

39. I confess to entertaining serious concerns about acceding to Mrs Redshaw’s grave reservation petition. Three of these have already been articulated by the PCC, and they form the basis for the party opponent’s objections to the petition:

(1) Mrs Redshaw already has a grave available to her in Hoole churchyard as her husband’s grave is a double depth grave with space which is available to her. On the evidence, there is no physical

impediment to her being buried in that grave. The parish have indicated that they will continue to respect Mrs Redshaw's understandable wish to be buried with her husband in the same grave.

(2) The PCC of St Michael, Hoole voted on 17 January 2022 not to accept any future reservations of grave spaces. The authorities are clear that where a PCC have adopted a policy governing the reservation of gravespaces that is considered to be reasonable and fair, it would not be right to override that policy unless there is an exceptional reason for doing so.

(3) Mrs Redshaw is resident in the parish (and on the church's electoral roll) and therefore she already has a legal right to be buried in the churchyard. The parish have pointed out that new graves are usually allocated on a '*next in line*' principle in the newer part of the churchyard. They "*can therefore reassure Mrs Redshaw that it is most unlikely that any of the very few remaining grave spaces left in the older section of the graveyard would be offered to anyone outside Mrs Redshaw's family in the foreseeable future*". However, '*family graves*' of double width are not permitted; and the PCC consequently consider this to be an issue beyond their remit.

In addition, I am concerned that:

(4) Mrs Redshaw views her present petition as a means of securing the reservation of a grave plot for herself as a backdoor means of achieving a family grave, thereby creating a double-width family grave plot, something that the PCC regard as impermissible.

40. As against these considerations, I bear in mind the following:

(1) As Mrs Redshaw observes, the reservation of a grave space in any particular location in a churchyard can only be assured by way of a faculty granted by the Chancellor. Any informal arrangements have no legal force, and may lead to disappointment and distress if the incumbent at the relevant time does not exercise their discretion to allow a burial within a particular grave space.

(2) Mrs Redshaw's wish to secure this particular grave space for her future burial (a) is entirely understandable and (b) pre-dates the PCC resolution not to accept any future reservations of grave spaces. The PCC have recognised the unfairness of applying this policy to applications that were pending, or in contemplation, at the time this resolution was passed. Whilst Mrs Redshaw can be criticised for not presenting her reservation petition earlier than she has done, concepts of fairness and consistency of approach tend to militate in favour of making an exception in Mrs Redshaw's particular case. She should be treated in no way differently from her sister.

(3) The rationale underlying the PCC's policy applies with somewhat less force in the case of Mrs Redshaw, given her age and the space remaining within the churchyard.

(4) The grant of a reservation is unlikely to prejudice the future burial expectations of other parishioners given both the factor identified at (3) above and also the PCC's informal assurance that the adjoining grave space is unlikely to be offered to anyone outside Mrs Redshaw's family in the foreseeable future.

(5) Any reservation faculty will be personal to Mrs Redshaw, and will not be capable of assignment to any other member of her family. The adjoining grave space will not be a reserved space for the Redshaw family, but for Mrs Redshaw alone. There will not be a '*Redshaw family*' double-width grave space but two grave spaces, one containing Mike's human remains and the other reserved for Mrs Redshaw's future burial when her own time comes. Should Mrs Redshaw choose to leave instructions to her personal representatives that she wishes to be buried in Mike's

grave when her time comes, then the adjoining, reserved grave space will not automatically become available to either of her two sons or to any other member of her family. They would need to present their own, separate reservation petition, or seek a variation to (on this hypothesis) the existing reservation faculty in favour of Mrs Redshaw in order to facilitate their own burial in the reserved grave space in place of Mrs Redshaw.

(6) Given Mrs Redshaw's involvement in the activities of the church, and her family's past association with the church and the churchyard, this is a difficult pastoral situation. It is not assisted by the fact that the position of Rector is now in vacancy. It is no doubt with such pastoral considerations in mind that, in her final update on the two petitions, the party opponent expressed the hope that should a legal resolution prove necessary, the conclusion would be the same as, or similar to, the compromise originally proposed: that Mrs Redshaw would remove the kerbs, and stones, etc which are contrary to the 2014 Churchyard Regulations, and that the incumbent, the churchwardens, and the PCC would then withdraw their objection to Mrs Redshaw's application to reserve the adjacent grave space for herself. This has proved unacceptable to Mrs Redshaw only because she is not prepared to remove the kerbs, stones, etc unless and until she is guaranteed the adjacent grave space. That is not a solution that is within the gift of the PCC; but it is within the power of the court to grant.

41. Weighing these competing considerations, I have decided, not without some hesitation, that the balance falls in favour of granting Mrs Redshaw's reservation application. In doing so, I emphasise that this is a decision reached upon its own particular, and peculiar, facts. Whilst the legal principles I have identified may be of some assistance in the determination of future cases, the actual decision in this case will be of no guidance as a precedent for any future petition, even in respect of this churchyard.

Disposal

42. For these reasons:

(1) I refuse the application for a retrospective faculty authorising the installation of a double-width grave area comprising sandstone coping stones, York stone flags, and interspersed pebbles. Mrs Redshaw is required, within the next three months, to remove the existing kerbs, or sandstone coping stones, that surround both Mike's grave and the adjoining grave space, and also the stone flags and the pebbles and chippings that have been laid or deposited within them, together with the planter that has been placed in this area. The whole area is then to be relaid as grass as soon as practicable thereafter. All of this is to be done at Mrs Redshaw's own expense.

(2) Upon completion of these works, and conditional thereon, I will grant a faculty for the reservation of a full burial gravespace adjoining the grave of the petitioner's late husband Mike. The faculty will be subject to the following further conditions:

- (a) The benefit of the reservation is personal to the petitioner, and is non-assignable.
- (b) Any fees payable under the current diocesan parochial fees order must be paid to the minister and the PCC of the parish within 56 days of the grant of this faculty.
- (c) The reservation shall be for the usual period of 25 years from the date of the grant of the faculty, but it will determine automatically if the petitioner is buried elsewhere.
- (d) Permission is granted to apply for an extension to the duration of the reservation by letter to the court (and for no further fee) within the last year of the term of the faculty.

(e) The reservation shall be recorded in the parish records; and the location of the reserved grave plot shall be marked on the ground by a suitable, and durable, marker.

43. The petitioner will bear the costs of these petitions.

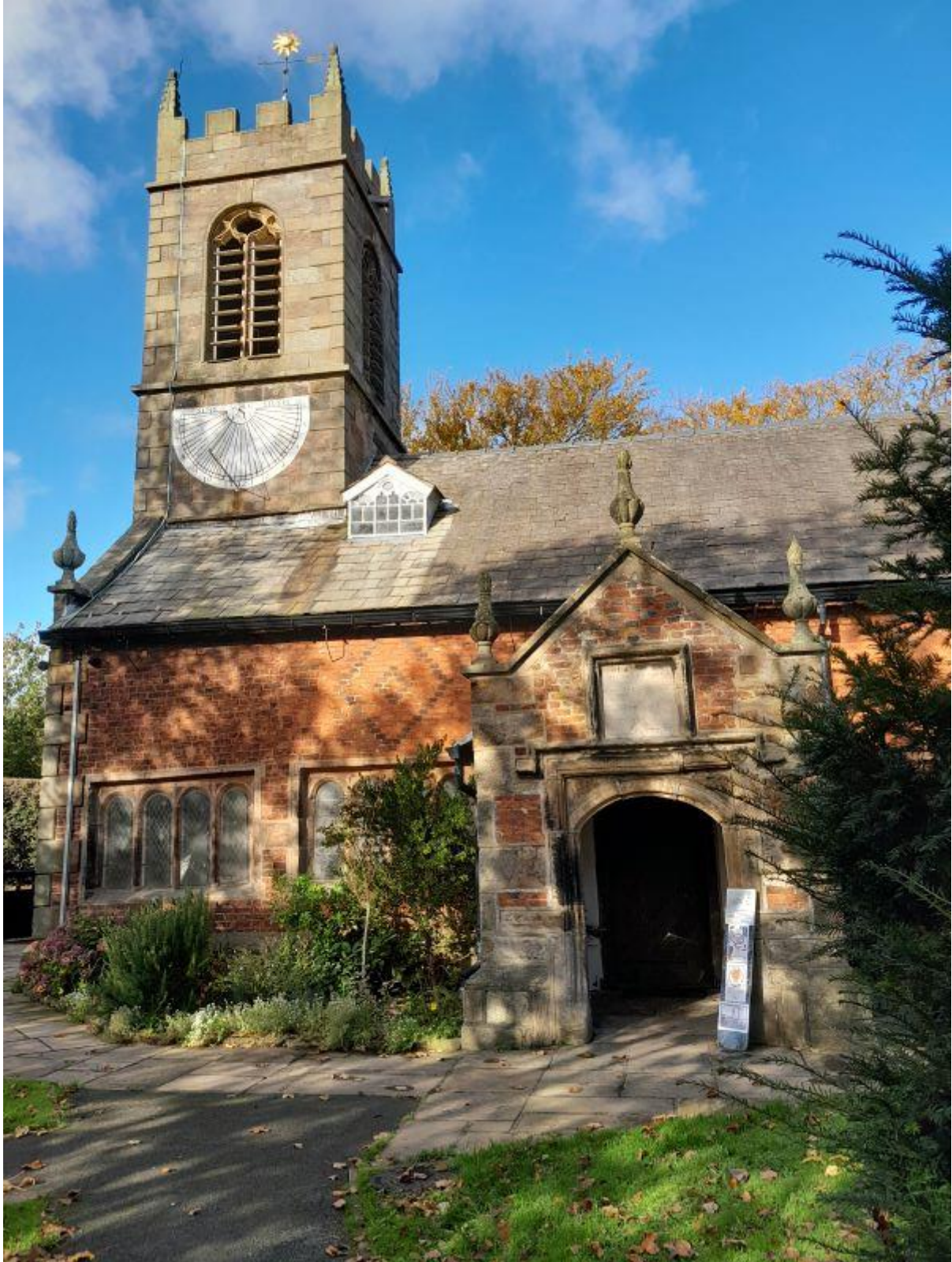
David R. Hodge

The Worshipful Chancellor Hodge KC

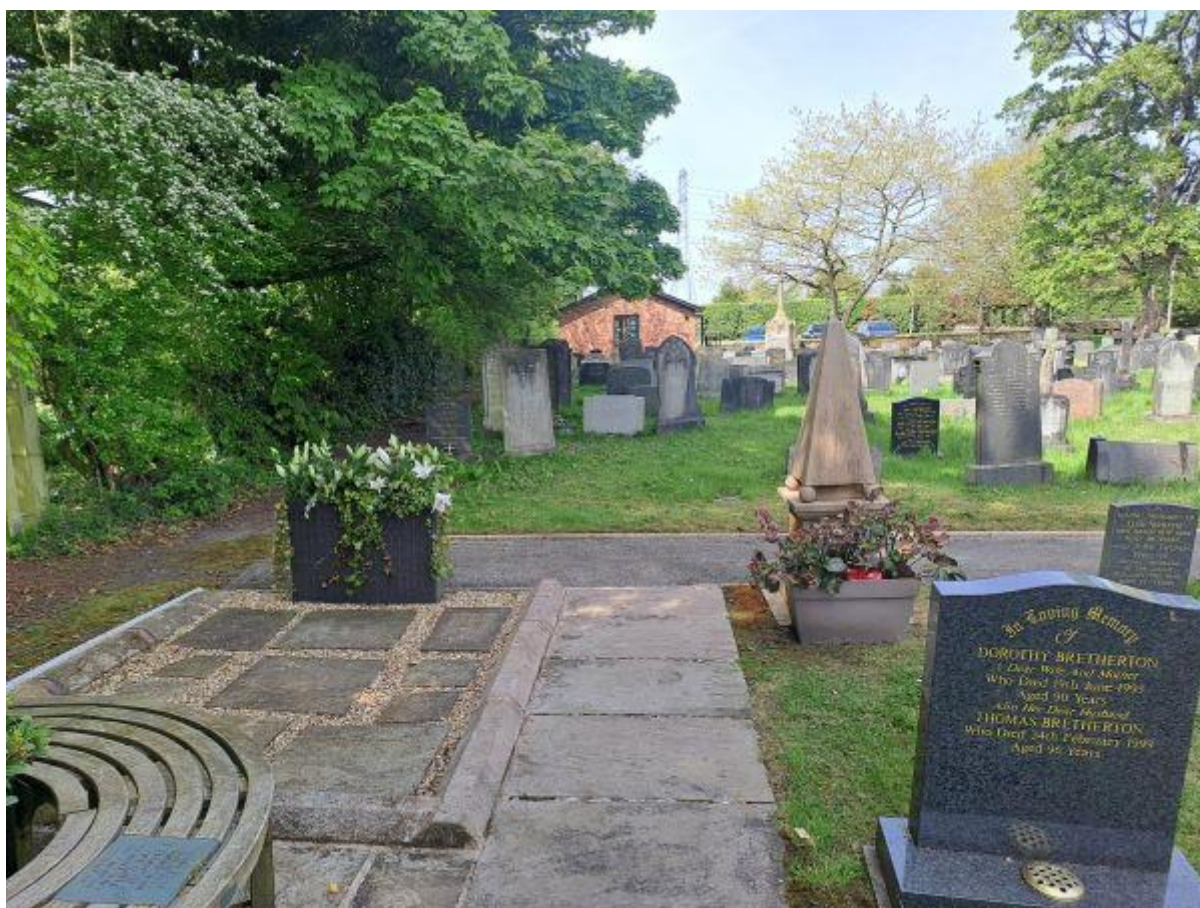
The Fourth Sunday before Advent

3 November 2024

St Michael & All Angels, Much Hoole



Michael Redshaw's Grave on the left
(with Mr Bracewell's grave marked by the obelisk-shaped memorial)



The Memorial Garden

(with Michael Redshaw's Grave in the background)

