

Neutral Citation Number: [2025] ECC Gui 1

OFS No: 2024-104920

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

The Worshipful Andrew Burns KC, Chancellor

Date: 27 March 2025

**IN THE PARISH OF EAST MOLESEY
THE CHURCH OF ST MARY**

In the matter of a petition for a faculty for the relocation of 64 headstones to the perimeter of the churchyard

JUDGMENT

1. The churchyard of St Mary East Molesey was closed to new burials by order in 1861 with the exception of interments in family vaults. While the churchyard is well maintained, the traditional but somewhat haphazard central placement of many headstones means that the churchyard cannot be readily used as a communal space. The petitioners are also concerned that some headstones have become unstable over time, posing risks to visitors and relocation would render them safe. By a petition dated 7 February 2025 the petitioners say: “we would like to relocate a number of headstones from the churchyard to the boundary walls in order to clear a space for outdoor activities”. They hope to carry out the works over three months from April 2025.
2. St Mary’s Church is on a Norman site, but the present church dates from 1865 and is Grade II listed. There are two listed tombs in the churchyard north of the church. The first is a mid-18th century chest tomb of red brick on a plinth (list entry number 1377475). The second is a chest tomb (west of the church) dedicated to R. Wood that dates from the 1780s (list entry number 1030098).
3. The petitioners propose to relocate 64 headstones to the churchyard’s boundary walls, preserving their historical significance while creating “a safe and welcoming outdoor space for events, activities and quiet reflection” at the centre of the churchyard. This is part of the St Mary’s Church Café and Community Space Renewal project. They want

the headstones to remain an integral part of the churchyard while enabling the area to be used more effectively for the benefit of the community.

4. There are about 111 headstones, box tombs and tablets in the churchyard surrounding the church. Some of the headstones have previously been moved and relocated along the boundary walls of the churchyard due to safety concerns. The proposal is to retain all the box tombs, including the two listed tombs, in their present positions and to relocate the headstones around the perimeter of the churchyard.
5. The removal of 64 headstones from the central area would permit the church to use the churchyard for:
 - a. its youth and children's programmes (enabling better engagement with a growing demographic in the congregation),
 - b. community events such as fairs, open-air services
 - c. gardening initiatives that foster connection and belonging
 - d. an area for quiet reflection, offering spaces for prayer and peaceful contemplation.
6. The petitioners also note that some of the headstones have fallen and are not legible and so relocation will give better access to those headstones and their historical context for visitors and researchers. The petitioners have appropriate quotations for the work from experienced stonemasons and propose to re-turf and landscape the areas once cleared. The proposal includes measures to avoid disruption to the existing habitats of local wildlife, including nesting birds, pollinators, and small mammals. Where possible, lichens and mosses currently present on headstones will be retained, either in their original state or by ensuring headstones are moved to locations that replicate the conditions required for their survival. The areas around newly positioned headstones will be landscaped with native plants and wildflower mixes.
7. There are missional advantages to the proposed changes to improve the usability of the churchyard. The space would permit outdoor youth gatherings, with capacity for up to 75 participants, or seasonal fairs, family days, and open-air services, drawing up to 150 attendees. Plainly the church would need to take into consideration the noise or other impacts on its neighbours when it is holding outdoor events.
8. The churchyard project would also permit outdoor learning spaces for children and youth to engage in gardening, environmental stewardship and creative play. The PCC has a fundraising strategy and are close to securing £20,000 for the project through collaboration with a local councillor. The remaining £5,000 will be covered by the PCC.
9. A community consultation process was conducted over four weeks in late 2024 and an informal public notice was posted locally with a summary of the proposals. There were a few consultees who raised opposition. A local resident suggested that he understood why the church wanted to remove headstones but said "it's completely outrageous" on the basis that the people who died paid for the right to be buried there. Another suggested that the proposal was to "publicly visually erase this community

historic resource, to the detriment of the visual character and history of the place” as East Molesey’s only graveyard.

10. One consultee correctly identified the churchyard as “an attractive little graveyard that has an evocative atmosphere about it of times past as it weathers each of the seasons through the year, representing a very English traditional scene”. His view was that its “erasure will be a loss also in this sense to the community visually as well as culturally” and suggested that the church will get a “small lawn” but could use “a substantial public park area within 10 minutes’ easy walk” The petitioners responded that the close proximity to the church building is what makes it such a useful space for church and community life, with toilets and a kitchen on hand.
11. Another consultee raised concern about lichens and wildlife which has now been included in the proposals. A number of consultees who were in favour talked about the “great opportunity to create much needed additional community space whilst respecting and preserving the headstones” and another about “a safe and welcoming space”, the need for an outdoor area and the advantages to nursery-age children.
12. On 27 January 2025 the Diocesan Advisory Committee, including the Archdeacon of Dorking, carried out a site visit with the Revd Nate Kurz, the incumbent, in attendance. They considered the setting of the churchyard and examined the proposals in detail before recommending them to the Court.
13. The Senior Conservation Design Officer at Elmbridge Borough Council informed the petitioners that planning permission was not required to move headstones as it was not classed as significant development. The church’s insurers have been informed.
14. A formal notice under rule 6.2 of the Faculty Jurisdiction Rules 2015 was posted on 7 February 2025. The period has now ended and there are no formal opponents to the petition. Slightly belatedly, on 16 February 2025, the PCC voted unanimously in favour of a resolution to petition for a faculty. I have waited a short while longer to ensure that any late comments or objections could be considered and permit the petition to proceed to judgment in accordance with the overriding objective exercising my case management powers under the 2015 Rules.
15. Using the factors in *In re St Alkmund, Duffield* [2013] Fam 158 as a framework for my decision I do not think the proposals would result in harm to the significance of the church as a building of special architectural or historic interest. The churchyard will retain its essential spiritual atmosphere with the headstones at the perimeter and the box tombs remaining in their present situation. The missional advantages described overcome the ordinary presumption in faculty proceedings in favour of things as they stand.
16. There is in any event clear and convincing justification for the proposals, with significant community and public benefit. They will be advantageous for pastoral wellbeing and improve the opportunities for mission, particularly to youth and children, which is an integral part of the church’s present vision in Guildford Diocese

and nationally. I balance those who raised objections during the public consultation process with the views of the DAC on their site visit. It is acceptable to use a churchyard where people were buried 200 years ago for activities in the service of the Gospel and it is not correct that a person who is buried in a churchyard has an absolute right to that grave and a memorial in perpetuity. It is common for graves to be reused after a hundred years and indeed the Law Commission of England and Wales has published a consultation paper with proposals to reform the law on burial and cremation and the use of burial space.

17. I accept that the churchyard is attractive and traditional, but the proposals will retain that atmosphere with the headstones reverently relocated to the perimeter, enabling more people to enjoy and use this small, but useful, community space. I do not accept that the proposals will erase the history of the churchyard or disrespect the memorials which will be retained in their new and more secure location.
18. For these reasons I grant the faculty. I have produced this judgment so there is a public record of the reasons for granting the faculty when there was a measure of local objection and I do not propose to charge a judgment fee.

ANDREW BURNS KC
CHANCELLOR