

In the matter of St Alban, Frant

Judgment

1. This is a private petition for the introduction of a memorial into the churchyard of St Alban's church in the village of Frant, which lies to the north-east of Crowborough. The petitioner is Mr David Huskisson. The proposed memorial is to mark the grave of his late wife, Stella, who was interred in the churchyard in December 2019.
2. The proposed memorial does not come within the categories set out in the *Churchyard Regulations* for the Diocese of Chichester and, accordingly, the incumbent does not have delegated authority to authorise it. The petitioner has therefore issued these proceedings seeking a faculty. Although neither the incumbent nor the PCC have elected to become a party opponent, the PCC objects to the grant of a faculty for reasons which I will come to. The Court has the benefit of advice from the Diocesan Advisory Committee and the Church Buildings Council, upon which the petitioner, the incumbent and the PCC were given the opportunity to comment. The incumbent sent a short letter in response dated 9 March 2021. The Registry received no objections following public notice.

The delegated authority of parochial clergy

3. There is an emerging divergence in practice between diocesan chancellors regarding the status which they afford to their churchyard regulations. As a matter of law, they are no more than instruments of delegation. Their purpose is to prescribe certain categories of memorial which may be introduced into churchyards with the written authority of the incumbent, thereby obviating the need to seek a faculty: See *Re St John the Baptist, Adel* [2016] ECC Lee 8.
4. I respectfully differ with the approach of those chancellors who afford enhanced normativity to the types of memorial covered by their churchyard regulations, and who therefore require petitioners to demonstrate, for example, a "good and substantial reason" (per Tattersall Ch in *Re Saviour Ringley, Stoneclough* [2018] ECC Man 3) or some higher test of exceptionality before granting a faculty for one to be introduced.
5. I gratefully adopt the reasoning of Bullimore Ch in *Re St Mary the Virgin Eccleston* [2017] ECC Bla 4. The position in this diocese was summarised in *Re St Mary Magdalene, Lyminster* [2017] ECC Chi 1 at paragraph 13:

The Churchyard Regulations in the diocese of Chichester are not to be imbued with the enhanced normativity afforded by some other chancellors to their regulations. McGregor Ch stated in *Re St John's Churchyard, Whitchurch Hill*, Oxford Consistory Court, 31 May 2014:

"As is the case with any petition, the burden of proof lies on the petitioner to show why a faculty should be granted to authorise the particular proposal set out in the petition."

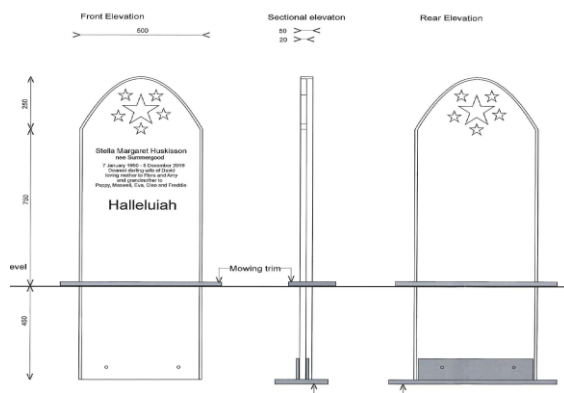
There is no requirement for petitioners to discharge a higher burden of proof, rebut a presumption, demonstrate a 'substantial' or 'powerful' reason or show an 'exceptional' case. Each petition will be

determined on its own merits, the only constraint being the inability of the court to permit something which is contrary to, or indicative of, any departure from, the doctrine of the Church of England in any essential matter.

- The *Churchyard Regulations* for the Diocese of Chichester include the following: “Attractive, well-conceived designs by skilled and imaginative craftsmen should be encouraged”. The notes at the foot of the *Regulations* (which are in bold type) emphasise that a faculty may be sought for the erection of a memorial which does not come within them, adding that “Such petitions are actively encouraged”. For an example of such a petition, see *Re St Mary, Bepton* (2013) 14 June, Chichester Consistory Court.

The petitioner’s case

- The petitioner’s case is set out in the petition. It is measured and reasoned. The family want a memorial which they consider appropriate and fitting for Stella Huskisson, who lived from 1950 to 2019, and was a much loved wife, mother and grandmother. A proposed cluster of five-pointed stars would be cut out in the top of the headstone. The stars are intended to reflect the name given to Stella by her clergyman father at her Epiphany birth, and represented in her choice of personal jewellery, as well as being inscribed on the wedding rings which she and the petitioner exchanged when they married.



- The headstone would be of a similar dimension to the stone memorials already in the churchyard, and would be fixed (anchored) to industry standards. Although there are currently no iron headstones in Frant churchyard, examples can readily found in Brightling, Hailsham, Wadhurst and elsewhere, some of which are considerably more ornate. The proposed memorial would be cast at an artisan foundry. For illustrative purposes, these iron memorials are from St Mary’s Hailsham:



- The papers accompanying the petition indicate that iron has been used for grave markers from Roman times until the seventeenth century. They were particularly common in the Wealden area of Hampshire, Sussex and Kent where local foundries proliferated. The

practice declined in Elizabethan times when iron was needed for the manufacture of cannons.

The PCC's case

10. The PCC's objection is set out in the section of the petition reserved for its views. It is signed off by the incumbent, the Reverend Brendan Martin. The substantive comments are very brief and read as follows:

We are not minded to accept a memorial that goes outside of the regulations. This has happened in the past and caused upset amongst some parishioners. And we are worried about precedent set.

We object on the basis that iron memorials are not in keeping with other memorials in the churchyard.

[The proposed memorial is] inconsistent with church fabric. There are no similar memorials.

11. These brief points were helpfully clarified in the incumbent's letter of 9 March 2021. The PCC objected to the memorial as a matter of principle because "it did not conform to the other memorials in the Churchyard". In an earlier incident, a previous incumbent "wrongly allowed a memorial outside of regulations" which was subsequently removed. The local fall out had been "sorely remembered". The PCC's objection is one of principle to avoid a repeat of this. The PCC did not feel its objection warranted becoming a Party Opponent. The incumbent described his own position of one of neutrality, balancing pastoral support for the family with his chairmanship of the PCC. He behaved entirely properly in advising the petitioner of his right to seek a faculty.

Church Buildings Council

12. The CBC advised by letter dated 21 January 2021 from Tracy Manning, its Church Buildings Officer, which (lightly edited) reads as follows:

The Diocesan regulations (*Diocese of Chichester Churchyard Regulations*, revised April 2020) give details on the dimensions, materials and type of inscriptions that are acceptable.¹ The regulations list accepted stones, and whilst they do not suggest the use of metal, they equally do not preclude its use. It does state that "*Attractive, well-conceived designs by skilled and imaginative craftsmen should be encouraged.*" The dimensions of the proposed headstone are in keeping with the churchyard regulations, and the thickness falls within the permitted regulations for slate. The design is simple and relatively unremarkable, except for the material. The Council also notes that the tradition for cast iron grave markers is established and there are numerous Victorian examples in the region.

The Council has no objection to the use of cast iron in terms of its longevity. The specified foundations are adequate to prevent movement, and the suggested thickness of the metal will mean corrosion would be unlikely to cause any structural issues.

In terms of the finish, traditionally, cast iron grave markers were either left 'as cast' to weather and rust with age, or painted. Although the corrosion can be viewed by some as unsightly, to others it is the natural alteration of the metal over time that adds colour and interest to the surface. The Council advises strongly against any artificial finish such as paint or galvanisation, which would prevent it blending in with its surroundings. The patina can be considered part of the design aesthetic, and this is what the petitioners seek to achieve here.

¹ This phraseology suggests that the CBC may not fully understand the status of churchyard regulations (in this diocese at least) as an instrument of delegation, and not a vehicle for promoting conformity or uniformity.

The Council acknowledges that the churchyard contains predominantly stone markers, however, due to the wide variety of stones and different microbiological growths on them (which range from grey to green to red), the appearance is already far from homogeneous. The Council suggests that this heterogeneity can add to the character and beauty of the churchyard.

In addition, there is also a precedent for cast iron as a building material at St Alban, including the use of cast-iron tracery in the windows, and cast-iron column clusters supporting the arcade, all pointing to a long-standing tradition for the use of the material here over the centuries. The Council would also point out that the drawing in the application describes the spelling of the inscription using the word 'Halleluiah', which is incorrect. It is spelt correctly in the petition, as 'Hallelujah'.

The Council does not object to the introduction of this simple cast iron grave marker in this context, and suggests that the proposal, to leave the surface to weather naturally over time, will eventually achieve a pleasant result in keeping with, and adding to, the character of the churchyard, and that the corrosion will not affect its strength or structural longevity.

Diocesan Advisory Committee

13. The DAC provided its advice in a letter dated 1 March 2021.

The grave marker would take the form of a vertical cast iron stela, incorporating an inscription and a star motif in reference to Stella's name. In relation to the proposal to use cast iron as the material for the grave marker, the DAC noted that, although there are no other cast iron markers in the churchyard at Frant, there is a long tradition of using cast iron for memorials in this part of Sussex, where iron-working was a significant industry in the eighteenth and nineteenth centuries.

Although the DAC had no issue with the choice of material, members were less keen on the shape of the memorial, noting that the junction between the curved top and the straight sides seemed somewhat clunky. It was also pointed out that a less common spelling of 'Hallelujah' is shown on the drawing and members recommended that the standard spelling should be used. However, it was agreed that the family had clearly put a lot of thought into this application and the DAC was happy to support the introduction of this application to the churchyard.

The DAC noted that the PCC were not in favour of allowing the grave marker, as they felt that it was not in keeping with the churchyard and that allowing it could set a precedent and make it more difficult to enforce the Churchyard Regulations in the long term. The DAC was sympathetic to the PCC's perspective and was sorry not to be able to support their stance on this, but agreed that it would be up to the PCC to make their own representations on this and that the Chancellor would take their views into account.

Discussion

14. The issue for the Court is whether the petitioner has made his case for the introduction of the proposed memorial. I have concluded that he has for each and all of the following reasons:

- i. It is fitting and appropriate that Mrs Huskisson be memorialised in this way;
- ii. There is a history and tradition of cast iron headstones in the Wealden area, albeit not in this particular churchyard;
- iii. The headstone will be of similar dimensions to others in the churchyard;
- iv. The headstone will rust over time and take on a worn patina not unlike the various stones used for other headstones;
- v. Variety is to be encouraged in churchyards. Whilst the clinical uniformity of large-scale Commonwealth War Graves Cemeteries are profoundly moving, village churchyards are traditionally more eclectic. As the CBC observes: "The Council suggests that this heterogeneity can add to the character and beauty of the churchyard."

- vi. The headstone will be fabricated by skilled professionals and securely anchored. It will be enhanced by the expected corrosion and weathering to its face.
 - vii. The proposal is recommended by the DAC, and whilst the CBC does not object to the headstone's introduction, the tenor of its letter is more encouraging than these neutral words might suggest.
 - viii. There have been no objections from individual parishioners.
 - ix. Although the PCC objects, it seems to be largely on the basis that the proposed headstone falls outside the *Churchyard Regulations*. This is to misunderstand the nature of the regulations as an instrument of delegation.
15. I am mindful that by granting this petition, the PCC will be compelled to receive into the churchyard a headstone which it would prefer to exclude. I have given its views considerable weight as it is the PCC which has the obligation to maintain the churchyard in the years ahead. Its opinion should not be lightly disregarded, and it has not been in this case. The PCC has not sought to introduce bespoke provision for this churchyard, limiting the materials from which memorials may be fabricated. Nor, as far as I am aware, has it approved a policy to exclude iron grave markers.
16. Ultimately, I have come to the very clear view that the arguments of the petitioner should prevail. I am fortified in this conclusion by the observations of the DAC and CBC who are entirely independent and expert bodies. This will not set a precedent as the PCC fears, because future faculty petitions will continue to be determined on their own individual facts. The *Churchyard Regulations* are not going to change. Iron headstones will not come within the ambit of the incumbent's delegated authority. If one is wanted by another family in the future, a faculty will be required, which may or may not be granted. Properly understood, this should not cause distress or ill-feeling in the parish. The earlier incident, which seems to have resulted from the then incumbent improperly exceeding his authority under the *Churchyard Regulations*, has no bearing on the Court's discretion to grant or refuse a faculty in these proceedings.
17. My only reservation concerns the star-shaped holes to be stamped through the headstone. Whilst I appreciate they are imaginatively designed, to take advantage of light, shade and viewing perspectives, they are not a feature commonly found in memorials, irrespective of the material from which they are made. It could be mistaken for an artwork, rather than a grave marker. More significantly, churchyards are public places, regularly used by the communities which they serve. Their contents are notoriously an allurements to children. I can well imagine a child placing their fingers, hands or arms through these star shaped openings and injuring themselves on the sharp points or jagged edges. For health and safety reasons – as well as for aesthetic considerations – the stars, like the lettering, should be raised. While this aspect is redesigned, and the spelling of Hallelujah corrected, the petitioner can consider the observation from the DAC that the ratios be adjusted making the shape wider and less pointed or 'clunky'. As the petitioner himself indicated in the petition, the proposed design is merely a suggestion and he would be receptive to the comments and observations of others.

Decision

18. It therefore follows that a faculty may issue for the headstone as proposed, save in respect of the five star-shaped holes. It will be subject to the following conditions:

- (1) That the headstone is not to be fabricated or introduced into the churchyard until a revised design has been submitted to the Chancellor and approved.
- (2) No artificial finish such as paint or galvanisation is to be applied to the headstone, whether at the time of fabrication or in the future.
- (3) That the faculty is not to issue until the court costs have been settled in full.

Costs

19. As is the practice of the Consistory Court, the court costs are to be paid by the Petitioner, to be calculated in accordance with The Legal Officers (Annual Fees) Order.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Chichester

11 March 2021