

In the Consistory Court of the Diocese of Salisbury

In the Matter of Dorchester, St Peter, Holy Trinity and All
Saints

Judgment

1. The Vicar and Churchwarden of this parish have petitioned for a faculty permitting the removal of a fixed memorial to Dr John Gordon who died in 1774 ('the memorial') from the north wall of Dorchester parish church and its relocation to the Dorset County Museum next door. The permission sought includes the repair of the north wall after removal of the memorial and the introduction of a replacement memorial to John Gordon.
2. The petition has been brought as a result of concerns arising from the wording of the memorial, which has been the subject of consideration and negative comment for many years. The PCC has concluded that the memorial compromises the mission and message of today's church and seeks its removal from the building.
3. As will be apparent, this case raises difficult questions of what has been called 'contested heritage'. I adopt the explanation of that term set down by Chancellor Hill in the recent decision of *Re St Margaret, Rottingdean (No 2)* [2021] ECC Chi 1:

"The term contested heritage is a somewhat euphemistic expression applied to memorials and other structures associated with individuals from the past whose conduct is considered abhorrent and inimical to contemporary values and, of particular relevance in faculty cases, to Christian theology and standards of behaviour. Most commonly, the issue arises from property memorialising slave traders or erected on the profits of slave trading."

The memorial

4. The memorial itself is large and sits prominently on the north wall directly opposite the main entrance via the south porch. It is characteristic of the simple neo-Classical wall monuments of the mid- to late-18th century. It is of white and black stone and consists of a marble tablet flanked by plain pilasters supporting an entablature and cornice over a fluted frieze. A low relief sculpture of a funerary urn in white marble is set above the cornice against a black obelisk bearing the inscription 'Omnes una manet Nox' – a quote from the Roman poet Horace which roughly translates as 'the same

night awaits us all'. A separate cartouche with the Embo baronetcy arms is set below the memorial.

5. It is the wording of the memorial which is the central cause of concern here. Given its crucial importance to the determination of this petition, I set it out in full below, using the punctuation, spelling and emphasis used in the inscription:

Near this place lies the body of John Gordon Esq,
Son of Robert Gordon Esq, of Pronsey;
Grandson of Sir John Gordon Baronet of Embo in Sutherland.
He died at Dorchester Oct 4th 1774 aged 46.
On his return to Jamaica,
Where he had resided many Years In universal Esteem.

He was signally instrumental
In quelling a dangerous Rebellion in the Island,
In the Year 1760.
A large Body of NEGROES
Whom his BRAVERY had repulsed Finally Yeilding
To their Confidence in his HUMANITY.

This Monument is erected as a Mark of Affection
To the Memory of The best of Brothers.

A photograph of the memorial is appended to this Judgment.

Ownership of the memorial

6. It may be of surprise to some that this memorial, which has been on the north wall of this church for almost 250 years, is not owned by the 'church'. Before determining if the memorial should be moved it is necessary to address the issue of ownership and its impact on the powers of the Court. Consent of the owner is not a necessary prerequisite to the grant of a faculty. Section 66(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 provides that:

“The consistory court of a diocese may grant a faculty for the moving, demolition, alteration or carrying out of other work to a monument erected in ... a church ... even if the owner of the monument –
(a) withholds consent to the faculty, or
(b) cannot be found after reasonable efforts to find him or her have been made.”

Section 66(5) defines the 'owner' of a monument as “the person who erected the monument, or...after that person's death, the heir or heirs at law of the person or persons in whose memory the monument was erected”.

7. Substantial research has been undertaken on behalf of the petitioners into the background of John Gordon, principally by the eminent historian Dr Max Hebditch. That research has, in part, been used to try to identify the heir at law of John Gordon, the owner of the monument. At this distance in time, the enterprise of identifying an heir at law will almost always be difficult. Identifying such a person does not depend upon the terms of John Gordon's will, but rather upon kinship. The evidence produced by the petitioners shows that John Gordon died leaving one son (who died childless), one brother (who died childless) and four or five sisters, three of whom had children. It has been established that there is no direct descendant of John Gordon, but, despite substantial efforts, it has proved impossible to identify a current heir at law. By now the class of relevant descendants is likely to be enormous.
8. Although it has not been possible to identify the owner of the memorial, I am quite satisfied that the petitioners have made "reasonable efforts to find him or her" as required by section 66(5) above and that, consequently, I have jurisdiction to grant a faculty for the proposed works if those works are appropriate.

Background to the petition

9. Although this petition is dated 16 July 2021, consideration of the future of this memorial has been ongoing for a far longer period. Many will assume that this petition is a response to the Black Lives Matter movement which gave rise to global anti-racism protests after the murder of George Floyd by a white police officer in Minneapolis in May 2020. Although those global events undoubtedly provided renewed momentum to address the issue of the memorial, it is clear from the evidence before me that this church community has been considering and working towards some resolution of these issues for much longer.
10. Numerous comments referencing concerns about the presence of the memorial can be found in the church visitors' book as early as 2013 and in 2018 a Church Development Group was convened, tasked with the consideration of broadening access to the church and making it more welcoming to all. That committee and the Parochial Church Council concluded that the memorial compromises their core message of welcome to everyone "by condoning actions to suppress members of one ethnic group, in language that is totally unacceptable today". Links were developed with the South West Dorset Multi-Cultural Network and their assistance sought in discussing possible solutions.
11. With the rise of the Black Lives Matter movement and the toppling of the statue of Edward Colston in Bristol in 2020 the issue of the memorial took on greater priority. The parish responded by putting up a notice next to the memorial acknowledging the concerns and stating that its future was under active consideration. It took steps to consult and engage with various

bodies and persons. The Gordon clan was contacted¹. The local council and other community organizations were also contacted for comment. On 30 July 2020 it was agreed that action was needed to address the issue of the memorial, and that that action needed to acknowledge and address the history described in the inscription rather than hide it. Consideration was given to the provision of accompanying interpretive displays and information, whether in the church or elsewhere. Information was sought from (and generously given by) Dr Vincent Brown, Professor of History of African American Studies at the University of Harvard² in order to understand the context of the slave revolt referred to in the inscription.

12. Discussions with the Dorset County Museum, which sits immediately adjacent to the church on High West Street in Dorchester, led to the issuing of the current petition in July 2021. Directions were then given for (a) the filing of evidence about the identity of the heir at law of John Gordon (the issue of ownership of the memorial being uncertain) and (b) the service of special notice upon Historic England, the Georgian Group, Dorset Council, the Dorset County Museum and any heir at law identified by the evidence filed³.

13. In the meantime, public notices had been displayed and in response a single letter of objection was received at the Registry from the public. The responses to the service of special notice also made clear that comments and objections in relation to the proposals were maintained by Historic England, the Georgian Group and some members of the Gordon clan who had been consulted. Ultimately, none of those persons or bodies elected to take party status in these proceedings and as such they remain formally unopposed, but there are nevertheless concerns and objections in relation to the proposals which I must (and do) take into consideration in determining the petition. I am grateful to all those who have engaged in the consultation process. This is an important decision and my deliberations have been greatly assisted by the thoughtful expression of views on both sides of the debate.

14. In the progress of the proceedings various extensions of time were sought and granted, all for good reasons. Those reasons included enabling further information and evidence to be obtained about John Gordon's life and family, the slave rebellion referred to on the memorial, the proposals from the Dorset County Museum and to await the outcome of the decision of the Consistory Court of the Diocese of Ely in a case with analogous issues – *Re The Rustat Memorial, Jesus College, Cambridge* [2022] ECC Ely 2.

¹ It will be apparent from the face of the memorial that John Gordon was the grandson of the Baronet of Embo, Sir John Gordon.

² Dr Brown is also author of *Tacky's Revolt: The Story of an Atlantic Slave War* (Harvard: Belknap Press, 2020).

³ In the event, it became apparent that no heir at law could be identified, but special notice was instead served upon identified members of the Gordon clan.

15. Whilst these matters were awaited I invited the views of the petitioners about whether the matter should be determined by way of written representations or a hearing of the Consistory Court, having indicated that if the former route were to be taken that I would intend to undertake an inspection visit of the church and the museum. The petitioners expressed the view that a determination by written representations (with consequential inspection visit) was to be preferred. Having considered their views I directed that the matter should be determined by way of written representations under rule 14.1 of the Faculty Jurisdiction Rules 2015.
16. An inspection visit took place on 19 May 2022. The visit was attended by Janet Berry of the Church Buildings Council. Representatives of the consultative bodies who had maintained objections or reservations about the proposed works were invited but were unable to attend. Also present were representatives of the petitioners and wider parish and the Registrar. During the visit I was able to see and assess the memorial itself and its context in the wider church building. I was also given a brief tour of the Dorset County Museum by its Acting Director, including a visit to the main display areas of the museum and a tour of the new store and its ancillary facilities.
17. During the inspection visit on 19 May it became apparent that a change of directorship at the museum had resulted in a shift of position in relation to the memorial. The museum had initially indicated an intention (though not an undertaking) to display the memorial either within the permanent galleries or as part of temporary exhibitions. At the inspection visit it became clear that the museum was now intending instead to place it in their newly refurbished store – of which more below. The destination for the memorial should it be removed from the church is clearly an important part of my considerations and I took the view that this shift in position was sufficiently significant that I should invite further comment from the consultative bodies and I gave directions accordingly. The matter has now returned to me for determination.

Consultation and advice – support and objections

18. The Diocesan Advisory Committee is a statutory body established to advise parishes, the Chancellor, the Bishop and others about matters such as the grant of faculties, the architecture, archaeology, art and history of places of worship and the use or care of places of worship and their contents⁴. Under Part 4 of the Faculty Jurisdiction Rules 2015 petitioners must seek initial and then final advice from the DAC on their proposals when seeking a faculty. Other than in cases of sufficient urgency, the Chancellor may not determine a petition of this type without first seeking the advice of the DAC⁵. The DAC have been involved in the development of these proposals for some time. On 14 July 2021 the committee issued its formal

⁴ For the full functions of the DAC see section 37 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.

⁵ R 7.2 of the Faculty Jurisdiction Rules 2015.

Notification of Advice recommending the works to the Chancellor for approval subject to certain uncontentious provisos about the replacement memorial. The committee also provided the petitioners with more detailed feedback in which it commended the wide engagement and options appraisal by the petitioners. It stated that it largely supported the position of the Church Buildings Council (of which more below); acknowledged the importance of the memorial and the need for the church to retain its links with the memorial; and emphasized the importance for matters of contested heritage such as this to be determined on a case by case basis.

19. The letter of objection in response to the public notice came from two parishioners who have been regular worshippers at St Peter's Church since 2007. They expressed the view that the memorial had caused no problems for approximately 245 years and that the expense of moving the memorial next door to the museum was not warranted. They emphasized that history could not be changed, excised or rewritten by the removal of the memorial. They asked that the memorial should remain in place until such time as "the Church Authorities issue a national directive on removing long standing memorials in Anglican Churches for specific reasons, e.g., association with the slave trade".
20. The Church Buildings Council is a statutory body established by section 54 of the Dioceses, Mission and Pastoral Measure 2007 with functions which include responding to appropriate requests for advice from judges and registrars of the ecclesiastical courts and from DACs in relation to applications or possible applications for the grant of a faculty. It is also tasked to promote by means of guidance or otherwise, standards of good practice in relation to the use, care, conservation, repair, planning, design and development of churches. Having been consulted, the CBC has provided three letters of advice in relation to this petition. It did, of course, send a representative to the inspection visit in May of this year and as such has had the benefit of a careful inspection of the church and the memorial in context and of the proposed destination for the memorial - the Dorset County Museum - and the circumstances of its receipt by the museum. The CBC considers that the petitioners' case for removal of the memorial is well made and does not object to the proposed works. It acknowledges the range of options considered by the parish. It considers that the historical and evidential value of the memorial is higher than its artistic value.
21. Historic England has provided considered advice in relation to this proposal. It has noted the particular historic significance of this memorial and concludes that its removal to the museum would harm the special significance of St Peter's church and the significance of the monument itself. It considers that the appropriate way of recognizing and responding to the legacy of Britain's involvement in the slave trade is to explain and contextualize historic monuments *in situ* rather than removing them. It suggests such interpretation within the church could be linked to a broader exhibition on the theme of slavery in the museum next door.

22. The Georgian Group has expressed a clear view that insufficient justification has been provided for the removal of the memorial from the church to the museum. It accepts that the memorial causes offence but, like Historic England, considers that the best approach to the contested nature of the memorial is to provide *in situ* powerful reinterpretation.
23. The Ancient Monuments Society (now using a working title of Historic Buildings and Places) confirms that it would ordinarily support the “retain and explain” approach of Historic England in relation to manifestations of contested heritage, but acknowledges that the inscription in this case is particularly challenging morally for an active place of Christian worship and accepts that the confronting and explaining of the contested heritage should appropriately take place in the museum rather than the church building.
24. Dorset Council is the local planning authority with responsibility for this church building. In response to consultation, it has advised that it considers that the removal of the memorial from the church would result in less than substantial harm to the significance of the church building, the impact of that harm being somewhat lessened by the lack of a local connection between John Gordon and the church or town of Dorchester. It supports the reinterpretation of the memorial within the context of the museum.
25. Various of John Gordon’s descendants have been consulted. One such consultee, the great great grandson of a direct descendant of John Gordon’s sister, Catherine, opposes the removal of the memorial from its current location, supporting instead “an appropriate addition to the memorial setting out briefly, in a neutral fashion and in line with modern liberal opinion, his actions relating to the slave riot of 1760 in Jamaica.” Whilst expressing full sympathy with the Black Lives Matters movement, he fears that the proposed relocation is an over-reaction which could, if followed, “lead to a wholesale desecration of our national heritage”. Another descendant of John Gordon responded to the efforts to identify and consult the heir at law. He was concerned that history should not be distorted, but ultimately expressed the view that the removal to the museum next door was the “ideal answer” to the issues which the memorial raises. A member of the Gordon clan involved in the convening of the House of Gordon website has stated that he would “be happy for the memorial to be removed”.
26. The Victorian Society and the Society for the Protection of Ancient Buildings have, understandably, taken the view that this petition concerning the future of an 18th century memorial (albeit set within a medieval building with a substantially Victorian interior) falls outside their remit and have not offered comments on the proposals.

The applicable law

27. This building is Grade I listed. Historic England describes such buildings as of “exceptional interest”. Only 2.5% of listed buildings are listed at Grade I. Given the importance of such buildings in the context of the national built heritage, it is subject to strict regulatory controls when changes are proposed. Ordinarily, Listed Buildings Consent would be required for such a change. The church of St Peter is a parish church of the Church of England⁶ and as a consequence is exempt from the requirements in the Planning (Listed Buildings and Conservation Areas) Act 1990 to obtain Listed Buildings Consent by virtue of the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) (England) Order 2010. Such an exemption is enjoyed because the Church of England operates its own equivalent controls through the faculty jurisdiction. Those controls are exercised by the Consistory Court of the Diocese.

28. When determining whether permission should be granted to make changes to a listed building over which it has jurisdiction the Chancellor sitting in the Consistory Court must apply what have become known as the *Duffield* Guidelines - so named as they were first laid down by the appellate Court of Arches in the decision of *Re St Alkmund, Duffield* [2013] Fam 158. Those guidelines take the form of a list of questions:

“1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?

2. If the answer to question (1) is “no”, the ordinary presumption in faculty proceedings “in favour of things as they stand” is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see *Peek v Trower* (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in *In re St Mary’s, White Waltham (No 2)* [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.

3. If the answer to question (1) is “yes”, how serious would the harm be?

4. How clear and convincing is the justification for carrying out the proposals?

5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see *St Luke, Maidstone* at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2*, where serious harm should only exceptionally be allowed.”⁷

⁶ And as such it is “for the time being used for ecclesiastical purposes” for the purposes of section 60(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

⁷ Para 87 of the *Duffield* judgment.

29. That decision was clarified in the further decision of the Court of Arches in *Re St John the Baptist, Penshurst* (9 March 2015, unreported). That clarification is found principally in paragraph 22 of that judgment which, for precision, I set out in full below:

“(a) Question (1) cannot be answered without prior consideration of what is the special architectural and/or historic interest of the listed church. That is why each of those matters was specifically addressed in *Duffield* paras 57-58, the court having already found in para 52(i) that “the chancellor fell into a material error in failing to identify what was the special character and historic interest of the church as a whole (including the appearance of the chancel) and then to consider whether there would be an overall adverse effect by reason of the proposed change”.

(b) In answering questions (1) and (3), the particular grading of the listed church is highly relevant, whether or not serious harm will be occasioned. That is why in *Duffield* para 56 the court’s analysis of the effect on the character of the listed building referred to “the starting point...that this is a grade I listed building”.

(c) In answering question (4), what matters are the elements which comprise the justification, including justification falling short of need or necessity (see *Duffield* paras 85-86). That is why the document setting out the justification for the proposals is now described in rule 3.3(1)(b) of the FJR 2013 as a document “*commonly known as* a “statement of needs”” (italics added), in recognition that it is not confined to needs strictly so-called.

(d) Questions (1), (3) and (5) are directed at the effect of the works on the character of the listed building, rather than the effects of alteration, removal or disposal on a particular article.”

30. In May 2021, in exercise of its powers under section 55(1) of the 2007 Measure, the Church Buildings Council published guidance on the issue of contested heritage in church buildings⁸. Given its statutory provenance I must (and do) have careful regard to that guidance when determining whether this petition should be granted. The purpose of that guidance is “to provide a practical framework for addressing issues of contested heritage in relation to specific historic objects in a church”. It includes, in Part 3, a suggested approach to addressing this difficult area.

The special architectural and historic interest of the church building

31. The church of St Peter sits at the junction of High West Street and High East Street in Dorchester town centre. It is described by Nikolaus Pevsner as a “typical town church”. It is Grade I listed. It sits between the Dorset County Museum and the Dorchester Corn Exchange – both also architecturally, historically and socially significant buildings within the town. Because of its prominent location the church serves both regular parishioners and congregants and also a significant number of local and

⁸ *Contested Heritage in Cathedrals and Church Buildings*, found at https://www.churchofengland.org/sites/default/files/2021-06/Contested_Heritage_in_Cathedrals_and_Churches.pdf

visiting tourists⁹. It offers a place of peace and reflection as well as a place of significant historical value.

32. There has been a church on this site for at least 800 years, but the building which we see today is substantially 15th century. It is a fine example of Perpendicular architecture. As with almost all medieval churches, it has developed and changed over the centuries, notably with the addition of vestry and chancel in 1856-7 and with the addition of halls and related facilities in the 20th century. The interior of the church substantially reflects the extensive restoration which took place in the mid-nineteenth century.
33. The church contains many monuments, including the Gordon memorial. Several are referred to specifically in the listing entry (though the Gordon memorial is not). Many of the monuments within the church are far grander and larger in scale than the Gordon memorial. The church contains two 14th century effigies of recumbent knights in the south chapel and a 14th century chest tomb in the chancel. Particularly impressive and grand in scale are the memorials to Sir John Williams (1617)¹⁰ and Denzel, Lord Holles (1680). The Gordon memorial itself is one of numerous 18th and 19th century memorials of varying size and ornamentation located on walls throughout the church. The church of St Peter is rightly noted for the variety and excellence of its memorials.

The special significance of the memorial

34. The memorial holds some significance as an ornate neo-Classical wall monument of the mid- to late-18th century. As is apparent from the above, it's significance is as part of a substantial set of similar monuments housed within St Peter's church. It is in its original location on the north wall of the church, although the presence of a modern waterproofing membrane between the wall and monument shows that it has been taken down and replaced at some point within the last 50 years. It's artistic value is relatively limited its design, though large and ornate, being otherwise unremarkable for monuments of this type. There are various other similar monuments upon the walls of the church (the Gordon memorial being one of five from the 18th century).
35. Where the memorial is of particular, even exceptional, value is as a record of historical events rarely recorded elsewhere. Many monuments commemorate people who were slave owners or otherwise engaged in the slave trade but that fact is not explicit on the face of the monument. The memorial to Tobias Rustat in the Ely decision is one such example. The Gordon memorial may be unique as a record in stone of a planter's response to a slave uprising, specifically Tacky's Revolt in 1760. In Jamaica itself references on monuments to slave revolts are very few and none exist in relation to Tacky's Revolt.

⁹ It is estimated that some 8 000 people per year visit the church outside of services.

¹⁰ Now rather awkwardly squeezed behind the organ.

The historical context – John Gordon and Tacky's Revolt

36. As is apparent from the decision of Deputy Chancellor Hodge in the *Rustat* case, in considering matters of this sort it is important properly to understand the historical context of the person and facts commemorated in the relevant memorial.
37. John Gordon was a lawyer and plantation owner on the island of Jamaica who died in Dorchester on 4 October 1774 aged 46. He was buried two days later in the church or (more likely) churchyard of St Peter. The location of his burial is not recorded or marked elsewhere. In any event, excavations at the time of the relatively recent construction of church halls on the churchyard revealed unidentifiable and jumbled bones indicating scant Victorian regard for interments at the time of the 19th century extensions to the building. It appears that John Gordon had no family or other connection to the town of Dorchester, but rather was simply in transit through the town on his way to Falmouth and a return sailing to Jamaica¹¹.
38. From 1759 to 1762 John Gordon was directing Jamaican plantations at Greencastle and Newry in the parish of St Mary's and Fort George in the parish of St George. Whether he owned plantations as well as acting as overseer of the plantations of others at this stage is unclear, but by 1773 he was still living in Jamaica and owned estates at Home Castle, Riverhead, Dornoch, Gordon Hall and Hayfield producing sugar, rum, coffee, fustick¹², logwood and livestock. He owned 416 slaves.
39. John Gordon returned to England in the summer of 1773 apparently to ensure appropriate arrangements for his son, Robert Home Gordon (then around 7 years old) after the death of the boy's mother and to secure Robert Home's future by the making of a Will. That Will was signed in London in September 1774 and it appears to have been on his journey back to Jamaica from London that John Gordon died in Dorchester.
40. The memorial records John Gordon's involvement in an incident at the end of the first phase of the yearlong Jamaican slave revolt of 1760 known as Tacky's Revolt. For a week from 7th to 14th of April 1760 a slave known as Tacky, together with others, organized an uprising against their white owners. Little is known about Tacky other than his name and the fact that he was from the Gold Coast of West Africa (current day Ghana). His name suggests that he was a royal official when captured¹³. Tacky assembled about 400 slaves – men, women and children. The uprising was violent, resulting in the death of more than 60 Europeans, a similar number of free people of colour and approximately 400 black slaves. Those latter deaths

¹¹ The churchwardens' accounts for St Peter's church recording receipt of a fee for the tolling of the Great Bell upon John Gordon's interment on 6 October 1774 refers to "John Gordon Esq a Stranger".

¹² A tropical tree producing yellow dye.

¹³ On 8th April 2022 the Government of Jamaica honoured Tacky by declaring 8th April as National Chief Takyi Day.

included considerably cruelty, including two rebel ringleaders who were burned alive and two others who were hung in public in iron cages until they starved to death. On 14th April, Tacky and other leaders of the rebellion were killed when the rebel force was surrounded. The remaining slaves had little choice but to surrender. They sent a delegation to John Gordon (in whom they apparently were able to place some trust) and offered to do so if they could leave the island rather than being put to death. John Gordon negotiated with that delegation and then with the authorities of the island. Those negotiations resulted in the surrender of the remaining rebel forces and the deportation of most (though not all) of their number from the island of Jamaica¹⁴. It is of note that that deportation would not have resulted in the grant of freedom to those who were removed from Jamaica, but rather the continuation of their status as slaves elsewhere.

Would the proposals result in harm to the special significance of the building? How serious would that harm be?

41. Turning now to the *Duffield* Guidelines, I must ask myself whether the proposals would result in harm to the special significance of the building and if they would, how serious that harm would be. This is an important and substantial memorial located in a prominent position and its removal from the church after almost 250 years would undoubtedly cause some harm to the significance of this Grade I listed building. All of the statutory consultees who have engaged with this petition share that view.
42. How serious would that harm be? Historic England advises that the proposal would cause “a degree of harm” to the significance of the church, though makes no assessment of the seriousness of that harm. The CBC advises that the proposal would cause “moderate harm” to the value of the memorial, but does not expressly assess the harm to the significance of the building as a whole. Dorset Council has expressed the view that the removal would result in “less than substantial harm” to the significance of the building.
43. The memorial is part of a wider set of 18th and 19th century (and older) wall monuments within the church. It is far from the most significant monument in the church in terms of its contribution to the architectural and artistic significance of the building, but its historical importance is high. I have considered the fact that John Gordon had no links to the church of St Peter or Dorchester itself, other than the fact that he died there whilst passing through the town. The lack of local links lessens, but does not remove, the impact of the loss of the memorial from the church. The potential for aesthetic imbalance caused by its removal would be mitigated

¹⁴ Listed in a record of slaves captured and taken aboard a Royal Navy ship at the end of the St Mary’s uprising may be the names of some of the ‘negroes’ alluded to on this monument: Jenery, Port Royal, Kingston, Cudjo, Quamino, Robin, George, Anthony, Hector, Matthew, Philip, Suckham, Matthew Fintee, Jack, and Abbe. There were women: Sarah, Sabira, Cate, Sophia, Betty, Dod, Dianna, Sentosia, Quamino, and Minah – see Vincent Brown, *Tacky’s Revolt: The Story of an Atlantic Slave War* (*ibid* p. 151).

to an extent by its replacement with another plaque commemorating John Gordon and his burial “near this place”. Although the removal of the memorial from the building would significantly weaken the link between it and the church, that link would nevertheless be preserved by the replacement plaque and the provision of information within the church about where the memorial can be inspected. The relative proximity and accessibility of the memorial in the museum next door further mitigates the damage to the historic significance of the church. Having asked myself how serious the harm would be to the special significance of the building overall, I have concluded that I agree with the assessment of Dorset Council that it would cause less than substantial harm.

44. The harm to the significance of the memorial itself would be greater (the CBC uses the phrase “moderate harm” and I do not disagree with that assessment). I am very mindful of the fact that that significance comes principally from its value as a rare, possibly unique, record in stone of a significant event in history. In some respects its presence in the church of St Peter is an accident of history, in that it is only there because John Gordon happened to die in Dorchester on his way passing through the town, but it has nevertheless been in the building in this location for almost 250 years and records the burial of John Gordon’s remains nearby. Although the memorial will remain intact and well curated, its removal from the physical context in which it has remained since its erection would be harmful to its significance. That significance will also be harmed by its likely removal from permanent public display (whilst remaining publicly accessible).

Justification

45. And so I turn to the fourth question of the *Duffield* Guidelines - How clear and convincing is the justification for carrying out the proposals? Put simply, the petitioners justify the proposals on the basis that the continued presence of the memorial in the church is harmful to the mission and message of today’s church; that it creates a significant obstacle to the church’s ability to provide credible Christian ministry and welcome and damages the pastoral life of the church.

46. St Peter’s church is a town centre church with a significant ministry of hospitality and welcome. The significant number of annual visitors is testament to that fact. It has a strong tradition of social action, having hosted vigils against racism and after acts of terrorism and natural disasters. It has hosted services to commemorate the ordination of women and the decriminalization of homosexuality. It recently hosted a national touring Forgiveness exhibition with talks, pictures and stories of those who have experienced atrocities and found ways to come to terms with them. This ethos of welcome was manifested in the creation in 2018 of the Church Development Group, specifically tasked with ensuring that the building was inclusive and welcoming to all.

47. The petitioners say that the memorial causes offence – and that it is clear from the church visitors book that it has done so for a number of years. None of those persons and bodies consulted about these proposals dispute that the inscription on the memorial causes offence. That is clearly right. As Deputy Chancellor Hodge said in the *Rustat* case:

“No-one disputes that slavery and the slave trade are now universally recognised to be evil, utterly abhorrent, and repugnant to all right-thinking people, wherever they live and whatever their ethnic origin and ancestry. They are entirely contrary to the doctrines, teaching and practices of the modern Church.”

This memorial is quite different to Tobias Rustat’s memorial in Jesus College Chapel. On its face it celebrates in language of acclamation the violent quelling of a rebellion by enslaved people against a status which is now universally acknowledged as morally repugnant and contrary to Christian doctrine. That status was imposed upon them largely because of their race. Its continued presence in the building implies the continued support, or at least toleration and acceptance, of discrimination and oppression. Such a position could be said to be uncomfortable in any public building, but presents a particularly striking discord with the purpose of this building as a house of God. It is entirely inconsistent with the message of the universality of God’s love which this church community seeks to share. The fourth Mark of Mission of the Anglican Communion is of particular relevance: To transform unjust structures of society, to challenge violence of every kind and pursue peace and reconciliation.

48. When considering the offence caused by the memorial I was struck by something which occurred during the inspection visit in May. The contentious wording on the memorial has been kept covered whilst its future is being determined. I asked that the cover be removed for the duration of the visit in order properly to understand and assess the impact of the memorial and its inscription in its setting. During the visit the church remained open to visitors as usual and people did come into the building to pray and reflect and experience its history. At a point in the visit when we had moved away from the memorial itself with our attentions focused elsewhere in the building a visitor entered the church from the High Street and began slowly exploring the interior. When she reached the memorial (which, as mentioned, sits prominently directly opposite the main south entrance) she stopped in front of it for a moment before reacting with some shock and quietly, but audibly, declaring it (apparently to herself) to be “dreadful”. Such was a single but manifest example of the concerns upon which the petitioners rely.

49. The offence caused by the memorial must also be balanced against the concerns raised and even offence which may be caused by the removal of the memorial. History should not be erased or hidden. Some may perceive that the difficult issues to which the memorial gives rise have been ignored rather than addressed. There is in some quarters a genuine and

understandable fear that our national heritage will be harmed by the removal of the memorial from its original location, and that this application is an overreaction to recent political pressures.

50. When the question of justification was considered in the *Rustat* decision the Deputy Chancellor placed much emphasis on what he termed the “false narrative” about the life of Tobias Rustat and the source of the wealth with which he had endowed Jesus College. He found that the justification for removal on grounds of pastoral wellbeing and missional opportunity was based on a “mistaken understanding of the true facts” about Rustat’s life and the extent of his involvement in the slave trade. He refused permission to remove the memorial.
51. John Gordon’s involvement in the slave trade appears to have been much more direct and substantial than that of Tobias Rustat. He lived for much of his life in Jamaica and was the overseer, and later owner, of a number of slave plantations. At the time of his death he personally owned more than 400 slaves and, as the memorial makes clear, was directly involved in the “quelling” of a slave uprising which resulted in the death (including executions) of approximately 400 slaves.
52. Nevertheless, the petitioners do not rely upon moral judgments about the character of John Gordon to justify the removal of the memorial. Instead they acknowledge the risks in passing such judgments at a distance of 250 years: We do not know that much about the life and character of John Gordon; he may have repented of his role in Tacky’s Rebellion; he may have been a virtuous person in all other respects. They acknowledge that slavery was legal in Jamaica in 1760 and that the wording of the memorial reminds us that to help suppress a slave rebellion at that time was then regarded as a positive virtue. Though the continuation of the enslaved status of the deportees who negotiated with John Gordon is repugnant to us today, the wording of memorial¹⁵ and the historical research undertaken strongly suggests that John Gordon was a man whose reputation for being uncommonly humane was recognized and trusted by the rebels. Is it fair to condemn John Gordon today for what was by the social standards of his own day regarded as admirable? They state the truth acknowledged in *Rustat* that “all have sinned and fall short of the glory of God”¹⁶. It has been a priority since the earliest discussions about what to do with this memorial that the history that it represents should be acknowledged and not hidden. The petitioners have no objection to the continued commemoration of John Gordon within the church - indeed it has always been part of their proposals to replace the memorial with another plaque commemorating him (but excluding the offensive wording) and provide a notice directing visitors to the memorial in the museum next door.

¹⁵ “Yeilding To their Confidence in his HUMANITY”

¹⁶ Romans 3 v 23, English Standard Version.

53. Rather, in this case, the petitioners seek to justify its removal by relying upon the impact of the memorial upon the function of the worshipping community that serves God and the community in this place today. This accords entirely with the approach endorsed in the CBC's contested heritage guidance which states:

“Discussions of contested heritage should be framed to avoid starkly binary thinking that classes anyone as wholly good or evil. A theology of forgiveness is not reducible to simplistic categorisations. From a Christian perspective every memorial is a memorial to a sinner, however fulsome any tribute to their life, character and achievements may be, and the final moral reckoning on all our lives is known to God alone. The focus of discussion should be the impact of a piece of material culture on a church or cathedral's ability to be a place of welcome and solace to all, and how this should best be addressed”.

54. This is a church with a strong tradition for and calling to hospitality; which strives to welcome and include all. I accept that the retention of the memorial presents a significant barrier to the fulfilment of that calling.

The balancing exercise – public benefit vs harm

55. And so I turn to the fifth and final question in the *Duffield* Guidelines – Does any resultant public benefit from the proposals outweigh the harm caused?

56. As with many applications for permission to make changes to listed buildings, this balancing exercise will almost invariably require consideration of the alternative options available to the petitioners. As a general principle, if the petitioners' objectives can be met by way of a less harmful proposal then permission is less likely to be granted. As I said in *Re St Peter Mancroft, Norwich* (15 April 2015):

“I am, of course, not enjoined to decide whether the petitioners should be pursuing any of the alternative proposals which have been mooted; rather I am asked to consider whether the merits of *this* petition mean that a faculty should be granted. Nevertheless, one factor in deciding whether to grant a faculty is the question of whether alternative, and potentially less harmful, options have properly been considered by the petitioners.”

57. Here the framework provided by the CBC's contested heritage guidance is of particular assistance. Part 3e provides a list of potential options in how to address the issue of memorials of contested heritage, listed from the least to the most interventionist: from 'no change', through the provision of interpretation or explanation, non-permanent alteration and relocation within the building to relocation elsewhere or destruction. Although there is nothing in the material before me which makes clear whether the petitioners have referred to the specific guidance of the CBC's note, it is clear that the petitioners in this case have carefully considered the various options available to them. They address them thus:

- a. Making no change. This does not address the concerns by which the proposal is justified;
- b. The retention of the memorial unchanged and its interpretation by the provision of explanatory material. This continues to compromise the missional imperative of the church to welcome all by implying the condoning of actions to suppress members of one ethnic group in language which is unacceptable today;
- c. Retention of the memorial with explanatory material but covering the offensive wording. However difficult, the principal significance of this memorial comes from the offensive wording itself. It is a rare and possibly unique example of a public reference to a slave rebellion. The retention of that significance and the telling of that story would be lost to the public by the covering of the offensive wording;
- d. Relocating the memorial to a less prominent location within the church. Although the strength of the links between the memorial and the church would be retained, this option would serve no useful purpose as the memorial would continue to cause offence and compromise the church's message of welcome to all. The church has very many wall monuments already and consequently there are very few possible alternative locations within the church in any event;
- e. Relocation to the adjacent museum. The petitioners' purpose of removing the offence caused by the memorial and consequent damage to its message of welcome to all would be achieved whilst preserving the memorial in a location where it will be well curated and publicly available. In the museum the wider interpretation and explanation of the particular historic significance of the memorial will be possible, rather than hiding it under options c. or d. above; and
- f. The permanent alteration of the memorial (by the removal of the offensive wording) or its destruction. These options have been rejected as too harmful to the significance of the memorial and inconsistent with the petitioners' stated intention to ensure that the history described on the memorial should be acknowledged and not hidden.

58. I agree with the petitioners that the option of 'no change' is inadequate in this case. The presence of this memorial in this church is damaging to its purpose and mission. To do nothing will not address that problem.

59. The parishioners who responded to the public notices in their letter of objection have suggested that any change should await the time when "the Church Authorities issue a national directive on removing long standing memorials in Anglican Churches for specific reasons eg association with the slave trade". As with all faculty petitions, contested heritage applications will arise in almost infinitely variable circumstances. There can be no question of a uniform approach to such cases. Each must be decided upon consideration of the unique set of facts applicable to it. The

suggestion of a blanket requirement for the removal of memorials by reason of association with the slave trade is a dangerous one.

60. I take options b., c. and d. above together: the option of contextualizing and interpreting the memorial within the church, whether whilst covering the offensive part of the inscription or not, and whether by relocation within the church or not. This is the option endorsed by most of those who have objected to the current proposal for removal. In many cases this will be an attractive option which preserves the heritage significance of the relevant building whilst taking steps to address the difficult issues which the object in question raises. Historic England's advice on contested heritage is that "the best way to approach statues and sites which have become contested is not to remove them but to provide thoughtful, long-lasting and powerful reinterpretation, which keeps the structure's physical context but can add new layers of meaning, allowing us to develop a deeper understanding of our often difficult past". I endorse the statement of Chancellor Hill in the *Rottingdean* case that:

"A rush to remove an offending object risks creating sterility and an airbrushing of history. We need to be honest about past wrongs. None of us is without fault. Ours is a fallen world in which sinners are continually called to repentance. The risk in rewriting our history, is that lessons from the past may be forgotten."

61. And so I must determine whether the petitioners' objectives can be achieved by the less harmful intervention of interpretation and contextualization within the church building. I reject the option of covering the offensive part of the inscription as part of any retention within the building. What is entirely apparent from the evidence received, not least that of Dr Brown who holds substantial expertise in the relevant historical context, is that the core significance of this memorial is in its reference to and description of John Gordon's role in Tacky's Rebellion. It is an uncomfortable truth that the source of this memorial's primary historical importance comes from that part of it which causes offence and hampers the mission of this church. To cover or erase that wording would deprive the memorial of much (if not all) of its unique significance. All accept that this is a significance and history which must be told, and not hidden.

62. I also accept that relocation within the building is not an appropriate option. The walls of this church are already heavy with wall monuments. There is little, if any, space to accommodate such a large memorial in a less prominent position. Perhaps more significantly, such a change, whilst arguably reducing the impact of the memorial by placing it in a less prominent position, would not address the petitioners' concern that the presence of this memorial in the church (at least whilst the inscription remains visible) will mean that this is a house of God where not all people feel welcome, finding the presence of this memorial troubling because of its glorification of the oppression or marginalization of people on the basis of their race.

63. And so I turn to consider the option of retention of the memorial *in situ* but with the provision of contextualizing or explanatory information. The inscription on this memorial is striking, especially in its use of the 'NEGROES'. It describes in words of admiration an act of violent oppression against enslaved people using what is now clearly considered racist language. Those words are entirely inconsistent with Christianity's foundational understanding that we are all created in the image of God, emphasizing the intrinsic value in each and every human being and demanding justice for the flourishing of God's people.
64. It is also a rare and important public reference to an event of protest and resistance in the history of the slave trade. It has high evidential, historical and educational importance. Its value in contributing to the telling of this tragic history should be maintained. The question is whether that history can safely and suitably be told in St Peter's church, or whether that should be achieved through its removal to the museum next door.
65. I have concluded that, even with careful and sensitive contextualization of its history, the tone and content of this memorial is so explicitly and fundamentally contrary to the message of inclusion and welcome at the heart of the Mission Action Plan for this church that this option would not adequately address the needs of the petitioners to proclaim afresh the Gospel in this generation. This conclusion is fortified when I consider the alternative proposal which has been put forward.
66. Turning to the chosen option (e.) of relocation to the adjacent museum, the petitioners have considered the various factors raised in the CBC guidance in relation to such a proposal. They point out that the risk of physical damage to the memorial by its removal is limited given that the presence of a waterproof membrane between the memorial and the wall shows that it has clearly been removed and replaced in this location within the last 50 years. There is no question of moving a 'grave marker' in this case. The location of the interment of John Gordon's remains is not marked by the memorial and is not, and cannot now be, known. It could be said that statement on the face of the memorial that "[n]ear this place lies the body of John Gordon Esq" will remain true even after its removal to the museum next door. The details of the memorial and story of this application would be carefully recorded in the inventory for the church and a replacement memorial to John Gordon would be fixed to the wall in the place of the removed memorial.
67. The circumstances of relocation of the memorial within the museum are important. As the CBC points out, the Dorset County Museum is accredited under the Arts Council England's UK Museum Accreditation Scheme which provides assurance that the museum is well governed and properly managed and that collections in its care are looked after and managed appropriately. It is proposed that the memorial will be removed to the museum under the terms of a renewable 5-year loan which follows the

National Museum Directors' Council's *Principles for Lending and Borrowing*. Its links to the church will be retained and it will remain subject to the faculty jurisdiction¹⁷. Although the museum is no longer able to indicate a current intention to include the memorial as part of its display galleries, the memorial would be placed in its newly refurbished Collections Discovery Centre – the museum's main store. The intention is to store it on the open shelves, with the inscription visible to visitors. From September 2022 the popular and successful weekly public tours of the Collections Discovery Centre will be reinstated (having been limited before now as a result of the coronavirus pandemic). Particular access to the memorial by the public will also be provided upon specific request.

68. Although not guaranteed, the museum has indicated the possibility of future inclusion and interpretation of the memorial as part of its display galleries possibly as part of a contemporary display telling the story of how views of history have changed and how decisions about the acquisition of objects are made. The narrative might be akin to that of the temporary display of the Edward Colston statue in Bristol's M Shed, horizontally and still daubed with paint from its toppling in June 2020.

Conclusion

69. I have formed the view that the public benefit from these proposals will outweigh the harm caused by them. For the reasons set out above, the harm caused to the special significance of this important building by the removal of this memorial from the church to the museum next door will be significant but not substantial. The memorial itself will suffer greater, but still only moderate, harm. It will be preserved nearby in a context which will ensure its value will be safeguarded, and which will provide a more appropriate location for the telling of its history. The public benefit achieved will be substantial.

70. It will be apparent from this judgment that a faculty is granted in this case. That faculty will be subject to a number of conditions which will ensure that harm to the significance of this memorial and of this building will be minimized. Those conditions are:

- a. The works shall be undertaken by a suitably accredited or experienced stone conservator agreed with the DAC or (in the absence of such agreement) approved by the Chancellor;
- b. No works shall be commenced until:
 - i. The removal method in relation to the memorial and the installation method of replacement memorial has been agreed with the DAC and CBC or (in the absence of such agreement) approved by the Chancellor;

¹⁷ See the decision of the Court of Arches in *Re St Lawrence, Oakley with Wootton St Lawrence* [2015] Fam 27 at para 33.

- ii. The form and inscription of the replacement memorial has been approved by the Chancellor after advice from the DAC¹⁸; and
- iii. The current position and condition of the memorial has been fully and carefully recorded.
- c. A comprehensive record of the researched information about and interpretation of the memorial, together with a record of the process and outcome of this faculty petition shall be added to the parish inventory and provided to the museum.
- d. A notice shall be placed at a suitable location adjacent to replacement memorial noting that it is a replacement memorial and where the original memorial can be inspected.

71. For the avoidance of doubt, I direct that the memorial shall remain subject to the faculty jurisdiction and that direction shall be recorded on the face of the faculty when issued.

72. I cannot conclude this judgment without acknowledging the exceptional work put into this proposal and petition by those of the parish of Dorchester and West Stafford who have had conduct of the matter. They have addressed this extremely sensitive issue with real care and an openness which has been commendable. They have sought and listened to the views and experiences of a wide range of persons and bodies, both within the Church of England and outside. They have carried out careful and comprehensive historical research. They have more than discharged their duty under section 35 of the Ecclesiastical Jurisdiction and Care of Churches measure 2018 to “have due regard to the role of the church as a local centre of worship and mission”. The grace, patient and transparency with which they have conducted themselves throughout this lengthy process must be held up as an example to others when addressing similar issues. I trust that the building of God’s kingdom in this place will continue to flourish through the service and inclusive welcome that they have exemplified.



Chancellor Ruth Arlow
25 July 2022

¹⁸ I would welcome a proposal in which the inscription on the replacement memorial reflects *verbatim* the inscription on the current memorial, excluding the offensive wording and including the Horace quote ‘*Omnes una manet Nox*’ as a sobering reminder to us all.



Omnes una manet Nox

Near this place lies the body of John Gordon Esq,
Son of Robert Gordon Esq, of Pronsey;
Grandson of Sir John Gordon Baronet of Embo in Sutherland.
He died at Dorchester Oct 4th 1774 aged 46.
On his return to Jamaica,
Where he had resided many Years In universal Esteem

He was signally instrumental
In quelling a dangerous Rebellion in that Island,
In the Year 1760.

A large Body of NEGROES
Whom his BRAVERY had repulsed Finally Yeilding
To their Confidence in his HUMANITY.

This Monument is erected as a Mark of Affection
To the Memory of The best of Brothers.

