

In the Consistory Court of the Diocese of Newcastle

In the matter of the Churchyard of St Mary's, Stamfordham

Re Elizabeth Ann Hollis, deceased

Private Petition to erect a Headstone in the Churchyard

JUDGMENT

Introduction

1. By private petition dated 27 January 2022, Howard Royston Hollis, known as Roy, seeks a faculty to introduce a memorial into the churchyard at St Mary's church, a Grade I listed primarily C13th church within a conservation area in Stamfordham, a village 13 miles to the west of Newcastle upon Tyne. Mr Hollis seeks to mark the grave containing the remains of his late wife, Elizabeth Ann Hollis, known as Ann. Mrs Hollis was 73 years old when she died on 17 February 2017. The delay in formally memorialising her grave, currently marked with a simple wooden crucifix, has been occasioned by a most unfortunate dispute which has arisen in relation to the material proposed to be used for this purpose.

The Petition

2. Mr Hollis proposes using granite, specifically a light grey, speckled type known as “Cathay”, to create a headstone which is 600 mm wide, 750 mm high and 100 mm thick, standing on a 750 mm x 300 mm plinth of similar material. The headstone itself is to have a classic ogee type form to its upper edge. The face of the headstone will be polished, the remainder sanded. No flower holder appears within the proposal.
3. Whilst I have not seen a reference to the use of any particular font, Mr Hollis proposes the following inscription:

In loving memory of a Dear Wife, Mother and Grandmother

Elizabeth Ann Hollis

Who died 17th February 2017, aged 73 years

The monumental mason refers to the inscribed lettering being finished with black paint.

The Position of the PCC

4. At a meetings of the Parochial Church Council (9 June 2020), it was determined not to support a petition to this court seeking permission to use the proposed memorial, the decision reportedly being unanimous. (Subsequently the PCC has also considered, and rejected, seeking to amend its rules as to the use of granite.) The only issue to which objection has been taken relates to the requested use of granite which, the PCC concluded, would offend against the Churchyard Rules and guidelines applicable to St Mary's that sandstone only should be permitted for such memorials. For the avoidance of doubt, the size, style and proposed inscription are not in any way contentious. Had it not been for the request to use granite, the same proposal but in sandstone would have been agreed without argument.

The position of the DAC

5. The proposal was separately considered by the members of the Diocesan Advisory Committee on 14 July 2020 who did not recommend the proposals for court approval in the following terms:
 - The use of granite is generally discouraged and the local churchyard rules for St Mary's prohibits the use of granite for memorials.
 - Whilst there is a precedent of some granite materials from a certain period in the churchyard, sandstone is the predominant material.

6. The DAC went on to opine that the work (which I understand to be a reference exclusively to the material) is likely to affect the character of the church as a building of a special architectural or historic interest, the archaeological importance of the church and the archaeological remains existing within the church of its curtilage. In reality, the applicable words relate to the historic interest in the church and its curtilage.

The lodging of the Petition and Notice

7. Subsequent to the provision of this advice, having discussed the matter with the DAC's secretary, Mrs Lucy Burfield, Mr Hollis made the decision to petition this court and, with her assistance, completed the petition which was duly lodged. Public notice was given between 24 February and 25 March 2022 on the church notice board.

The PCC's objection

8. As a consequence of the public notice, one objection has been received, from the PCC itself. Having emphasised the extent of the discussion within the PCC and with Mr Hollis, as well as the distress and sadness the issue has caused, the formal response stresses its support for the Churchyard Rules and their applicability to St Mary's. It feels unable to

permit a variation for the benefit of an individual. I will come to its detailed reasoning below.

Letters of support for the Petition

9. Separately, the court has received several letters of support for the petition, including letters from members of the PCC writing in a personal capacity. The letters speak with one voice and, contrary to the position of the PCC of which some are members, the gist of them is to invite the court to grant an exception to the general rule in circumstances where the inability of the incumbent or PCC to permit the use of granite, owing to the terms of the Churchyard Rules, has caused significant distress to the Petitioner, members of the Church community and the village.

Procedure

10. Formal objection having been received by the court, in accordance with rule 10.3(1) of the Faculty Jurisdiction Rules 2015, the PCC was invited by the Registrar to consider whether it wished to become a party opponent or simply invite the court to take its objections into account when deciding whether or not permission should be given in accordance with the prayer in the petition.

11. On 16 April 2022, the Registry was notified that the majority of the PCC agreed that its letter of objection be taken into account in reaching a decision without the PCC becoming a party opponent. The objection was duly furnished to Mr Hollis to afford him an opportunity to comment on the substance of the objection prior to the court reaching a decision. Mr Hollis responded in writing on 3 May 2022.

The Rules in Respect of Churchyards

12. The current Churchyard Rules were issued by my predecessor, Duff Ch, on 8 September 2013. I was invited to review these rules on my appointment in April 2020 but, on being advised by the Registrar that they have worked well in practice to date, I declined to alter them. There is the following preamble of relevance:

Faculties are normally required for any work undertaken in churches or churchyards. This includes alterations to their lay-out, the re-siting or levelling of gravestones, the making of new paths, changing boundaries, and, most frequently, the introduction of memorials to commemorate the departed.

It is important that those requesting an interment be made aware that there are rules which have to be followed if and when it comes to introducing a memorial; and that these are not the same as apply in public cemeteries. Care and sensitivity in explaining the position can save many pastoral problems at a later stage. A locally produced leaflet, consistent with what follows, can be valuable, as those arranging an interment may, because of their natural distress, find it hard for them to hear what is being explained.

The Chancellor of the Diocese has given delegated authority to incumbents, priests-in-charge and team vicars with responsibility for the area in which the churchyard is situated permitting them to allow simple headstones which fall within the Churchyard Rules set out below. Where there is no incumbent, priest-in-charge or team vicar, the Chancellor's authority is delegated to the Rural Dean and it is important to remember that it is exercisable only by him.

In any case of difficulty, even one seeming to be within the Rules, and so within the scope of his delegated authority, the incumbent may insist on the applicant petitioning for a faculty. The incumbent may seek the advice of the Diocesan Advisory Committee for the Care of Churches at any stage.

If a proposed memorial falls outside the scope of the Rules, the applicant may still petition for a faculty. Where an applicant wishes to erect a memorial which differs from the normal standards indicated in the Rules, but which appears to be of good design, the incumbent should encourage the proposal to be sent forward.

PCCs may find it helpful to make local rules in respect of the churchyard in their parish. Such local rules must be compatible with the Chancellor's rules. It is essential that before PCCs make their own rules they should consult the Diocesan Registrar to ensure that this is the case.

Good relationships with local memorial masons can make the administration of the rules much easier.

13. The only rule of direct relevance to the point in issue is r.5 which provides:

All materials should be made of natural stone (in which case they have a polished surface on the front and on the top surface of the base only), or of hardwood. Stones traditionally used in local buildings, or stones closely similar to them in colour and texture, are to be preferred. White marble, synthetic stone or plastic are not permitted. Black, blue or red granites, and granites darker than Rustenburg grey, are discouraged and are not permitted where they are not already common in the churchyard.....

14. In all material respects, the church's own Churchyard Rules (updated September 2019) (and apply to its neighbouring parishes) repeat the Diocesan Rules quoted here and so add nothing to the issues under consideration.

The Petitioner's Case

15. Mr Hollis acknowledges the rules which, in St Mary's case, state that the only material to be permitted is sandstone, the material from which the church itself is constructed. He objects to the use of this material on the following bases:

- (i) Sandstone is a porous, sedimentary rock which absorbs moisture and promotes the growth of lichen, mosses, algae etc which causes deterioration within a few years. The churchyard's handbook advises that monumental quality stone should be free of flaws, marks and blemishes which are not acceptable on the surface of a memorial. This, he suggests, is difficult to achieve with a sedimentary rock and he cites examples of relatively recent deterioration of memorials already in situ.
- (ii) Noting the position regarding granite and its shade by reference to Rustenburg, he argues that, by implication, lighter grey granite is permissible, such as that he proposes.
- (iii) Furthermore, there are examples of granite within the churchyard of a variety of shape, size and colour.
- (iv) He cites other churchyards within the Diocese, including those where the church is constructed of sandstone, where exceptions have been made.
- (v) He points to his long 40 year association with St Mary's, having been a choir boy as a child.

The PCC's objection

16. The PCC's position, which on its face reflects the extent of the thought, consultation and reflection applied to this problem, is concisely set out as follows:

- (i) It agrees with the advice of the then Archdeacon, the Ven. Peter Robinson, that a headstone represents what is going on under the ground so, just as bodies change after burial, so it is acceptable for a headstone to weather over time.
- (ii) The cultural norm within its churchyard, represented by the earliest gravestones from the C18th, is for sandstone to be used.

Recognising that there are two slate gravestones as well as several of granite, all but one are in the older section of the churchyard and erected in the period 1912 to 1947.
- (iii) Mrs Hollis is buried in the 'new' part of the churchyard and, in keeping with what is set out in (ii), the universal use of sandstone has been maintained.
- (iv) It is its understanding that the cultural norm it identifies is to preserve the character of this particular churchyard: they represent the greens, blues and beiges of nature quite apart from the material used in the construction of the listed church itself.

- (v) There is a pastoral angle too. To permit granite on this occasion will have an impact on other families who requested granite but, on being informed of the rule in favour of sandstone, agreed to comply with the rules. The PCC identifies the potential for upset and unrest in the event of an exception here being permitted.

The Petitioner's response

17. By way of reply, Mr Hollis:

- (i) contends that there are 'many' granite headstones, a number being within 20m of his wife's grave;
- (ii) denies an awareness of a rule against the use of sandstone until he requested granite in 2019;
- (iii) denies that the use of granite detracts from the church itself;
- (iv) whilst not seeking to change the rules exclusively for his benefit, expresses his belief that permitting the exception would not cause upset: indeed, from comments made to him by villagers, he suspects that the opposite would be the case.

The letters in support

18. Letters/emails have been received from:

- (i) Stuart Parker, resident of the village and a member of the church community;

- (ii) Sue Parker, resident, parishioner and PCC member;
- (iii) Lynne Black, parishioner and PCC member;
- (iv) Charlotte Hancock, parishioner and PCC member.

19. I have already summarised the gist of what they say. The most relevant is that of Mrs Parker who recognises that the general preference is to be respected, there are circumstances in which greater flexibility should apply. In this instance, she says that “where there is a very strongly held preference for another material, taking the colour into account to blend in as far as possible, it is entirely reasonable to provide for an exception” which, in this case, “would go some way to start healing and allow us to move forward treasuring the memory of Ann”.

The law

20. As has been said in other cases, the starting point for considering a petition, such as the present one, to install a memorial which is outside the letter, spirit and intent of the applicable Churchyard Rules is that permission will not ordinarily be given.

21. That said, the rules do not represent the black letter of the law. As has been said, by Hill, Ch in *In the matter of St Alban, Frant* [2021] ECC Chi 4, “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”.

22. In the same case, the Chancellor denied that there was a necessity to demonstrate a good or substantial reason or, indeed, any higher test of exceptionality before granting a faculty. In an earlier case, *Re St Mary Magdalene, Lyminster* [2017] ECC Chi 1, he had said words to similar effect adding: “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.”

23. In an earlier case, *Re St Mary Kingswinford* [2001] 1 WLR, Mynors Ch had identified four circumstances in which such a faculty could potentially be granted:

- (i) Where the proposal is for a non standard but specially designed memorial which is a fine work of art in its own right;
- (ii) Where the proposal is a category of memorial that may be suitable in some churchyard but not others such that it would be inappropriate to issue a general authorisation. Variations are to be

found between churchyards across a diocese and regional (or local) variations are not to be ignored or suppressed.

- (iii) Where there are so many examples of the type of proposed memorial that it would be unconscionable to refuse consent for one more;
- (iv) Where the stone may be aesthetically or otherwise unsatisfactory but where there are compelling personal or other circumstances suggesting that a faculty should otherwise be granted.

Discussion

24. Whilst I have been provided with many photographs purporting to support the position of the petition or the PCC, I should indicate that, in accordance with my usual practice when faced with a likely disputed petition, I made a private visit to St Mary's churchyard in late April having, by then, been alerted to this case. Having set out the principles to which I must have regard, it is important to emphasise that each case turns on its own facts. Mr Hollis drew my attention to a press report of another decision of Hill Ch where permission for a non standard memorial for the grave of two very young children, (involving a carved image of Winnie the Pooh and the catchphrase of one of the central characters of a popular animated children's film), neither of which offended against Christian doctrine.

25. The law reports are full of such exceptions and it is understandable that Mr Hollis would wish me to consider an example but, in truth, beyond demonstrating the approach, they are not helpful in determining the specific issue here. The legal principles are the guide to the outcome as applied to the specific factual matrix presented by this petition in this particular location.

26. Having set out, in full, the helpful preamble to the Diocesan Churchyard Rules, it seems to the court that the approach of the PCC to the request made by Mr Hollis has been impeccable. There has been a proper drawing attention to the rules which the incumbent has rightly determined do not permit her to grant the exception sought. The Archdeacon was appropriately consulted and confirmed the correctness of the approach as well as offering a proper justification for the required use of sandstone. Again, in accordance with the preamble, the DAC has been consulted and, with its combined considerable experience, has provided a sound reasoned basis for not supporting the petition. The DAC has assisted the Petitioner in this process by helping him to complete and lodge the Petition. There also appears to have been extensive dialogue with the Petitioner. From a procedural and pastoral point of view,

notwithstanding the very significant emotion that has been generated, it seems to the court that all has been done as should have occurred.

27. Whilst the court is not constrained by any requirement other than the necessity of avoiding something contrary to Church of England doctrine, it has found the guidance of Mynors Ch to be helpful as well as the visit to the churchyard to see directly its overall appearance and the extent to which what would now be considered exceptions have occurred.

28. The proposal would not fall into a category of a fine work of art in its own right: the form is identical, or near identical, to a form in common usage in the churchyard, the only difference being the material which would not elevate the norm into something else.

29. Nor do I consider that this is an exception that is representative of the regional variation category.

30. More directly, Mr Hollis points to other sandstone churches in rural villages in the south of the Diocese where there is much granite and new granite is still being installed. I cannot comment on any of the locations he mentions, it has not been unknown for some incumbents not to adhere to the rules and comparison is problematic for the reasons already given. But, whilst I did not count the number of granite memorials already in situ, the overwhelming appearance, from the moment of entering the

churchyard and then walking around, is one of sandstone. Whilst I note that a granite memorial is positioned about 20 m from the grave in question, not only is the overall impression one of sandstone, the grave itself is situated in one of several rows of apparently exclusively sandstone memorials. On an objective assessment of either the immediate surroundings or the churchyard as a whole, it could not be said that there are so many examples of granite that it would be “unconscionable” to refuse to grant another. Indeed, my assessment is that the opposite would be the case in what I found to be an overwhelmingly harmonious, consistent and pleasing churchyard, containing no fewer than 36 Grade II listed headstones. That harmony and consistency included the churchyard’s relationship with the listed church.

31. Having read the letters of support for Mr Hollis, I anticipate that he and the authors argue that this is one of those cases where there are compelling personal or other circumstances that should dictate the issue of a faculty. That it has caused such considerable upset to Mr Hollis and others is very apparent from all I have read. Indeed, it is suggested that, despite his very lengthy association with St Mary’s, it has formed the basis of his withdrawal from the church community. It appears to have created such inner conflict in the minds of a number of members of the

PCC that they have written to the court in support of a proposal that they appear to have voted down. I very much regret but accept that it has had this effect. The issue is whether this would justify the exception being approved here.

32. Both Mrs Parker and the PCC cite the example of a slate gravestone in the churchyard. The circumstances in which the use of slate was permitted is not directly known but not difficult to surmise. It is, in fact, a good example of a reason why an exception might be granted because it was at the request of a former roofer or his family to use what might have been thought to be a natural material that was central to his lifetime trade. There was a clear association between the man there buried and his calling. There are other examples in the cases.

33. By contrast, it seems to the court, the only reason that the court can find advanced as lying behind the request for the use of granite is its greater durability when compared with traditional sandstone. The court has struggled to identify why that material, with no known association with Mrs Hollis, should be permitted notwithstanding the deep upset the natural weathering of sandstone causes Mr Hollis.

34. In *Re St Alban, Frant*, supra, an exception was permitted in the face of PCC objection (but support from the DAC and no objection from the

Church Buildings Council) to allow the introduction of an iron memorial where there was a long tradition of using cast iron within the locality attributable to a significant industry being present in the C18th and C19th. In granting the faculty the court noted that it was a fitting memorial where there was a long history of cast iron in the area albeit not in this churchyard, noting: “The headstone will rust over time and take on a worn patina not unlike the various stones used for other headstones.” That example, like the roofer’s slate, has a narrative of its own as well as the ability to age in a way that is complementary with the indigenous sandstone. The court can find no like or comparable feature in the proposal to use granite here.

35. In the final analysis, therefore, the court has come to a clear view. It notes and agrees with the reasoning of the PCC and the DAC. It is satisfied that the installation of a granite headstone would look out of place both in the immediate locality of the grave of Mrs Hollis as well as more generally in the setting of this otherwise remarkably homogenous churchyard attached to a Grade I listed church. It has the capacity to upset others who denied themselves the chance to ask the court to use granite out of respect for the rules. It has the capacity to generate an expectation that, in the future, granite will be permitted. Whilst this case is about an individual’s wishes, it cannot be denied that it has

implications for those who have been, or will in the future be, disappointed. The reasons supporting the petition are such that it would be very difficult to draw any distinction in future. Whilst I acknowledge and regret the distress that it will continue to cause Mr Hollis, and expressing the hope that a line can now be drawn under this by agreement to the use of sandstone but otherwise to the exact specification agreed, I am satisfied that this petition must be refused.

36. Save for the ordinary fees required in pursuing a private petition for this purpose, there will be no additional order for costs.

Simon Wood

His Honour Judge Simon Wood
Chancellor of the Diocese of Newcastle

21 June 2022