

**IN THE CONSISTORY COURT
OF THE DIOCESE OF MANCHESTER**

RE ST JAMES DAISY HILL WESTHOUGHON

**JUDGMENT
delivered on 17 August 2020**

Introduction

1. By her petition Ms Victoria Spencer [‘the Petitioner’] seeks a faculty to erect a black granite memorial in the churchyard of St James Daisy Hill Westhoughton on the grave of her parents Ernest David Spencer and Cherable Roma Spencer who died on 27 September 2017 and 29 October 2017 respectively and were buried in the same grave in such churchyard.

2. St James Daisy Hill is a Grade II* listed church. The listing is as follows:

‘1879-81. By Paley and Austin. Brick and terracotta with slate roof. Nave, chancel, north transept and vestry and south bell turret. Nave of 3 irregular bays has sill course and top cornice and parapet; coped gables. Windows have Perpendicular tracery of 3 lights, the western bay on north side has no window, the eastern bay on south side has paired 2-light windows; weathered buttresses. Gabled north porch; pointed entrance with carved spandrels, gable has cusped-arched paneling. West end has 5-light window with moulded arch in square architrave with blind tracery spandrels. Transept has hipped roof, 3-light window and projecting entrance under hipped roof. Organ loft has gable-end straight-headed tracery window of 2 lights with transom. Gabled vestry has 2-light segmental-headed east window, straight-headed window and entrance to north. Chancel has 2 deep, gabled buttresses flanking segmental-headed east window of 6 lights over later lean-to shed; 4- light segmental-headed window to north and south. bell turret breaks forward. Pointed entrance and round-headed lights to windows to lowest stage. 2nd stage has 2-light traceried window to left of stair lights. Top stage has flat gabled buttresses and 2 open traceried bell openings and traceried gable ends; top gabled bell opening has weather cock. Interior: Nave has king post trusses and boarded roof. Wainscoting and sill course. Contemporary light fittings. Chancel arch on responds; transept arch with no capitals. Timber pulpit on stone base has frieze of lights with rectangular pierced panels above. Chancel has segmental-pointed timber tunnel vault. 2-bay arcade to organ loft. Windows have inner mullions. High reredos with linen -fold panelling and cusped panelling, high cupboard and cresting, the altar moved forward. Sedilia and piscina with traceried heads. Timber organ case. East window by Morris and Co., 1897-8; Epiphany and Saints, "One of their (Paley and

Austin's) most masterly performances", N. Pevsner "Buildings of England: South Lancashire", p.104.'

3. By prior arrangement I visited the churchyard on 15 November 2019 in the company of the Petitioner and Revd Carol Pharaoh, the incumbent, and, for the reasons set out below, during such visit I decided that the faculty should be granted and so informed both the Petitioner and Revd Pharaoh. The memorial has subsequently been erected and the Petitioner has been informed that no costs will be incurred by her in the writing of this judgment.

4. The only issue is that the memorial is constructed of black granite and that such is not permitted without a faculty by the Diocesan Churchyard Regulations 2016 which provide in para 2.2.1. of Appendix B thereof that:

'Materials must be of natural stone or hardwood. Stone must be sandstone, limestone, granite or slate. Stone must be quarried within the Diocese or similar in appearance thereto and in keeping with the particular type and colour of the stone of which the church and any surrounding buildings are built. It may not be black, blue, dark grey or red and no memorials or vases shall be of marble, synthetic stone or plastic.'

5. During my visit I was able to observe that the church itself is constructed of brick and that the churchyard has a very large number of black granite memorials throughout the churchyard with a variety of symbols on them. The Petitioner's parents' grave is situated at the end of the churchyard furthest away from the Church

6. In such circumstances it is important to consider the status of the Diocesan Churchyard Regulations.

The status of the Diocesan Churchyard Regulations

7. In *St Saviour Ringley* [2018] Man 3 I had to consider a similar situation, although in that case it concerned the proposed erection of a heart-shaped memorial. In terms of the test to be adopted in determining whether to grant a faculty for something not authorised by such Diocesan Churchyard Regulations, I stated as follows:

'20. Para 5.1 of Appendix B of the Regulations expressly states that an incumbent does not have delegated authority to permit a memorial in the shape of a heart and para 2.2.5 of the Regulations state:

'Incumbents have no discretion to allow the erection of a memorial which does not comply with the detailed provisions contained in Appendix B. Any purported permission given by the Incumbent not within his/her powers is void and of no effect.'

21. Moreover, para 2.2.18 of the Regulations states that:

‘The mere fact that another memorial has been erected in breach of these Regulations is not a good reason for allowing another such item that does not comply with these Regulations. Similarly, an Incumbent is not bound by decisions of previous Incumbents which contravene these Regulations.’

22. However, Note 3 to Appendix B states that a faculty may be sought for a memorial which does not comply with the Regulations.

23. In considering whether a faculty should be granted for such a memorial I am satisfied that I must take into account the importance, effect and purpose of churchyards and of memorials in them.

24. I entirely agree with Eyre Ch when in *Re St James, Newchapel* [Lichfield] he stated:

‘16. Churchyards are consecrated to God, Father, Son and Holy Spirit. Accordingly, they must be treated and cared for in a manner consistent with that consecrated status. Churchyards fulfil important spiritual roles. They provide appropriate settings for Christian places of worship and as such send out a message of the Church’s commitment to worshipping God in the beauty of holiness. They contain memorials to departed Christians demonstrating the Church’s continuing love for them and its belief in the communion of saints. In addition, they are places of solace and relief for those who mourn. It is notable also that many people find comfort in knowing that their mortal remains will be interred in a particular churchyard and in a particular setting. That comfort derives in part from a confidence that the character of that setting will be preserved.’

25. It thus necessarily follows that this court has an important responsibility to ensure that what is placed in our churchyards is both fitting and appropriate and the Regulations are important in fulfilling such responsibility.

26. In recent judgments delivered by Consistory courts there has been some debate about the approach to be taken in principle when considering an application for a faculty which is not permitted by Diocesan Churchyard Regulations.

The different approaches

27. The first approach is to require a substantial reason to be shown before a faculty will be granted for a memorial because it falls outside the scope of the Regulations and cannot be authorised by an incumbent. This approach was adopted by Mynors Ch in *Re St Mary Kingswinford* [2001] 1 WLR 927, Holden Ch in *Re Christ Church Harwood* [2002] 1 WLR 2055 [where my predecessor found that there were strong grounds to justify the exceptional grant of a faculty for a memorial incorporating a photographic image of the deceased which was outwith the then Diocesan Regulations] and Eyre Ch in *St James, Newchapel* and in *St Peter, Church Lawford* [2016] Ecc Cov 3.

28. In *Re St Mary Kingswinford* Mynors Ch stated in relation to the circumstances in which a faculty could be given for a memorial which did not comply with Diocesan Regulations:

‘38. However, at least some non-standard memorials will be approved. This is likely to be for one of four reasons. The first is where a proposal is for a specially designed memorial which may be non-standard, but which is a fine work of art in its own right. Such proposals are indeed to be positively encouraged. The second is where a proposal relates to a category of memorial that may be suitable in some churchyards but not in others, so that it would be inappropriate to issue a general authorisation. There are after all some variations between churchyards in different parts of the diocese and such regional variations are not to be either ignored or suppressed. The third situation where a non-standard memorial may be allowed is where it is of a type, which may or may not be desirable in itself, of which there are so many examples in the churchyard concerned that it would be unconscionable to refuse consent for one more. The fourth reason for approval is where a stone might be aesthetically or otherwise unsatisfactory, but where there are compelling personal or other circumstances suggesting that a faculty should nevertheless be granted.’

29. In *Re St James, Newchapel* Eyre Ch emphasised that, whilst these were useful examples where a faculty might be granted for a memorial which did comply with Diocesan Churchyard Regulations, these are but examples because [per Holden Ch in *Christ Church Harwood*] it is not possible to definitively identify in advance all matters which are capable of constituting a sufficiently exceptional reason to justify the granting of a faculty and [per Eyre Ch in *St James Newchapel*] there will be circumstances which fall within Mynors Ch’s examples in *Re St Mary Kingswinford* where it will nevertheless be appropriate to refuse a faculty and there will be circumstances which fall outwith such examples where there will be an exceptional reason for granting a faculty.

30. I entirely agree that whilst the examples given by Mynors Ch in *Re St Mary Kingswinford* should be regarded as a useful means of evaluating the facts of the individual case, they are not to be regarded as a judicial straightjacket.

31. On this approach permission for a memorial which does not accord with the Diocesan Regulations will not be given lightly and [per Eyre Ch in *St James, Newchapel*] ‘a powerful reason must be shown before a faculty for such a memorial will be given’, particularly because this represents ‘a matter of justice and fairness to those who have erected conforming memorials’ because families who put aside their personal preferences and accept a memorial different from that which they would have chosen if given a free hand ‘would have a legitimate sense of grievance if others ... were able easily to obtain faculties for non-conforming memorials’. Thus ‘fairness to those who have reluctantly complied with the Chancellor’s Regulations requires the Court to confine exceptions to cases which are truly exceptional.’

32. The second approach is to accept that no burden is imposed on a petitioner save that of demonstrating that on the particular facts of the case a faculty should be granted. This approach was adopted by McGregor Ch in *St John's Churchyard, Whitchurch Hill* [Oxford], Hill Ch in *St John the Baptist, Adel* [2016] Ecc Lee 8 and Bullimore Ch in *St Mary the Virgin, Eccleston* [2017] Ecc Bla 4. In that latter decision Bullimore Ch expressly dissented from the view that 'some particular level of justification has to be shown for a proposal 'outside' the Regulations', largely because Diocesan Regulations relate primarily to the issue of the limits of the Chancellor's delegated authority, rather than to wider questions of taste and acceptability and that it was only necessary to regard the Diocesan Regulations as a good starting point from which to determine whether a proposed memorial was suitable.

33. In *St Mary Prestwich* [2016] Ecc Man 1, in considering whether to permit kerbstones around a grave when such were not permitted by the Regulations, I adopted the first approach.

34. I am aware of other decisions of consistory courts: see

34.1. the requirement for 'exceptionality' by Turner Ch in *Christ Church, Timperley* [Chester] and *St Hilary, Wallasey* [Chester] and Collier Ch in *St Helen, Welton* [2017] Ecc Yor 2;

34.2. the requirement for 'some good reason' by Briden Ch in *St Laudus, Mabe* [Truro] and Ormondroyd Ch in *All Saints', Bransgore with Thorney Hill* [2017] Ecc Win 2 and Eyre Ch in *St Leonard Birdingbury* [2018] Ecc Cov 1; and

34.3. the requirement for 'a powerful reason' by Gallagher Ch in *St Paul, Rusthall* [2016] Ecc Roc 2.

35. I note that in *St Leonard Birdingbury* Eyre Ch rejected the approach of Bullimore Ch in *St Mary the Virgin, Eccleston* that Diocesan Churchyard Regulations were 'largely a matter of practicality' and that they relate 'primarily to the issue of the limits of the authority to be delegated, rather than wider questions of taste and acceptability' and stated:

'53. ... In my judgment that characterisation of churchyard regulations understates the role they can play as expressing a collective understanding (I would go so far as to say a collective wisdom) with regard to the memorials which are likely in most instances to be either acceptable or unacceptable, appropriate or inappropriate in churchyards of a diocese. Much will depend on the contents of the particular regulations and on the nature and extent of the consultation involved in their formulation. It is clearly necessary that those chancellors who seek to treat their churchyard regulations as setting down a standard of what will be normally acceptable should ensure that there

has been extensive consultation and careful consideration of the terms of any proposed regulations. However, where that has been done then it is legitimate and in my view appropriate that the regulations can be seen not, of course, as laying down the sole standard of good taste but as representing a considered collective understanding as to what is generally acceptable and appropriate. In those circumstances it is appropriate that a good or substantial reason should be required before a memorial falling outside the scope of such regulations be permitted.'

36. I entirely agree with that analysis.

37. Moreover, although in *St Andrew, Witchford* [2016] Ecc Ely 2 Leonard Ch refused a faculty on the basis that there was a need for exceptionality or the like, it is clear that his decision was founded on the basis that his discretion whether to grant a faculty was to be exercised with considerable caution and was to be heavily influenced by the Diocesan Regulations.

38. I bear in mind that the Manchester Diocesan Churchyard Regulations issued by me in 2016 expressly record:

'These Regulations are issued by the Chancellor of the Diocese after consultation with the Archdeacons and representatives of the Diocesan Advisory Committee ['DAC'] and with the approval of the Bishop of Manchester.'

39. Having reflected on the judgments referred to above and noting that there was extensive consultation before the Regulations were issued, I am satisfied that I should apply a test of whether the Petitioners have shown a good and substantial reason why I should approve this proposed memorial which constitutes a departure from the stance adopted in the Regulations.'

Conclusions

8. Accordingly, I ask myself whether, on the facts of this particular case, the Petitioner has demonstrated that there is a good and substantial reason why I should approve what would otherwise constitute a departure from the stance adopted in the Diocesan Churchyard Regulations.

9. On the facts of this case I am satisfied that the presence of so many black granite memorials in this churchyard constitute a good and substantial reason why the Petitioner should be permitted to erect a black granite memorial in this churchyard. This is particularly the case where the Church itself is constructed of brick and in my judgment a black granite memorial is in no way incongruous with the brick-built Church, as I could myself observe when visiting the churchyard. In such circumstances I am satisfied that the Petitioner has demonstrated a good and substantial reason why I should approve what constitutes a departure from the stance

adopted in the Diocesan Churchyard Regulations. Moreover, given the presence of so many examples of black granite memorials in this churchyard, it would in my judgment be unconscionable in this case to refuse consent for one more such memorial and in this respect I repeat and adopt the dicta of Mynors Ch in *Re St Mary Kingswinford*.

10. I thus grant the faculty sought by the Petitioner.

11. I was asked by Revd Pharaoh to indicate what approach she should adopt if there were to be further applications for black granite memorials in this churchyard, as seems likely. Given the particular circumstances of this churchyard, I am satisfied that it is appropriate that she and any subsequent incumbent have my delegated authority to permit further black granite memorials in this churchyard.

GEOFFREY TATTERSALL QC

Chancellor of the Diocese of Manchester