



Application Ref: 2020-10801

**IN THE OXFORD CONSISTORY COURT**

**THE REVEREND CHRISTOPHER ROGERS, DEPUTY CHANCELLOR**

**IN THE MATTER OF ST SEBASTIAN'S CHURCH, WOKINGHAM**

**IAN WILLIAMS**

**Petitioner**

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**JUDGMENT**

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**The petition**

1. The petitioner is Hon. Secretary of the Huddersfield and District Army Veterans Association (**'the Association'**), and petitions in that capacity for the removal of the memorial cross of the Association's founder, Major Robert Welsh, (**'the Monument'**) from the churchyard of St Sebastian's, Wokingham, to the Association's military plot at Edgerton Cemetery, Huddersfield. The petition was made pursuant to s. 66 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.
2. Major Welsh was buried in St Sebastian's churchyard on 7<sup>th</sup> October 1907<sup>1</sup>, though the plot in which he is buried was later paved over for the laying of a path. The Monument, which records his details, was therefore leant against the wall of the church nearby.
3. The PCC does not object to the removal of the Monument, and Kirklees Council has given permission to the Association to re-erect the Monument on one of the graves which it owns at Edgerton Cemetery. That is slightly different from the Petitioner's

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<sup>1</sup> As referred to in the parish's register of burials, though mistakenly stated to have been in 1913 in the Petitioner's letter in support of the petition.

stated intention of erecting the Monument on '*empty ground adjacent to the burial plot facing the grave stones.*'

4. The DAC recommends the work, stating that it is not likely to affect the character of the church as a building of special architectural or historical interest (despite its not being listed).
5. At the time of making the petition the Association had not been able to find any living relatives of Major Welsh, his not having had children and only one of his siblings having had a child, who died unmarried.

#### **Procedural history and evidence**

6. I gave directions on 24<sup>th</sup> September 2020 giving liberty to the Petitioner to lodge further evidence of his search for Major Welsh's heir-at-law by 23<sup>rd</sup> November 2020, with any written argument and further documentary evidence to be submitted by 21<sup>st</sup> December 2020. I also made preliminary observations, stating that in the unusual circumstances of this petition and in the absence of the consent of Major Welsh's heir- or heirs-at-law the Petitioner would need to make a powerful case to justify the granting of the requested faculty.
7. Under cover of letter dated 10<sup>th</sup> November 2020 the Petitioner lodged a copy of an advertisement seeking living relatives of Major Welsh's widow, which was placed in a Wokingham local newspaper on 8<sup>th</sup> October 2020 for a period of four weeks, but without response. I subsequently suggested that he might wish to seek the services of a genealogist. The Petitioner did so, and the genealogist instructed was able to trace two granddaughters of the half-brother of Major Welsh's widow, Maud Sykes and Brenda Sykes.
8. In the light of this evidence I made an order on 7<sup>th</sup> December 2020 that I was satisfied on the balance of probabilities a) that the first heir-at-law of Major Welsh was his widow, Eliza Holroyd; and b) that her joint heirs-at-law are Maud Sykes and the heir or heirs of Brenda Sykes (Brenda Skykes by that time having died). I ordered that the Petitioner was to make all reasonable efforts to contact the heirs within 21 days, and to lodge any response.
9. Under cover of a letter dated 12<sup>th</sup> January 2021 the Petitioner lodged two letters, one dated 6<sup>th</sup> January 2021 from Rebecca Dew, daughter of Maud Sykes, and one dated 30<sup>th</sup> December 2020 from Jacqueline Paul, daughter of Brenda Sykes, both letters giving their permission for the removal of the Monument to Huddersfield. I have not been told

expressly that Maud Sykes has died, or been given any information regarding any siblings of Mrs Dew and Mrs Paul, but am told by the Petitioner that he believes these to be the *‘last two heirs to Robert and Elizabeth Welsh.’*

10. No formal written arguments were submitted, and the Petitioner consented to my giving judgment based on the written representations already provided, by letter dated 7<sup>th</sup> February. I therefore ordered that the Petition be dealt with based on the written representations already received, pursuant to Rule 14.1 of the Faculty Jurisdiction Rules 2015, as amended.

### **The law and discussion**

11. St Sebastian’s, Wokingham is not a listed building, and therefore the heavy presumption against change which would then apply is not engaged. In order to grant the requested faculty I do however still have to be satisfied on the civil standard of proof that the balance of evidence favours granting the requested faculty rather than its refusal, the burden of proof resting on the Petitioner.

12. Section 66(1) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (**‘the Measure’**) provides as follows:

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 or on, or on the curtilage of, a church or other consecrated building or on consecrated ground, 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.

13. S. 66(5) of the Measure provides that:

“Owner”, in relation to a monument, means—

(a) the person who erected the monument, or

(b) after that person’s death, the heir or heirs at law of the person or persons in whose memory the monument was erected.

14. In making my preliminary observations I observed that, while s. 66 of the Measure allows for the moving of a monument without the owner’s consent, it is in practice generally exercised for purposes related to the utility of the church, e.g. the building of

an extension or the laying of a path. This is particularly the case where tracing the owners of a number of monuments would be impracticable and therefore likely to impede work which is important for the conservation or development of a church and churchyard. That does not however mean that it cannot be used in other circumstances where the proposed change discharges the burden of proof.

15. My concern in the present case is that the main purpose for which the Monument was erected, to mark the final resting place of Major Welsh, would be defeated were it to be removed from the churchyard where he is buried. The Petitioner's main arguments in favour of that removal (if constructed from his various letters) are that:
  - a) This original purpose of the Monument was defeated when it was moved to the church wall so as to facilitate the laying of the path which now lies over Major Welsh's grave; and
  - b) The removal of the Monument and its re-erection in a place where Major Welsh's memory is cherished (as well as being cleaned and 're-lettered') will both honour him as the Association's founder and perpetuate his memory.
16. In relation to the Petitioner's first point, in *Re St Denys, Stanford in the Vale* [2019] ECC Oxf 1; (2020) Ecc LJ 263, Chancellor McGregor decided that the purpose of the headstone was not to mark the boundaries of the grave, and therefore dismissed a petition to move the petitioner's son's headstone sideways to align it with where she believed the centre of the head of his grave was.
17. Further, while headstones in churchyards are commonly placed at least roughly over the mortal remains of the person commemorated, that is not the case for ledger stones set in the floor inside churches. While debateable how comparable interior and exterior monuments are for the sake of this discussion, there does not seem to be a general principle that they always mark the precise place of burial.
18. Monuments also serve the purpose of informing people visiting churchyards of the names and details of those who are buried in that churchyard more generally. In doing so, monuments not only serve the needs of those visiting particular graves, but are also of use to those interested in the history of the parish, providing a gazeteer of former inhabitants and people connected with that place. Even if the details of the lives of those memorialised may be forgotten, the layering of memorials from across the generations provides a palimpsest of local history for the interest and edification of those still living.
19. Another relevant authority, helpfully handed down a week ago by the Chichester

Consistory Court, is that of *Re St Margaret, Rottingdean (No. 2)* [2021] ECC Chi 1, concerning the removal of two monuments which included racist language. In that judgment Chancellor Hill QC considered the relevance of the support for the petition of the heirs-at-law. At para. 52(1) he stated that ‘*their wishes as legal owners, whilst not determinative, must be afforded very considerable weight.*’

### Conclusions

20. Since the Petitioner has traced Major Welsh’s heirs-at-law, Mrs Dew and Mrs Paul, as dealt with in my earlier determination, and they have given their consent for the removal of the Monument, the Petitioner no longer needs to rely on s. 66 of the Measure.
21. I do however still have to be satisfied on the balance of probabilities that the case for removing the Monument has been made out, the burden of proof lying on the Petitioner. While the PCC of St Sebastian’s do not object to the Petition, nor do they actively support it. I also take into account the views of the DAC, though I am not bound to reach the same conclusion as they do.
22. The intentions of the Petitioner in seeking to perpetuate and celebrate the memory of Major Welsh are both good and honourable. They are however to be weighed against the benefit of the status quo, retaining the Monument in St Sebastian’s churchyard. Another relevant factor is whether the Petitioner (and the Association) could achieve the same result without removing the Monument from the churchyard, for example by commissioning a stonemason to create a replica of the Monument for the Huddersfield cemetery.
23. I must also consider the views of Major Welsh’s heirs-at-law as owners of the Monument, and give their views ‘*very considerable weight*’ (per Chancellor Hill QC in *Rottingdean*). Mrs Dew stated in her letter to the Petitioner that she gave her permission for the Monument to be moved, and that ‘*I wish you well with your quest for RW gravestone to be restored to Huddersfield.*’ Mrs Paul also stated that she gave her permission, and thanked the Petitioner for contacting her with the information about her family, but did not express any further view.
24. While not a listed building, I consider that some harm would result from removing the Monument, in that its purpose and context in marking the churchyard where Major Welsh is buried (if not the precise grave) would be removed, along with some minor harm to the general benefit of the monuments in the churchyard, as described in paragraph 18 above.

25. Weighed against that harm is the benefit of commemorating Major Welsh at the Association's plot in Huddersfield. That is clearly of significance to the Association, and their wish to perpetuate his memory is to be commended. I have not however been presented with any argument as to why it is necessary to have the Monument in order to do that, and I consider that it could be achieved as successfully by commissioning a replica of the Monument. I do not consider that Major Welsh would be any better honoured by his actual gravestone being preserved at the Association's plot.
26. I do understand why some members of the Association might like to be able to see Major Welsh's actual gravestone when visiting the Huddersfield cemetery, but while such considerations might be relevant for a museum in deciding whether to acquire a particular artefact, for example, they are not relevant for the purposes of deciding this petition, particularly when, as already stated, the Monument continues to serve at least part of its original purpose where it is.
27. Taking all of these factors into account, despite having given particular weight to the views of Major Welsh's heirs-at-law, as well as those of the PCC and the DAC, I am not convinced either that the removal of the Monument is necessary to celebrate the memory of Major Welsh at the Huddersfield plot, or that the benefits in doing so would outweigh the harm in removing it from St Sebastian's churchyard.
28. The Petitioner has not therefore discharged the burden of proof, and the petition is dismissed.
29. The courts waive its fee for this judgment.

Dated 9<sup>th</sup> February 2021