

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

RE: A CHURCHYARD

JUDGMENT

- 1) I have anonymized this judgment not only in respect of the name of the Petitioner and her family members but also in respect of the name of the churchyard concerned. In doing so I have taken account of the importance of justice being done in the public eye nonetheless such anonymization is appropriate in the circumstances of this case for the following reasons. The Petitioner is seeking a faculty in respect of a memorial to her late husband. He died in distressing circumstances and the distress to the Petitioner and her family was compounded by the holding of an inquest which did not take place until almost one year after the death. As a consequence of the stress affecting her, the Petitioner is receiving medication. The delay inherent in determining the current petition has added to that stress and the Petitioner is still in receipt of medication. The Petitioner has disclosed her medical difficulties and has expressed concern that publicity about the matters involved in this case would increase the stress upon her and would have an adverse effect on her health. I am satisfied that there is a real risk that public knowledge of the Petitioner's personal circumstances and of the matters leading up to this petition would indeed have an adverse effect on the Petitioner's health. In those circumstances the interests of public justice are adequately served by the provision of an anonymized judgment. In order to achieve the objective of minimising the risk of harm to the Petitioner's health being caused by public knowledge of her circumstances that anonymization must extend to the name of the church and churchyard in question.

- 2) The late Mr. X died in 2015 and his remains were interred in the churchyard of Parish A. Mr. X had suffered for many years from a number of serious and debilitating conditions. His remains were interred in an existing grave which contained the remains of his great-uncle. The families of Mr. and Mrs. X had a long-standing connexion to Parish A and an involvement in the life of the parish church. As well as that of Mr. X's great-uncle the churchyard contains the graves

of a number of Mrs. X's relatives including her parents and maternal grandparents all four of whose remains are in the same grave.

- 3) Mrs. X petitions for a faculty to authorise a number of items. A memorial in the form of a headstone is proposed for the grave of Mr. X. That is of unexceptionable material and appearance. It is proposed that the headstone should bear an inscription giving details of Mr. X's dates of birth and death together with entirely appropriate expressions of love and loss. In respect of that grave the Petitioner seeks also to install a kerb around the grave and to fill the area so enclosed by chippings. Mrs. X says that the grave was originally surrounded by a kerb but that this had been removed many years ago by her grandmother. About twenty years ago Mrs. X asked the then incumbent if she could replace the kerbs. The incumbent at that time asked her to postpone seeking to do this "to allow ease of strimming" but indicated that it would be possible to restore the kerbs at the time when the next family member came to be interred in that grave. The grave containing the remains of Mrs. X's parents and maternal grandparents already contains a vase bearing a one word inscription of the grandparents' surname. Mrs. X seeks to introduce a further vase in a similar style bearing a one word inscription of her parents' surname.

The Procedural History.

- 4) The Lichfield Churchyard Regulations provide that an incumbent is not authorised to permit a memorial which includes the placing of a kerb around and chippings upon a grave. They also limit the authority of incumbents to permitting a single vase on a memorial. Mrs. X has, accordingly, had to seek a faculty to authorise the proposed memorial and vase.
- 5) The Parochial Church Council of Parish A has objected to the proposed faculty. It has done so by reference by saying that it wishes to observe the Churchyard Regulations. The Council has declined to become a party opponent and has declined to make any further representations. In those circumstances I have proceeded on the footing that it is the view of the Council that it is inappropriate for the faculty sought to be granted by reason of the nature of the churchyard and the fact that the Regulations require a good reason to be shown before a faculty

will be granted for a memorial falling outside the range of memorials which the Regulations authorise incumbents to permit.

- 6) The Diocesan Advisory Committee has recommended approval of this petition. In doing so the Committee took account of the presence of kerbs around and of vases on other graves in this churchyard and the fact that the kerbs proposed were to replace kerbs removed some years ago.
- 7) I concluded that it was expedient to determine this case on the basis of written representations and Mrs. X consented to that course. Mrs. X is supported in her application by her son. They have both provided written submissions together with photographs showing the general appearance of this churchyard.

The Petitioner's Submissions.

- 8) Mrs. X relies on two key points: the history in relation to the grave containing Mr. X's remains and the nature of the churchyard and of the other memorials in it.
- 9) As to the history Mrs. X points out that the grave was originally surrounded by kerbs. She had forborne from seeking to replace those kerbs when she had first sought to do so about twenty years ago. This forbearance had been at the request of the incumbent at that time but Mrs. X had been given to understand that in due course she would be able to restore kerbs equivalent to those which had been removed.
- 10) In respect of the churchyard as a whole the photographs show that there are a considerable number of graves which are edged by kerbs. They show that the plot containing the remains of Mr. X and of his great-uncle is in a row containing a number of such graves and that there are similarly kerbed plots in the adjoining rows. The photographs indicate that although this grave is not completely surrounded by kerbed graves it is certainly in an area of the churchyard which contains a number of such plots. The photographs also show that there are kerbed graves in other parts of the churchyard. They also show a number of other plots with multiple vases and some where the plot appears to have been planted up with flowers and plants of various kinds.

11) Mrs. X makes reference to the unevenness of the surface of the churchyard and to the presence of stones in and on the ground. For this reason she submits that the absence of kerbs around the grave containing her husband's remains will add little if anything to the ease of maintaining this churchyard. In that regard she says that the churchyard is frequently somewhat overgrown making the point that it is not a churchyard consisting of a manicured short grass sward. Indeed, this appears to be the result of a deliberate policy on the part of the Parochial Church Council. I have been provided with photographs of signs posted in the churchyard by that Council. These explain that at certain times of the year (I assume the Spring and Summer) the grass and flowers are allowed to grow and seed "in order to provide shelter and food for a wide variety of insects, animals, and birds". That is an entirely appropriate approach for the Church Council to take but it does mean that for much of the year the grass in the churchyard will not be mowed or strimmed. The notices also advise those walking off the paths in the churchyard to take care because the ground around the graves has become uneven as the result of natural settlement and the effects of heavy rainfall.

Discussion.

12) I have explained at some length in *St Leonard, Birdingbury* [2018] Ecc Cov 1 my understanding of the principles to be applied when a faculty is sought for a memorial falling outside the range which diocesan Churchyard Regulations authorise incumbents to permit without faculty. In short a good reason is needed to justify the grant of such a faculty. However, where there are already such a number of memorials outside the scope of the Regulations in a particular churchyard that it would be unfair to a petitioner to prohibit a further memorial of the same kind then that unfairness can itself be a good reason for the grant of a faculty.

13) The matter of whether there should be permission for an additional vase bearing the surname of Mrs. X's parents on the grave containing their remains and those of Mrs. X's grandparents can be addressed shortly. There are already in this churchyard a number of graves on which there are multiple vases. The proposed additional vase on this grave will not look out of place and will properly reflect the

fact that the grave contains two married couples with different surnames. It would be artificial in the extreme to refuse the permission sought.

14) The question of whether to permit kerbs around and chippings on the grave now containing Mr. X's remains is less straightforward. There are repeated instances of consistory court decisions in which chancellors have taken a firm line against applications for the introduction of kerbs around graves and where they have upheld the stance of Church Councils who have sought to resist such proposals. This is because of a general understanding that the presence of kerbs around graves can impede the maintenance of a churchyard. In short terms the presence of kerbs tends to restrict the ease with which mowers and strimmers can be used. Such a restriction affects the maintenance of a churchyard as a whole either by making it more difficult to mow or strim the grassed areas or by making the mowing exercise more expensive. This can result in the mowing being less effective or in it being more infrequent or can mean that maintenance of the churchyard imposes a greater burden (either financially or in terms of time spent) on those responsible for maintaining it than would otherwise have been the case. In that way the presence of kerbs around a grave has an impact on the other graves in the churchyard and on the appearance of the churchyard as a whole. In those circumstances a family's preference for the appearance of a grave with kerbs around it cannot prevail against the effect on other memorials and on the general appearance of the churchyard.

15) Exceptionally, this is a case where the impact of the proposed kerbs on the maintenance of the churchyard is considerably less than would normally be the case and where it is appropriate to grant permission for the kerbs and chippings proposed. There are a number of factors which combine to lead to that conclusion. It is apparent that there are a significant number of memorials in this churchyard surrounded by kerbs and this is particularly so in the immediate vicinity of the grave now containing the remains of Mr. X. That has two consequences. First, it means that there would be a justifiable perception of unfairness and artificiality if the Court were to decline to permit kerbs to be placed around this grave. Second, it means that the maintenance of this part of the churchyard is already likely to be markedly affected by the presence of kerbs

around graves such that one further set of kerbs is unlikely to make a material addition to the difficulty of maintenance. That relates to two further factors namely the unevenness of the surface of the churchyard and the approach which the Parochial Church Council takes to lawn mowing. I have already explained that the Church Council has warned those visiting the churchyard of the unevenness of the ground and has deliberately adopted a policy of refraining from mowing or strimming for part of the year. The latter is a proper and legitimate policy but it does again have the consequence of reducing the adverse impact which the proposed kerbs will have on maintenance. It is also relevant that the proposal is to restore kerbs to a grave which previously had kerbs. That would not by itself justify the grant of a faculty but it is a relevant factor (albeit one of modest weight) in support of the proposal. Carrying rather more weight are the facts that Mrs. X had at the request of the incumbent desisted from pressing for the kerbs to be restored some years ago and that she had been led to believe that there would be no difficulty in effecting the restoration of kerbs in due course.

16) I am conscious of the burden placed on Church Councils in maintaining churchyards and of the weight to be given to the views of such a council as to what is appropriate or desirable in a particular churchyard. However, in the current case although I do take account of those views they must carry rather less weight than might otherwise be the case given the paucity of the information before me as to the particular reasons for the Council's stance.

17) In those circumstances the faculty sought will issue.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
3rd June 2018