

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ALL SAINTS: DILHORNE

ON THE PETITION OF ARTHUR WRIGHT

JUDGMENT

- 1) Lynn Wright died in August 2018 and was buried in the churchyard of All Saints, Dilhorne the following month. Arthur Wright is her widower and with the support of other family members he applied for permission to erect a memorial of red granite polished on the face and bearing gold lettering and 1220 mm high.
- 2) At the time of Mr. Wright's application the Revd Linda Lucking was the vicar of Dilhorne. With the support of the Parochial Church Council Miss. Lucking declined permission for the proposed memorial on the grounds that gold lettering was not permissible and that the size and colour of the memorial would not be in keeping with the other memorials in the churchyard.
- 3) The current petition results from that decision and seeks a faculty for the proposed memorial. The inscription proposed contains a statement of Mrs. Wright's age; reference to her roles as wife, mother, and grandmother; and a statement that she is resting in God's care while being remembered with love in the hearts of her family. It follows that the inscription is in entirely appropriate terms and I will not comment further on that aspect of the matter.
- 4) The Diocesan Advisory Committee has recommended approval of the petition noting the presence in the churchyard of other memorials made of red granite and bearing gold lettering.
- 5) The parish is now in interregnum and the Parochial Church Council has chosen neither to become a party nor to make any representations.
- 6) In December 2020 I issued directions explaining that I was minded to determine the petition on the basis of written representations and inviting Mr. Wright's views as to that together with any further submissions. Mr. Wright has confirmed that he is content for the case to be determined on the basis of written representations

and that he does not wish to make any representations in addition to those already submitted to which I will now turn.

The Petitioner's Submissions.

- 7) Mr. Wright provided short submissions accompanied by photographs of the churchyard. He says that the proposed memorial is within the dimensions permitted by the diocesan Churchyard Regulations and that there is no proper basis for its size being a ground for refusal.
- 8) As to the use of red granite and gold lettering Mr. Wright points to the other memorials in the churchyard as shown in the photographs. These show memorials of various different sizes and stones. A large number appear to be of polished black granite but there are at least two memorials in this part of the churchyard made of red granite including that on the plot adjoining that in which Mrs. Wright was interred – that memorial being to a relative of Mrs. Wright's. Mr. Wright contends, and the photographs confirm this, that a majority of the memorials in the churchyard bear gold lettering. He says that of the seventy-three memorials in the vicinity of Mrs. Wright's grave some sixty have gold lettering. It is of note from the photographs that not only do the majority of the memorials have gold lettering but a number appear to bear coloured images of various kinds.

The Approach to be taken.

- 9) The Lichfield Churchyard Regulations identify those memorials which an incumbent can permit without the grant of a faculty. However, those Regulations were the result of an extensive consultation and operate to express a collective assessment in the Diocese of which memorials are normally likely to be appropriate and those which are not. The Regulations provide, at [42], that a person seeking a faculty for a memorial falling outside the scope of the Regulations will need to establish "a good case" in order for the court to authorise the grant of a faculty. In part this is because the Regulations express a collective view as to what is likely to be appropriate but it is also a matter of fairness. Those who subordinate their own preferences to the collective view expressed in the Regulations and who install memorials within the scope of the Regulations but

different from the memorials which they would personally prefer would have a legitimate feeling of grievance if others were without good cause granted faculties for memorials of kinds which could not be permitted under the Regulations.

10) It is, however, important that the court takes account of the realities of the situation in any given churchyard. In *St James, Newchapel* (2012) I quoted, at [21], the assessment made by Mynors Ch in *Re St Mary: Kingswinford* t [2001] 1 WLR 927 at [38] of the circumstances in which a faculty could be given for a memorial outside the scope of diocesan Churchyard Regulations. I then, at [26], set out my assessment of the approach to be taken where a churchyard contains a large number of memorials outside the scope of the Regulations saying:

“Particular issues arise in cases where there are already a number of non-conforming memorials in a churchyard. The mere fact that non-conforming memorials have been allowed in the past or have been erected without faculty is clearly not of itself a justification for a further inappropriate memorial. However, there will be occasions when the extent of previous non-compliance with the Regulations will be relevant. In the passage quoted above Ch. Mynors referred to situations where the number of non-conforming memorials is such that it would be “*unconscionable*” to refuse permission for one more. In my judgment the proper approach is to take account of the number, type, and appearance of non-conforming memorials in relation to the size and appearance of the churchyard taken as a whole. There will be cases where the non-conforming memorials are so numerous or so dominant that it is simply unrealistic to believe that the objective of preserving the desired appearance of the churchyard can be achieved. That desired appearance being one that is harmonious in appearance and forming a worthy setting for the church. In such circumstances the balance of unfairness changes. It can then become unfair to the Petitioner to refuse a petition for a memorial of a kind akin to those already present in and dominating the churchyard. There is then a risk that the Petitioner’s wishes and preferences are being thwarted in pursuit of an unrealistic objective. Moreover, in such cases the risk of unfairness to those erecting conforming memorials contrary to their own preferences is likely to be diminished.”

11) It is that approach which I will apply here.

Discussion and Conclusion.

12) I have reflected on the view of the previous incumbent that the proposed memorial would not be in keeping with other memorials in the churchyard by reason of its size and colour. I am conscious that I have seen only photographs of the churchyard and that Miss. Lucking’s assessment was based on her direct knowledge of the churchyard. I note, however, that the minutes of the Diocesan Advisory Committee meeting record both the acting Archdeacon and the

Associate Archdeacon as expressing support for the proposed memorial. I note also that the photographs show a large area of the churchyard and I am satisfied that I am able to form a proper assessment from them. As will be seen that assessment has caused me to conclude that Miss. Lucking's view as to the potential effect of the proposed memorial was mistaken.

- 13) As Mr. Wright says the proposed memorial is within the dimensions provided for in the Churchyard Regulations. It is at the upper end of that range and will be a little larger than a number of the memorials in this churchyard but it will be of the same size as others. In my judgement the size of the memorial would not cause it to look out of place.
- 14) The real issues are the proposed use of polished red granite and of gold lettering. The use of gold lettering is widespread in this churchyard and it would be artificial and unjust to decline to approve Mr. Wright's preference for such lettering in this case. It is correct that there are only a small number of memorials of polished red granite in the churchyard of All Saints but there are some such memorials, including the memorial on the plot next to Mrs. Wright's grave. Moreover, the churchyard contains memorials of a variety of types of stone with the predominance appearing from the photographs to be polished black granite. In those circumstances the use of polished red granite for this memorial will be neither unsightly nor jarring. It will be readily apparent that the memorial is of a different kind of stone from most of those in the churchyard but it will not be the only memorial of such stone and will not cause the loss of an otherwise harmonious appearance.
- 15) In those circumstances Mr. Wright has established a good case for the proposed memorial and a faculty will issue as sought.

STEPHEN EYRE

HIS HONOUR JUDGE EYRE QC

CHANCELLOR

22nd February 2021