

ECCLESHALL: HOLY TRINITY

JUDGMENT

- 1) The church of The Holy Trinity in Eccleshall is an important Grade I listed church. Pevsner describes it as "*one of the most perfect C13 churches in Staffordshire*". The church building is surrounded by a churchyard which is approximately 11,000m² in area. The churchyard contains a large number of memorials and some substantial trees. There is currently an Area for the Burial of Cremated Remains ("ABCR") along the eastern wall of the northern part of the churchyard. This is approaching its capacity and there is a need to establish a new area.
- 2) There are three paths in the churchyard. One runs from the parish room to the main door of the church. It has recently been relaid with natural stone paving pursuant to a faculty granted on 4th April 2011. The other two paths both run from the lych gate in the south-east corner of the churchyard. One of these is paved and also runs to the main door of the church. The other, "the Bishop's Path", runs north from the lych gate to the chancel door. At some time in the past a surface of pebbles has been laid on the Bishop's Path but the pebbles have now been rather worn away and grass has grown through the path.
- 3) All those who have made representations in this case are agreed that it is appropriate for the Bishop's Path to be relaid in some form and for its surrounds to become a new ABCR. There are two issues. First, whether those whose remains are interred in that area should be commemorated by memorial plaques laid alongside the path at the points of interment. Second, whether the relaying of the path should take the form of grassing or the laying of slabs with the latter being seen as a corollary of the individual marker proposal. For the reasons set out below I have concluded that the proposed individual memorials and the associated

paving are not appropriate and I refuse the amended petition to that extent.

The Petition and its Procedural History.

- 4) The Petition is brought by the Vicar and churchwardens of Holy Trinity. It has had a long and complicated history. In part this is due to the commendable efforts the Petitioners have made to achieve the best solution. The Petitioners and the PCC have taken care to discover the needs and wishes of the people of Eccleshall and then to bring forward proposals of quality to address those needs.
- 5) The Petition was dated 10th January 2011. At that stage what was envisaged was the landscaping of the Bishop's Path by removal of the pebbles and reseeded to create a grassed central path surrounded by gently sloping grass banks. The remains were to be interred directly into the banks at the side of the path with "*no individual tablets or other plot markers*". Instead of individual memorials on the ground there was to be a central memorial. This was to bear words from John 14.6 "*I am the way, the truth, and the life*". The names of those whose remains were in the ABCR were to be entered in the memorial book in the church. On 10th February 2011 the Diocesan Advisory Committee recommended approval of this original proposal.
- 6) However, on 28th February 2011 Mr. Ian Atkinson wrote objecting to the petition. He did not choose to become a party to the proceedings but set out a case for retaining marker plaques. It appears that his letter was a reflection of more general concern in the parish. This concern caused the PCC to reflect on whether it wished to proceed down the "no individual markers" route. This in turn led to a request that this aspect of the matter be covered by a Liberty to Apply.
- 7) On 4th April 2011 on the direction of the Deputy Chancellor a faculty was granted authorising the widening and relaying of the path from the parish room to the church; the closing of the existing ABCR; the tidying of that area; and the designation in principle of the proposed new area as an

ABCR. It also provided Liberty to Apply "*in respect of the design and management of the new [ABCR] including ... the introduction of any central monument and the procedure for recording the names of the remains buried there and any memorials after mediation and re-discussion within the parish*". The wording of the Liberty to Apply was an expansion of the Deputy Chancellor's direction saying in respect of the third element of the petition (ie the new ABCR) "*outline permission granted with liberty to apply after mediation and re-discussion.*"

- 8) There then followed consultation with parishioners. There does not appear to have been any formal process of mediation. However, that consultation has led the PCC, through the Petitioners, to put forward a markedly different proposal. This provides for the Bishop's Path to be relaid in natural stone (of the same kind as the path running from the Parish Room) with a gravel strip running alongside it. Cremated remains are to be interred into the gravel strip and individual markers to be placed alongside the path at the sites of the interment of cremated remains. The markers are to take the form of engraved York Stone plaques. The plaques are to be 12" square laid horizontally and spaced at 2" intervals with the gaps between them filled with grey pea-gravel. Each plaque would bear the name and the years of birth and death of the person commemorated. In the course of time the gravel strips would be filled with the markers. There would be space for 101 interments on each side of the path and it is estimated that this would provide capacity for the next twenty years or so. The Petitioners say that there would then be an opportunity to consider a more general reordering of the churchyard. There would be no central monument but at the end of the path nearer to the church there would be a bench and a flower bed to provide visitors with "*a place of reflection near the burial plots*".
- 9) There was some debate as to whether this revised proposal fell within the scope of the Liberty to Apply. This was resolved by my ruling of 3rd July 2012 whereby I directed that a new petition was not required and gave directions for the obtaining of comment on the revised proposals.

- 10) All concerned have expressed themselves satisfied with this procedure and have consented to the matter being determined on written representations.
- 11) Mr. Atkinson has written to the Vicar supporting the revised proposal and I have been provided with a copy of his letter. In addition there has been a fresh public notice. This has elicited no objections. There are no formal parties opponent although as will be seen there are opposing views to which I will have to give weight.
- 12) I am satisfied that this is a matter which can properly be determined on written representations. I am assisted by the sundry photographs and plans supplied by the Petitioners and I have made an unaccompanied site visit on which I viewed the Bishop's Path and the churchyard as a whole.

The Competing Submissions.

- 13) The Petitioners' representations are set out in a series of letters (1st December 2011, 30th May 2012, and 12th July 2012) from Revd James Graham, the Vicar of Eccleshall. The key points are as follows.
- a) First, considerable emphasis is laid on the pastoral needs of those whose family members' remains are to be interred in the new ABCR. Mr. Graham makes the point that the original proposal which made no provision for individual commemoration at the point of interment resulted in marked local concern. The consultation exercise which was undertaken showed a clear majority preference for such individual commemoration. Mr. Graham says (as is clearly correct) that "*the provision of a suitable ABCR should be seen as part of the parish church's pastoral care of the bereaved*" and so of the Church's mission. The identification of individuals by name is a reminder of the preservation of that person's identity and the retention of a separate plot for each individual is "*a reminder of God's love for each individual*". Although the Petitioners rely on the message which will be proclaimed by individual commemoration it is apparent that the key factor which has caused their change of plan is their assessment of the needs of the

bereaved. The current proposal is brought forward because it is believed that the pastoral needs of the bereaved will best be addressed through individual commemoration of the departed providing "*a focal point for recalling and celebrating the life of a relative or friend*".

- b) The Petitioners are conscious that collections of individual plaques can become untidy and unsightly through the accretion of flowers and other objects at the individual plots. They propose addressing this by making it a condition of interment in the plots that no objects should be placed on the individual markers.
 - c) The Petitioners contend that the relaid path will add to and not detract from the appearance of the churchyard. They point out that the churchyard is large and could absorb another paved path. The Petitioners lay emphasis on the quality and order which will be applied to the path and its surrounds. On their behalf Mr. Graham says "*the resultant affect will be well-structured and beautiful. The eye will be drawn from lych gate to chancel door via a path that has come to be properly surfaced and cared for.*"
 - d) In commenting on the views of the Diocesan Advisory Committee the Petitioners make the point that it would be neither possible nor desirable to impose a rigid template on every churchyard. They say that account needs to be taken of the particular needs and circumstances of each churchyard.
- 14) Although I have not received individual representations from parishioners I accept the assessment made by the Petitioners after the PCC's consultation exercise that the predominant preference of parishioners is for some form of individual commemoration at the point of interment.
- 15) The Society for the Protection of Ancient Buildings has commented on the revised proposal. It has no objection to this proposal but did suggest that the same font, size, and style of lettering should be used on all the memorial plaques.

- 16) I have already said that the Diocesan Advisory Committee supported the original proposal. It does not, however, support the current proposal. This is because of its support for the draft policy on ABCRs proposed by the archdeacons as mentioned below which recommends that there should not be individual memorials at the points of interment. The DAC explains that the rationale for this is that the use of individual markers causes the area in question to be used up in a finite period. In addition it says that a collection of individual memorial stones can be unsightly "*creating a hard 'tiled' surface to the graveyard*".
- 17) The Archdeacon of Stoke (Revd Godfrey Stone) has provided detailed comments on the revised proposal setting out his reasons for opposing it. Those reasons can be set under three heads.
- a) First, he contends that while the original proposal would have enhanced the appearance of this part of the churchyard the revised proposal would be likely to detract from it. The Archdeacon makes the point that the Bishop's Path is "*one of the few parts of this 'busy' churchyard currently free from memorials*". My site visit confirming the accuracy of this observation though I note that there are memorials on either side of the path. He goes on to say that it could be felt that there are "*already too many gravestones*" in this churchyard. The addition of a paved path with memorial markers running alongside it would harm the appearance of the churchyard by adding to the perception of crowding and by removing a strip which is otherwise free of memorials. Conversely, the Archdeacon says, the renewal of the Bishop's Path as a grassy path would enhance the churchyard's appearance.
- b) Second, there is a related concern as to sterilisation of the churchyard in the sense that the paving of the path and the laying of memorial plaques will prevent reuse of the ground for future interments. Conversely the absence of plaques would facilitate reuse of the ground with the scope for the area to provide a capacity for the interment of cremated remains potentially for many decades into the future.

c) Finally, the Archdeacon addresses the pastoral and theological issues involved here. He makes the point that *"theologically a churchyard provides a place where loved ones can be laid to rest, gathered with others around Our Lord as he is worshipped daily and weekly in this church"*. The Archdeacon refers to the Christian belief that the departed are laid to rest by seemly disposal of their mortal remains and by committing them into the care of our Heavenly Father. He indicates that the pastoral needs of the bereaved are likely to be best addressed by helping them to accept this belief and to trust God for the well-being of the departed. A corporate memorial can contribute to this objective whereas conversely there is a risk that a sense of ownership can develop around an individual burial plot and this can detract from acceptance that the departed has been committed into the care of God.

18) Mr. Alan Taylor has provided comments on behalf of English Heritage. English Heritage has not become a formal objector to the revised proposal but it does oppose it. Mr. Taylor supports the views expressed by the Diocesan Advisory Committee and by Archdeacon Stone. He adds the view of English Heritage that *"siting memorial slabs along this path would have a seriously harmful impact on the setting of the Grade I listed church and its position in the Eccleshall Conservation Area."*

The Applicable Principles.

19) In determining this case I have to have regard to a number of principles.

20) The first is to have regard to the nature and purpose of the churchyard. 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 can also fulfil important spiritual rôles and can be a powerful part of the Church's witness to the world. 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. The circumstances of interment and the memorials

in a churchyard can be powerful evidence of the Church's love for the local community. Churchyards are places of solace and relief for those who mourn. In addition 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. Churchyards are also an important part of our national and local heritage. The Church's care for them is part of its work of stewardship of our environment and heritage. It follows that the Court must be satisfied that what is placed in a churchyard is appropriate and fitting and that it is appropriate and fitting not just for today but for the future.

21) In this case the churchyard with which I am concerned is the setting for a church which is an important Grade I listed building. It follows that the Court must have particular regard to the impact of the proposals on the significance and appearance of that building. The approach laid down by the Court of Arches in *Duffield: St. Alkmund* is relevant here. For practical purposes and in most cases there will be a difference between the impact resulting from the alteration of a churchyard and that caused by an alteration of a church building itself. Nonetheless, the same general approach remains applicable where a churchyard provides the setting for a significant listed building (and it will of course as the curtilage of the church fall within the listing). In short if there is a proposal which will adversely affect the appearance, significance, or character of a listed building the Court must consider carefully whether the benefit to be obtained is such as to justify the serious step of permitting such an adverse impact.

22) In addition I have to have regard to the pastoral needs of the bereaved. As I have already indicated providing comfort to the bereaved is an important part of the Church's mission. That comfort is, in part, provided by ensuring that the resting places of the mortal remains of their loved ones are seemly and that there is provision for appropriate memorials. However, I have already summarised the differing views expressed by the Revd James Graham and by Archdeacon Stone in the context of this petition. It

will be apparent from these that there is ample scope for a difference of opinion as to the best way of meeting those pastoral needs.

- 23) Are there any principles which should govern my approach with reference to ABCRs in particular? The current Lichfield Churchyard Regulations (Guidelines for the Management of Churchyards) date from 2007 and deal only in brief terms with the form which ABCRs should take. Those regulations appear to envisage there being individual memorials in such areas but they do not expressly consider the contrast between individual memorials and collective commemoration in such areas. At the time of writing this judgment I am in the process of consulting throughout the Diocese as to revision of the Churchyard Regulations and new Regulations will be promulgated in due course. However, that exercise may take some time and the Petitioners and the people of Eccleshall desire and are entitled to an answer before that exercise ends.
- 24) In the period before my appointment the four archdeacons serving the Diocese combined to produce and circulate a draft policy in respect of ABCRs (based on the approach adopted in the Diocese of Carlisle). That document strongly supports collective memorials and says that new ABCRs should not contain individual markers. The document explains the principal reason for this policy as that *"the present practice [of individual markers] if continued unchecked will result in increasingly larger areas which are paved with memorial stones limiting the number of burial of ashes for subsequent generations."* Clearly that draft policy is not binding on me. Nonetheless, it does have very considerable persuasive force representing as it does the collective considered opinion of the archdeacons of the Diocese.
- 25) Chapter 7 of the Churchyards Handbook (4th Edition) sets out the real problems which can result from the use of individual memorials at the point of interment in ABCRs. While acknowledging the force of those problems the Handbook does not suggest that such memorials can never be appropriate.

- 26) I will set out my assessment of the approach to be taken with regard to ABCRs though I repeat that I am currently engaged in consulting throughout the Diocese in that regard. I intend that consultation to be a genuine exercise and accordingly it may bring to light considerations which change my assessment of the approach to be taken.
- 27) The starting point is that there can be no fixed or unalterable rule. Each churchyard is different and each petition seeking a faculty for a new ABCR will have to be considered on its merits in the light of the particular circumstances of the churchyard in question. Even though there can be no fixed rule there are powerful considerations which militate against allowing individual memorials at the points of interment in ABCRs. It seems to me that there are three such considerations.
- 28) First, such memorials can operate as a substantial restriction on the capacity of an ABCR. The placing of a memorial in the form of a plaque covering part of the surface of an ABCR precludes the reuse of the area under that surface and, such memorials being of materials which will last for very many years, precludes that reuse for a long period. There is accordingly a risk of there being "once and once only" use of each part of the land in an ABCR restricting the area available for the interment of the remains in the future.
- 29) A related factor is the risk as mentioned by the Diocesan Advisory Committee and as indicated in the archdeacons' document of creating a paved area whose appearance will detract from the setting of a churchyard. This risk is present in ABCRs to a greater extent than with interments in traditional graves because of the closer spacing of interments in ABCRs.
- 30) Finally there are theological and pastoral considerations. As is stated by the Archdeacon of Stoke the Christian understanding of interment is that it is an act of seemly disposal of mortal remains and committing once and for all time the deceased into the care of God. This understanding has been repeatedly confirmed by the Court of Arches and Consistory Courts

throughout the land underlying, as it does, the approach of the courts to applications for exhumation. There is very considerable force in the view that the pastoral needs of the bereaved are best met by bringing about an understanding and acceptance of that belief and that this is assisted by a collective memorial. However, I am conscious that this is a matter on which views differ (as is apparent in this case) and where the Court should be reluctant to impose a particular view. It is clear that the Court cannot ignore the real benefit which those who are bereaved can derive from having a focus for their memories of the departed. A well-designed ABCR should seek to provide such a focus. If there is a collective memorial and no individual memorials at the sites of interment then it will normally be appropriate to record the names of those interred at some point in the ABCR. I am not convinced that the pastoral needs of the bereaved can only be met by individual memorials at the points of interment but some way should be found of identifying a place where the names of those interred are to be recorded.

- 31) Those powerful considerations operate in favour of ABCRs which do not have individual memorials at the points of interment and against permitting ABCRs intended to contain such individual memorials. Different considerations might apply to such areas where there are individual memorials at some position other than the points of interment (for example along a wall though such arrangements are not free from difficulty). However, I repeat that each churchyard will be different and that a balancing exercise will be needed in each case. It is accordingly possible that in an appropriate case it will be right to grant a faculty for an ABCR containing individual memorials marking the points of interment but for that to be so there will normally have to be special factors outweighing the disadvantages inherent in the use of individual memorials.

Conclusion.

- 32) What is the position in this case? In the light of the foregoing principles is the course proposed by the Petitioners appropriate?

33) The Petitioners have taken considerable care to discover the views of the people of Eccleshall and to address their needs. They have also taken care to address the concerns about the adverse consequences of individual memorials at the sites of interment in ABCRs. I must give real weight to those steps and to the Petitioners' assessment of the pastoral needs which are to be met. As to the latter, however, I have already explained that Archdeacon Stone's analysis shows that it is possible to take a different view as to the pastoral needs and as to how they are to be met.

34) I must also give real weight to the considered views of English Heritage, the Diocesan Advisory Committee, and the Archdeacon of Stoke. That weight must be given to those views both with regard to the desirability or otherwise of individual memorials and as to the impact on the appearance of this churchyard. I note, however, that the support of the Society for the Protection of Ancient Buildings for this proposal shows that a different view can be taken on the question of whether the proposals will have an adverse impact on the appearance of the churchyard.

35) A chancellor must exercise very considerable caution in making his own aesthetic assessment. That is an area where he is unlikely to have expertise in any way comparable to that of the members of the Diocesan Advisory Committee or that available to English Heritage or to an amenity society. Accordingly, I attach only minimal weight to my own assessment. However, I should indicate that the view which I formed on my site visit and from considering the photographs accords with that expressed by English Heritage and the Archdeacon of Stoke namely that the proposed paved path with its associated memorials is likely to detract from rather than enhance the appearance of this churchyard. It is a churchyard where open space is at a premium and where to create an additional paved area will be likely to add to the impression of crowding. Certainly the arguments put forward by the Petitioners do not provide me with any basis on which I could reject the considered assessment of English Heritage and the Archdeacon supported as it is by the view of the Diocesan Advisory

Committee (albeit that Committee placed less weight on this aspect of the matter). I must, therefore, conclude that at the very lowest there is a real prospect that an ABCR consisting of a paved path with plaques alongside it would detract from the appearance of the churchyard and from the setting of this Grade 1 church.

36) Will a benefit flow from the proposed works which is sufficient to outweigh that potential harm? The assessment of the benefit which might flow from the proposed ABCR is to be seen in the light of the principles set out above. Thus there are real disadvantages inherent in the use of individual memorials at the point of interment. Moreover, there is real scope for debate as to the best approach pastorally. The balancing exercise here is not an easy one. This is because of the very real weight which is to be given to the assessment made by the Petitioners as Vicar and churchwardens of the pastoral needs of the people of Eccleshall based as it was on careful thought and consultation. However, even after giving due weight to that assessment I must conclude that the proposed ABCR is not the only way to meet those needs and that it is not necessarily the best way of doing so. That being so the potential benefit is not of sufficient weight to outweigh the concerns as to the harm to the appearance of the churchyard coupled as they are with the general disadvantages of an ABCR involving individual memorials at the point of interment.

37) In those circumstances I have concluded that it is not appropriate to permit the proposals for a paved path lined with plaques marking the sites of individual interments. The application in relation to those matters is refused.

38) I regret that this decision will cause further delay in the work to create a suitable ABCR at Holy Trinity. It is clear that all involved agree that the area around the Bishop's Path is a suitable location for a new ABCR. It may assist if I say that subject to hearing further representations a proposal along the lines of that originally approved by the Diocesan Advisory Committee would be likely to obtain rapid approval. I can also say that, again subject to hearing representations, the Court is likely to be

able to approve a collective memorial which in some suitable way records the names and dates of those interred around it in addition to bearing an appropriate quotation from Holy Scripture. I give permission for an application to be made for approval of such a proposal without the issuing of a fresh petition.

STEPHEN EYRE
CHANCELLOR
11th March 2013