

In the Matter of St Peter, Croft-on-Tees

Judgment

1. On 3 September 2015, Mr E F Hodgson issued an Application to introduce a monument into the churchyard of St Peter's, Croft-on-Tees. In fact this was something of a misnomer because a monument had already been erected. The headstone commemorates Ernest Frank Hodgson (1898-1962) and Violet Rhoda (1906-1970) who I take to be Mr Hodgson's parents. What was actually sought was the addition of kerbs and chippings.
2. The priest-in-charge, the Revd Jennifer Lane, declined to give her authority. She could not have done otherwise. Kerbs and chippings are prohibited under the Churchyard Regulations for the former diocese of Ripon and Leeds, issued on 14 April 1989 by the then Chancellor, Judge Simon Grenfell QC which provide as follows in paragraph 4(a)(iv):

'Raised kerbs, railings, paving, plain or coloured chippings, built-in vase containers [...] cameos, portraiture or photographs are not permitted.'
3. Under the current transitional arrangements, Chancellor Grenfell's Regulations remain in force in the area formerly comprised in the diocese of Ripon and Leeds. A new set of Churchyard Regulations are in the process of being drafted and will become effective throughout the entirety of the diocese of West Yorkshire and the Dales bringing a uniformity of approach with effect from 1 January 2016. The drafting of the new Churchyard Regulations has been a lengthy process and has not proceeded as swiftly as I would have wished but I remain hopeful of meeting this deadline. For present purposes, however, I need simply record that the prohibition of kerb stones and chippings will be continued in the new Regulations, as is the case in most dioceses of the Church of England.
4. The Application has been referred to me, which I understand has been the practice hitherto. I take no point on this but indicate that for the future I would expect requests for the introduction of memorials which are not permitted by the Churchyard Regulations to be the subject of a petition for a faculty.
5. When I considered the papers on 14 October 2015, I could not determine the matter as there was no reason given for the introduction of kerbs and no material upon which I could exercise my discretion in departing from the prohibition under the Regulations. I allowed Mr Hodgson six weeks to lodge additional information at the

registry indicating that a compelling case would need to be shown. In the event that no further information was lodged, the application would stand dismissed.

6. Within the time prescribed, Mr Hodgson supplied a handwritten letter dated 25 October 2015 together with an undated letter from Mr Lee Patrun of Bambridge Brothers, Monumental Masons. However, I was unable to progress the matter, save by convening a hearing, as Mr Hodgson had not given his written consent under r 13.1 of the Faculty Jurisdiction Rules 2013 for the matter to be determined by written representations. His signed consent dated 10 November 2015 has now been received. This indicates that he does not wish to put any further material before me and asks me to determine the matter 'by way of written representation based in all previous correspondence and documentation already sent in support of the application'. Besides the two letters just referred to, I have seen four colour photographs showing the grave and its immediate vicinity.
7. I understand that Mr Hodgson is in poor health and regret the delay in giving him an answer to his application. But as I hope he understands, the Consistory Court is governed by strict rules of procedure which cannot be circumvented on compassionate grounds.
8. Mr Hodgson adopts the reasoning in Mr Patrun's letter, which I set out below, and adds, in his own words:

'I have looked after the grave since father died in 1962 and mother in 1970. There has always been visits from moles, but not as bad as the past four or five years; this is the first year I have given up; in late January on one visit, there were 9 mole hills on and along side the grave. A family grave next to ours, about the same date 1962, has the kerb set and chippings, and has never had any problems. My late parents were vergers, sexton and caretakers from 1936 until mother's illness in 1969. I do hope that you are able to grant permission for the kerb stones. [And in a postscript:] I have had to re-turf about every 4 years and grass seed every year lightly.'

9. Mr Patrun's letter reads:

'The reason for fitting a kerb stone to the memorial at Croft Church is so lettering can be added to the memorial. Mr Hodgson would like to add his wife's name on one end of the kerb and his brother's and his own in the future.

There is no more room on the existing memorial for his wife's name. Mr Hodgson and his brother would not like to replace the memorial, as it is a family stone that has been in place for many years. Neither would they like to add a block to the stone making it bigger as it looks unsightly and could cause damage when separated from its base.

Mr Hodgson also would like the kerb set placing so it stops the moles from digging up the family grave and causing heartache every time he sees it. Very often he visits the grave and has to replace soil and sort out the ground because of the moles. By adding the kerb set and chippings he believes this will reduce the amount of moles on the family plot or even prevent them from digging through.'

10. I should also observe that the existing memorial appears from the photographs to be of honed granite which is prohibited under paragraph 4(b)(iii) of the 1989 Churchyard Regulations. Whilst it may be that the headstone was erected prior to these Regulations coming into force, I consider it probable that they merely repeated an existing prohibition. I have no information as to whether a previous incumbent may have purported to give permission for its erection. It is clear from the photographs that the memorial looks out of keeping with other headstones in the immediate vicinity. Nothing in this Judgment should be taken as condoning or approving of the presence of the existing memorial.
11. In cases such as these, the burden of proof lies on the applicant to satisfy the court that it would be right for a faculty to issue permitting the introduction of kerbs and chippings. There seem to be three principal grounds relied on: (i) that the kerbs would provide a suitable means of memorialising Mr Hodgson's late wife, Joyce, who died in 2005 and whose body or cremated remains, I assume, were interred in the plot. They would also, in due course, record the interment of Mr Hodgson and his brother; (ii) that chippings secured by kerbs would eliminate or minimise invasive damage from moles; (iii) that there is a precedent for kerbs and chippings on neighbouring graves and fairness should allow them on this grave too. I will take each in turn.
12. Although kerbs could be used to record the names and dates of others who have been buried in the grave, this is not a common practice. As Mr Patrun notes, there are other options available which include replacing the existing memorial for a larger one with space for additional names or adding a further stone. Replacement, would allow for a memorial to be introduced which was of a material which complied with the Regulations and was more in keeping with the churchyard. I note that Mr Hodgson is not minded to introduce a replacement stone, for the understandable reason that the existing one has been there for some time. There is doubtless a strong sentimental attachment to the stone but Mr Hodgson is not without alternatives.
13. Moles are a nuisance in consecrated land just as much as in domestic gardens. It may be that the PCC could consider whether there are steps it can take to ameliorate the problem. I fully understand that mole hills and earth movements resulting from tunnelling are unsightly and distressing and add significantly to the burden of care and maintenance. However, I am not persuaded that this naturally occurring phenomenon is a proper or sufficient justification for a departure from Regulations of general application.

14. The question of precedent and equal treatment is more troubling and more complex. Clearly as a general rule people should be treated the same and rights given to one should be given to all. However, one of the problems for Consistory Courts throughout the Church of England is laxity in the enforcement of Churchyard Regulations. If one incumbent adopts a relaxed attitude it creates enormous difficulty for his or her successor. Unlawful activity by others in the past ought not to become a justification for a wholesale disregard of the rules for the current generation. Indeed, there is an argument for removing the existing memorial as it may lead others in the parish, or indeed the diocese, to claim that they too are entitled to honed granite headstones. I do not consider that the presence of kerbs elsewhere in this churchyard is a sufficient justification for acceding to Mr Hodgson's application.
15. Although the Application states that the proposed kerbs would be of dark grey granite, presumably to match the memorial, I understand that Mr Hodgson would be agreeable to them being of sandstone. Whilst I acknowledge his willingness to compromise, I do not consider that using a more appropriate material would make any difference to the outcome of the Application. The countervailing considerations are ones of substance, and cannot be overcome by amending the type of stone. In any event, it would lead to an unsightly juxtaposition of incompatible stones.
16. I have considerable sympathy for Mr Hodgson. He is an elderly man and not in the best of health. He has cared for the grave of his parents and takes solace from knowing that there is a family grave where he and his brother will eventually be buried and where, I assume, his late wife also lies. He wishes that the family grave is properly marked and protected from the unsightly visitation of moles. He has advanced his arguments with great dignity. However, I very much regret that I am not persuaded that the reasons he gives, whether individually or cumulatively, are sufficient to justify a departure from a central tenet of the Churchyard Regulations. Having regard to all the circumstances of the case and for the reasons given herein this Application must be refused.
17. I conclude by adding, although it may not be of any comfort to Mr Hodgson, that I would look favourably upon a petition from him to introduce a replacement memorial of larger size than would ordinarily be permitted such as to have space to record all the names he wishes and I would endeavour to be as accommodating as possible in terms of design and material. In addition I would waive all court fees in respect of any such future petition. He may now wish to give this alternative further consideration in the light of my ruling.

The Worshipful Mark Hill QC
Chancellor

24 November 2015