

**IN THE CONSISTORY COURT OF
THE DIOCESE OF OXFORD**

15th March 2019

Before:

**THE REVEREND AND WORSHIPFUL ALEXANDER McGREGOR,
CHANCELLOR**

In the matter of :

**The Petition of Claire Coles,
Re St Denys, Stanford in the Vale**

Between:

(1) Claire Coles

Petitioner

– and –

(1) The Reverend Paul Eddy

(2) Margaret Williams

(3) Nigel Archer

Parties Opponent

Determined on consideration of written representations

JUDGMENT

The Chancellor:

1. This is a petition by Claire Coles to re-locate the headstone at the grave of her son, Tom, by a small distance sideways. Mrs Coles wishes to relocate the headstone so that it is aligned with what she believes to be the centre of the head of Tom's grave. It is her case the headstone was incorrectly positioned by the stone mason, with the result that the stone is off-centre, being aligned towards one side of the head of Tom's grave.
2. The petition is opposed by the Vicar and churchwardens. It is their case that the headstone was, as agreed with Mrs Coles, aligned with the headstones of the graves in the rows behind Tom's grave. The parties opponent raise four main grounds of objection to the headstone being re-aligned in the way Mrs Coles wishes.
3. First, they say that re-aligning the headstone would make it stand out against others in the churchyard with which it is in line. Secondly, headstones are aligned with those in rows beyond them "for dignity, and creating an orderly environment" and Tom's headstone is aligned with those behind it for several rows. Thirdly – their principal objection – that Mrs Coles agreed in writing to the headstone being aligned in that way and the vicar is not agreeable to its being re-aligned, contrary to the agreement. Fourthly, that allowing the petition would be seen as creating a precedent.
4. The parties have agreed to the petition being determined upon consideration of written representations. I have accordingly considered the written representations the petitioner and the parties opponent have submitted in accordance with directions. I have also considered the photographs submitted by the petitioner with her written statement.
5. More detail as to the third objection of the parties opponent is given in their written statement. The Vicar states that he inserted additional text in the standard document for authorising monuments in the churchyard under his delegated authority as follows:

“Before installation, ALL curbing to existing grave be moved and coloured pebbles removed and sunken ground laid flat to grass. Plus, the headstone to be in LINE with those behind as the curbing currently is not in line and was only permitted as a temporary, pastoral measure until Headstone.”

The reference to curbing is to curbing which Mrs Coles and her husband began to introduce without permission but for which the Vicar then gave permission on the understanding that it must be removed after six months when the headstone was erected. (The Vicar did not, of course, have authority to authorise the curbing even on a temporary basis under the diocesan churchyard regulations. While I understand that he acted out of the best pastoral motives, I trust that he will not depart from the regulations in that way in the future.)

6. The Vicar says that this additional stipulation was already known to Mrs Coles and her husband from previous conversations and that the document containing it was conveyed to them and to the stone mason by the funeral directors.
7. I have not seen a copy of this document and would normally have made further directions for its production. However, Mrs Coles in her detailed statement in

response to that submitted by the parties opponent does not deny what the Vicar has said about this document or about its content (that is despite the fact that she lists a number of what she says are inaccuracies in the objections). Indeed she implicitly admits what the Vicar says about the stipulation he imposed as to the alignment of the headstone, saying “I agreed to the regulations but interpreted the alignment as being horizontal rather than a vertical alignment due to there being no apparent uniformity within the Graveyard.” That being so, what the Vicar says about the document authorising the headstone and the stipulation contained in it is not contested by Mrs Coles and it is appropriate to proceed to determine the petition without requiring the document to be produced.

8. It is not easy to see how the Vicar’s stipulation as to the headstone being in line with those behind it could reasonably be interpreted as meaning that it would be aligned with those beside it. But even giving Mrs Coles the benefit of the doubt about that, the mistake was hers, not the Vicar’s, and the fact is that she did agree that the headstone be introduced as stipulated by the Vicar.
9. So far as the law is concerned, nobody has a *right* to introduce a headstone in a churchyard. A headstone may be introduced under the authority of a faculty. Additionally, the incumbent has a *discretion* whether to allow monuments to be introduced under authority delegated from the chancellor under the diocesan churchyard regulations provided that they comply with the requirements in the regulations.
10. The Oxford diocesan churchyard regulations provide, “A monument may be introduced only at the place where the body of the person to be commemorated by the monument is buried.” The words “at the place” have their ordinary meaning and accordingly allow the incumbent a certain degree of latitude, in the exercise of the discretion under the churchyard regulations, as to the precise location at which he or she permits a particular monument to be positioned.
11. Therefore, even allowing for a misunderstanding on the part of Mrs Coles as to the meaning of the Vicar’s stipulation about the alignment of the headstone, I am satisfied from the material before me that it was nevertheless located in the position in respect of which the Vicar gave permission in accordance with the churchyard regulations.
12. Mrs Coles argues that allowing her petition would correct the position of Tom’s headstone “to mark where he is buried and therefore identify the boundaries around his grave”. So far as marking where Tom is buried, the headstone achieves that in its current alignment. As to identifying the boundaries of his grave, that is not the purpose of a headstone and in any event it is apparent from the parties respective submission that the precise boundaries of Tom’s grave are not agreed. On the evidence that has been adduced the court is not in a position to ascertain them.
13. Mrs Coles is concerned that as space in the churchyard reduces, the land in between existing graves may be used a burial plots, and as a result there will be a risk that Tom’s body is uncovered and disturbed. In the absence of evidence to the contrary, the court will presume that the statutory requirements relating to the burial register and associated churchyard plan are complied with. I do not consider that there is any

real risk of Tom's body being accidentally disturbed to accommodate future burials in the churchyard.

14. So far as the objections raised by the parties opponent are concerned, I do not consider that their first objection – that re-aligning the headstone would make it stand out against others in the churchyard – is particular weighty. From a consideration of the photographs, I do not consider that it would stand out in an unacceptable way.
15. I consider that the second objection – headstones are aligned with those in rows beyond them “for dignity, and creating an orderly environment” – is a significant matter. A parish is entitled to maintain a certain standard of uniformity and order in a churchyard; and an incumbent is entitled to determine how that should be achieved in terms of the alignment of monuments. Tom's headstone is aligned with the headstones in the rows behind it. I consider that it is legitimate for the incumbent to require monuments to be aligned in that way as he says “for dignity, and creating an orderly environment”.
16. The third objection – that the headstone is aligned in the manner stipulated by the Vicar and agreed by Mrs Coles – also carries significant weight. Even if Mrs Coles misunderstood the stipulation, that is not the Vicar's fault. And as I have already found, he is entitled to require such uniformity of alignment of monuments as he thinks fit, within the parameters of the churchyard regulations.
17. I do not consider that the fourth ground of objection – that allowing the petition would create a precedent – carries a great deal of weight. I can see that allowing Tom's headstone to be re-aligned in the way proposed could result in other parishioners seeking to align monuments in a different way from that which the Vicar is willing to approve. But, as the Vicar recognises, each case falls to be considered on its merits and at least so far as the law is concerned, a decision on the facts of one case is not determinative of other cases with different facts.
18. The court has a discretion whether to grant the faculty sought by Mrs Coles to re-align Tom's headstone. The onus is on Mrs Coles, as the petitioner, to persuade the court that it should do so. In the light of what I have said above about the parties' respective cases, I find that Mrs Coles has not discharged that burden. I have not found her case as to boundaries and the risk of disturbance of the grave to be made out. I have found that there is significant weight in two of the grounds of objection. Accordingly I do not allow the petition.