

**Neutral Citation Number: [2019] ECC Der 4**

**In the Consistory Court of the Diocese of Derby**

**Re St. Paul Quarndon**

**In the Matter of the grave of Jack and Maria Maier, and the petition of Anita Bexon, their daughter.**

### **JUDGMENT**

- 1) The petitioner seeks permission, with the support of Mr and Mrs Maier's other children, to remove the existing headstone erected in memory of their father, who died in 1999, and erect a replacement in black granite in memory of both the parents, her mother having died in late 2018. The request has been discussed by the Parochial Church Council, who have declined to give their approval.
- 2) I saw the papers in early August, and asked for clarification of some matters, and also asked that the petitioner and parish priest/PCC would make clear that they consented to my dealing with the matter simply on the documents. I also invited them to submit any further information that they wished, and asked that they would come back to me by a date in August. This was subsequently varied (for a number of reasons), to a date in September. In the result, Rev. Rebecca Mathew completed a Form 5, and she has also made clear that she wants me to take her letter of objection into account in reaching a decision, rather than becoming a party opponent or having a hearing. She has also provided a further letter dated 12th September 2019, giving some further information and seeking to answer a number of questions I had posed. Mrs Bexon has also indicated in writing she agrees to my making a decision on the documents.
- 3) There is no doubt the Diocesan Churchyard Regulations of 1990 forbid the use of black granite in the churchyards within the diocese of Derby. It is however an easily observable fact that very many churchyards do contain some memorials of that kind, many introduced since that date (as in the case of this churchyard), some churchyards with one or two such memorials, others with at least a generous number, and yet others with row upon row. Here at Quarndon, there are some, a fact relied on by the petitioner in support of her request. How has this arisen, and what is the effect of the Regulations? Are they simply out of date, and no longer of any use?
- 4) To answer these questions, I need to take a step back and try and explain a number of points, because otherwise the whole thing seems to have no rhyme or reason. A churchyard of the Church of England in any particular parish, is consecrated (i.e. set aside and blessed by the Bishop) to receive the mortal remains of the departed. It is 'owned' by the Church, usually the incumbent of the parish, and that remains the position even after a burial has taken place in a particular plot. It cannot be sold, save in unusual circumstances, that do not apply here. It remains under the ownership of the Church and the PCC has continuing responsibilities of maintenance.
- 5) It was originally for the use of the parishioners, but that category has been enlarged to include those whose names are on the electoral roll, which is essentially open to those who attend the church although living outside the parish boundaries. It is the nearest the Church of England has to a membership roll, not in the sense of recording the names of members of the Church, or Christ's Body, which is effected sacramentally through baptism, but for those who want, or may want, to engage in the political life of the local church, by voting for members of, or being themselves, on the PCC, or in other ways. The churchyard is also open to receive the remains of anyone who dies within the parish, either through illness or accident, without being in either of the other two categories. Also the parish priest may agree to bury or inter the remains of anyone else in his or her discretion, subject only to any general directions the PCC has issued in the matter. There is only a finite amount of space available, and there may come a time when the churchyard is formally closed to further burials. Any right of burial then becomes largely meaningless.
- 6) Burial space in very many places is already at a premium, especially in towns and cities, but also in many villages and hamlets, and any remaining plots are a carefully marshalled resource. It is very important to many people that they can be buried in this special ground, usually surrounding the church in which they have worshipped, or with which they have strong personal or family connections, through baptism or marriage, or having gone to school in the village, or something similar, or where many of their relatives or friends have received the sacraments of the Church, or have been laid to rest. Thus a churchyard is not a place where 'all-comers' may require to be buried. A 'proper' right of burial is

important and valued. (Obviously, any 'right of burial' can only be exercised on behalf of the deceased, by family or the personal representatives, but the sort of expression I have used is commonplace.)

- 7) Although, as I have explained, certain individuals have 'a right of burial', THERE IS NO CORRESPONDING RIGHT TO ERECT A MEMORIAL. PERMISSION IS ALWAYS REQUIRED.
- 8) Partly that is to protect the appearance of the church building itself, many of which are buildings of special architectural or historic interest, and thus have been designated as 'listed buildings'. They are part of the nation's built heritage as well as being local centres of worship and mission. Red or coloured granite memorials, or others constructed of 'alien' materials, may look fine in the monumental mason's catalogue, but would not enhance the appearance of ancient buildings constructed in local stone or brick. Also, people's taste and judgment being very varied, the need for permission allows some control on the nature and size of memorials that families may wish to erect, and so protect the appearance of other memorials and graves nearby. Not everyone would welcome a two metre pink plastic angel being erected over the next door plot to where their parents are now buried.
- 9) Most proposed memorials of course do not raise any questions: they are modest in size and shape and general appearance, there is limited decoration, and any inscription is simple and reasonable, and not 'over the top' or otherwise inappropriate for a Christian burial ground. If permission had to be sought in every case, formally, by petitioning the Chancellor of the Diocese and going through the various formalities set out in the Faculty Jurisdiction Rules 2015, the numbers involved would be likely to overwhelm the Chancellor and others involved in the faculty process. It would be quite unnecessary, as most families are quite content with an 'ordinary' and uncontroversial headstone, and a faculty would involve the payment of fees to get the petition into the faculty system, when it is quite unnecessary. It would rightly engender much criticism about expense, and also the delay in obtaining approval.
- 10) For many years past, the forty or so dioceses have therefore had Churchyard Regulations or Directions, formulated or approved by the diocesan Chancellor, usually after consultation with the Archdeacons and Diocesan Advisory Committee. These lay down rules in relation to the types of stone, and sizes and designs of memorials, among other things. (This is not a practice that has been adopted under specific legal authority, such as a Measure approved by the General Synod, but has simply been developed as a useful and helpful way of dealing with a common issue that is faced by grieving families, that is, the need to obtain permission to erect a monument in the churchyard). The Regulations will probably also prohibit various things that once were commonplace, like kerbs or figures, or various designs, like heart shapes or open books or bird baths, and usually prohibit the marking off of the area of the grave by railings or edgings or the use of pebbles or gravel or stone chippings.
- 11) Although the Regulations will vary from diocese to diocese, they have a 'family likeness'. They are intended to apply to all churchyards in the diocese, but the Chancellor may authorise bespoke Regulations for individual churchyards, if that is appropriate. These will then take the place of the diocese-wide ones.
- 12) Let me stress, this is not an exercise in laying down the limits of acceptability or good taste, although any memorial within the parameters laid down will in all probability be uncontroversial. These Regulations exist principally for a different purpose. IF THE PROPOSED MEMORIAL IS WITHIN THE REGULATIONS, THE PARISH PRIEST MAY GIVE PERMISSION FOR THE INTRODUCTION OF THE HEADSTONE. The process is simple and straightforward, it is speedy and, importantly, it does not require fees to be paid. The Chancellor delegates power to the parish clergy to give permission on his or her behalf in those cases.
- 13) HOWEVER IF THE PROPOSED MEMORIAL DOES NOT MEET THE CRITERIA IN THE REGULATIONS, THE CLERGY HAVE NO AUTHORITY TO GIVE PERMISSION. Any purported permission is of no effect. That is not the present case of course. If a family wish to have a memorial that falls outside the Regulations, they may seek a faculty (permission) from the Chancellor. Such a petition starts a legal process subject to the Faculty Jurisdiction Rules 2015, that may result in objections being made, by parishioners, the PCC or clergy, or other interested parties. That is what is happening in this case. The Chancellor may, but may also decline, to give permission. A petition and the payment of fees does not guarantee approval. It is not like applying for a TV licence at the Post Office, where the completed form and requisite fee result in the grant of the licence. If permission is given, the Chancellor is not thereby 'breaking' his or her Regulations, but simply exercising his or her judgment in regard to something where the clergy have no authority to deal with it.
- 14) That is enough of the generalities, so let me get at last to the specifics of this case.
- 15) Mr and Mrs Maier came to this country from Germany after the war. They raised their large family of seven children in Quarndon. Jack died in 1999. The family was refused a black granite memorial at that

time, to their upset, but when Maria died at the end of 2018, and it was necessary to have her details recorded on the grave, the family decided to seek a replacement stone for the original gritstone one, in black granite. That had been Maria's wish over the years, as she in particular had been upset by the earlier refusal. According to the petitioner's note dated 23rd August, this change to the stone had been decided on by the family before their mother died. In mid April the family approached the parish priest, Revd Rebecca Matthew, through one of the sisters, Amanda McBride, to tell her of their wishes (doubtless hoping this would all be straightforward despite the original refusal having regard to the number of other black stones that had been erected), and on 23rd April Anita Bexon met with the stonemason at the churchyard to discuss the details. On 29th April, the incumbent sent an email to Amanda saying a black stone would not be allowed and referring to the Regulations which were in a leaflet in the church porch (of which I have a copy). Anita only saw the relevant part of the leaflet on 3rd May. The parish priest told the family they could apply for a faculty from the Chancellor.

- 16) On 12th September, the parish priest indicated she wanted me to take her original objection into account in reaching a decision, rather than formally becoming a party. The PCC had met that day and obviously had discussed the situation again.
- 17) Apparently the Regulations in the porch had over time become rather 'tatty' and at some point Rebecca typed them up and put them in an 'easy to read' leaflet that she could give out to families for their guidance. She herself had looked up the 1990 diocesan Regulations on the website, just to check what sorts of stones were allowed. She says: 'I assumed that a previous incumbent had discussed and formally approved these Regulations at PCC and that's why they (the 'tatty' copy) were on display'.
- 18) I hope it is clear from what I have previously said that the diocesan Regulations are binding on the clergy, as they have been issued by the Chancellor as part of his responsibilities for the churches and churchyards in the diocese. These are undertaken on behalf of the bishop, to relieve him or her of a time-consuming area of work. The Regulations may be of interest to the members of the PCC but their binding nature does not depend on the PCC's approval or that of the incumbent, or whether they like them or not. They are bound by them whatever their individual feelings may be, for the purposes I have tried to explain.
- 19) The PCC may ask for specific variations to apply to 'their' churchyard, and the Chancellor will consider any reasons they put forward and to what extent he or she can approve the desired changes. The fact they are diocese-wide helps clergy, monumental masons and others, including families wanting to erect a memorial whereas individual Regulations, however desirable in some cases, largely undermine the usefulness of having a general set of Regulations that everyone can become familiar with.
- 20) Mrs Bexon points out that not only were there black granite stones erected, prior to their father's death, the latest in 1995, but others had appeared since then - some 5 in the years between 2004 and 2013. The family assumed there must have been some relaxation of the rules.
- 21) When Rebecca visited the family after Maria died and met all the seven children and their spouses or partners, she does not recall providing a leaflet to them indicating the restrictions that applied, but she knew this was a burial in a grave with a headstone, and she has no note she was told of a desire to change the memorial itself. This was raised after the funeral by Amanda. (I appreciate Rebecca's contacts were with that sister, not the present petitioner.)
- 22) The PCC first discussed the application on 4th July. The relevant minute says : Graveyard Re faculty application by the Maier family for a black polished granite headstone, the PCC agreed the following: We feel obliged to be bound by our policy and note with regret that it may have been breached in the past. Members expressed sympathy towards the Maier family and were aware of the personal reasons for the request.
- 23) I repeat that the Regulations do not contain the PCC's policy, but are binding on the clergy. The PCC cannot decide not to be bound by them, or in this case 'allow' what the family want, although it may be helpful for them to express their views on the matter. The most they can do is seek approval from the Chancellor for a variation of the Regulations, either more strict, or less strict, and seek his or her approval accordingly.
- 24) The original petition included a number of photographs, and a brief but helpful report from the Archdeacon, on behalf of the DAC, (who are always consulted about petitions relating to churches or churchyards under the FJR 2015). I am sure the photographs were taken to demonstrate the number of black stones in the churchyard - why else would they be taken?
- 25) There are a good number, even if not very close to this grave. However, overall they do not stand out as being unusual or one-off, or strange in being different. I do not consider one more will in any way affect the look of the graveyard or the church. The proposed design and size are compatible with the

Regulations. Many of those already there are polished, as this one is intended to be, and the lettering on others is gilded or painted as this will be. The inscription is simple and factual, and in no way unusual or over-done.

- 26) It is apparent that previous incumbents have allowed the erection of these memorials despite the 1990 Regulations. It would in my view be unreasonable to refuse the Maier family request, and would appear quite discriminatory to them and others. THE APPLICATION IS GRANTED AND A BLACK GRANITE HEADSTONE ON A BASE IN ACCORDANCE WITH THE DETAILS SUBMITTED MAY BE ERECTED, SUCH MEMORIAL TO BE ERECTED BEFORE 31st MARCH 2020.
- 27) I realise that this decision is very likely to leave the incumbent and PCC feeling somewhat 'sore' and uncertain as to the next such application that comes along. The diocesan Regulations seem clear, but are not being 'enforced' by the Chancellor. I can only repeat that the parish priest cannot approve such an application on her own authority at the moment, so this application had to come to me. I have to exercise my judgment. It seems to me the proposed headstone is suitable in this churchyard.
- 28) The PCC may wish to seek my approval to allowing the introduction of black granite memorials (not red or blue or other 'odd' colours) with polished surfaces and gilded or painted lettering, simply on the authority of their priest, rather than being obliged to require that such applications come to me. That is, they would seek a relaxation of the current Regulations. The parish priest does not have to approve every such application of course, if unhappy with the proposed size or design or inscription, but this may make her job a little easier than it is now. As we can see in this case, where the Regulations have been frequently ignored, it is in practice almost impossible to maintain the line laid down. It is to be hoped that new Regulations will be introduced soon to make this sort of situation easier for the clergy to deal with.

John W Bullimore  
Chancellor  
27th September 2019