

Neutral Citation Number: [2019] ECC Lei 1

IN THE CONSISTORY COURT OF LEICESTER
IN THE MATTER of BURTON LAZARS, ST JAMES
IN THE MATTER of a FACULTY FOR A HEADSTONE

TERENCE HENRY McNAMEE

Petitioner

CHANCELLOR BLACKETT-ORD

The Feast of Charles, King and Martyr

15 January 2020

JUDGMENT

1. I have before me a Petition for the erection of a memorial headstone to commemorate the late Jean McNamee who was the wife of the Petitioner.
2. The issue raised by the petition is not as to the form of the proposed memorial stone but as to whether a memorial stone should be permitted at all, and if so, when and where.
3. The Parish Church of St James at Burton Lazards is one of a group of churches that together make up the Melton Mowbray Team Parish. The Team Parish has its own church-yard regulations for its various burial grounds, allowed by

faculty. Those regulations do not differ markedly from the Diocesan Regulations.

4. Two of their churchyard regulations are pertinent:

“8. Memorial stones over burials of cremated remains are not permitted ...”

“19. Without faculty permission, the Incumbent (or, if there is none, the Area Dean) may permit the interment of ashes in the burial ground either in an existing grave or in any part of the churchyard that has been authorised by faculty for such a purpose”.

5. The arrangement at St James is that there is a churchyard which is of some historic interest, and adjoining it is a Garden of Remembrance where cremated ashes may be deposited.

6. On general principles, an Incumbent does not permit a memorial stone to be erected where there are no human remains in situ. Under these regulations the Incumbent may allow a stone memorial in traditional form to mark a burial, but may not allow such a stone for cremated remains. Such remains may be buried either in an existing grave or in the Garden of Remembrance, but the burial of cremated remains does not of itself allow a headstone marking those remains.

7. The late Mrs McNamee died on 2 February 2018 and her remains were cremated on 28 February 2018.

8. By Petition dated 28 April 2018, the present Petitioner sought the reservation for himself of a grave space in the churchyard. His petition was in standard form

and on 14 June 2018 I allowed the Petition and the grave space numbered J12 is now reserved for him in the churchyard.

9. By this time he had appreciated that if his wife's cremated remains were to be buried in the churchyard or the Garden of Remembrance, no memorial stone could be put over them under the Incumbent's authority, unless permitted by faculty. Accordingly on 2 June 2018 the present Petition was presented. It was to some degree defective in that

(a) it did not make clear exactly what the Petitioner wanted, and

(b) it contained no statement as to whether the PCC supported the Petition.

10. As to the first of these points we need not be troubled, because it was evidently clear enough to the drafter of the public notice of 10 July 2018 that what was sought was permission, "to erect a memorial on a grave space to commemorate the cremated remains of Jean McNamee."

11. As to the second point, we know that the matter did in fact come before the Melton Mowbray Team Parish PCC for consideration. The minutes of its meeting of 7 June 2018 record that it refused to support the petition by a substantial majority.

12. The Petitioner helpfully wrote to myself and others on 8 July 2018 clarifying what he wanted:

"(i) For my wife's ashes to be interred in the allocated grave-space with a Memorial stone bearing her name. This space and memorial is also for the interment of my bodily remains on my demise

OR

- (ii) As a secondary alternative, for my wife's ashes to be interred in the Garden of Remembrance and the memorial stone with my wife's name to be erected on the allocated grave-space".

13. There was then some delay in the matter, which was certainly not the Petitioner's fault. It was partly as a result of myself being confused between the present petition and its predecessor as to which I had (as I have mentioned) resulted in the grant of a faculty in June 2018.
14. I considered the present Petition in early December 2018, when I gave directions to the effect that
 - (a) I required the Petitioner to consent in writing before 4.00 pm on 11 January 2019 if he agreed that the proceedings might be determined on consideration of written submissions under paragraph 14 Faculty Jurisdiction Rules 2015 rather than at a hearing with oral submissions, and
 - (b) in any event, before the same time and date, the Petitioner should deliver a signed statement stating his reasons why his petition should be allowed notwithstanding that what he proposed did not accord with the churchyard regulations.
15. The Petitioner duly gave his consent and served a statement dated 2 January 2019 reciting the history of the matter and stating that his preferred option was that his wife's remains should be interred in his reserved grave space with the headstone, but his second choice was that the ashes should be interred in the Garden of Remembrance without a headstone, with her headstone standing over

his own reserved grave space. As to this alternative, he added "I offer this option only reluctantly as I am very uncomfortable with the idea of our remains not being buried together". The Petitioner also gave his reasons for his proposal and request. He did so helpfully in five numbered paragraphs:

- "1. I am approaching 84 years of age. I am the last remaining senior member of our respective families. Consequently I am anxious to complete the interment of my wife's remains before any further deterioration in my health or ability to manage my own affairs.
2. Siblings in both families are distributed widely and no-one is local to Melton Mowbray.
3. I have not learned of any local objections to my proposals from parishioners and that they were also supported by the churchwardens.
4. Inclusion of a memorial. I would refer to my letter to the Chancellor of the 8th July 2018 regarding this subject,

A visible and permanent memorial is in my view essential. I would want this to be a sign-post to visit future generations and to re-affirm the physical family bond where their antecedents are laid to rest.
5. I understand that in other areas the re-use of grave-space for cremated remains is being encouraged due to the limitations on space available. Also the purchase of grave-space for cremation burials is also a growing trend in some area of the country."

16. The Consistory Court has power to permit what the Petitioner asks, but it will not do so unless there is good reason why the relevant regulations should be departed from. It could be said that where a parish has elected for its own regulations, its PCC has perhaps given more thought to the specific terms of the regulations than is usual, and the burden upon a petitioner who seeks to depart from the terms of the regulations might be supposed to be rather heavier. But

this is not a matter which I have taken into account in reaching the conclusion below.

17. The law in this field is reasonably plain. As Chancellor Ormondroyd held in Re All Saints, Bransgore (2017) ECC Win 3, the starting point when considering an application for memorials excluded by the churchyard regulations was to refuse permission unless some good reason could be shown for a departure from the stance indicated by the regulations. Similarly, Chancellor Eyre held in Re St Leonard, Birdingbury (2018) ECC Cov 1, that it was fair to those who had chosen memorials that came within the scope of churchyard regulations, to require those that did not do so to show a good reason.
18. With respect to his five reasons, I believe that the Petitioner's submissions can be summarised thus: he wants the memorialisation of his wife to be completed in his own lifetime (or else may never be satisfactorily completed) and he wants to be buried with her and he wants a stone to reflect these facts.
19. I think that the Petitioner would agree with me that under the regulations, the following is already permitted:
 - (a) that his wife's ashes are buried in the Garden of Remembrance and this fact mentioned when a stone is erected over his own grave;
 - (b) that after his own death, his remains are cremated, and buried with her in the Garden of Remembrance, but without a headstone;

- (c) that her ashes are kept unburied until he is dead, at which time her ashes can be buried in his own grave space and at the same time as he is buried there, and the fact commemorated in a single stone.
20. I appreciate that none of this is precisely what the Petitioner wants. But the question is whether his particular desires justify the departure from the regulations that they would involve.
21. In my view, the Petitioner has not made out his case.
22. Although I sympathise with the Petitioner, and understand his intentions and desires, I do not feel that his reasons or justification are strong enough to justify this Court departing from the terms of the churchyard regulations of this parish.
23. Accordingly, I dismiss the Petition.

Mark Blackett-Ord
Chancellor
The Festival of Charles, King and Martyr
30 January 2019