

IN THE CONSISTORY COURT OF THE DIOCESE OF LEICESTER

RE: ST PETER, WYMONDHAM

JUDGMENT

1. This is an Application for a memorial to the late Mrs Teresa Veronica Smith to be erected at her new resting place in St Peter's Churchyard, Wymondham.
2. I grant a faculty subject to conditions.

REASONS

Factual background

3. Mrs Smith passed away in November 2009 and was originally laid to rest in a cemetery in Castleford, West Yorkshire. In 2023, the Ministry of Justice authorised the exhumation and re-burial of the late Mrs Smith in St Peter's Churchyard.
4. This is an unusual Application in that it is not an application for a new memorial to be created and installed. It is an application for the existing memorial (without the original kerbside surrounding) that was erected in West Yorkshire, to be re-erected at the new resting place of St Peter's Churchyard, Wymondham.
5. The existing memorial is of a black polished granite headstone measuring 36"x28"x5.5". The headstone has an oval/rounded top and double-check shoulders. It includes an incised motif of red coloured roses, with green coloured leaves, both on the top left and top right of the headstone. There is a coloured photo plaque of the late Mrs Smith in the top centre of the headstone. At the base of the memorial there is a slope central section measuring 6" at the bottom and 2" at the top in black polished granite. There are three etched images portraying Mary the mother of God, Elvis Presley and Jesus Christ respectively within the base.
6. The Petitioner is Ms Hepworth, the daughter of the late Mrs Smith. Ms Hepworth explains that she contacted fourteen potential churchyards and cemeteries prior to reburial in order to find a place that would permit the erection of her mother's existing headstone memorial. Eleven refused.
7. St Peter's, Wymondham was one of three that said it would allow the existing memorial to be erected. It was because of the difficulties Ms Hepworth had in finding a place to re-site her mother's final resting place that she met with the

Reverend David Cowie, Priest in Charge of St Peter, Wymondham, on three separate occasions. On each occasion she showed pictures of the existing memorial in order to ensure it was permitted. The Reverend provided assurance three times that the memorial would be permitted except for the kerb surrounding which would have to be removed. The Application explains that St Peter's Church was chosen due to the express assurance of the Reverend that the memorial could be erected. Grantham Cemetery had also confirmed that the late Mrs Smith could be settled with the existing memorial erected. In contrast to St Peter's Churchyard, Grantham Cemetery would not require any alteration to the existing memorial.

8. Notwithstanding the position of Grantham Cemetery, Ms Hepworth chose St Peter's, Wymondham as the final resting place, because (in part) the location of the memorial would be close to and facing a bench allowing her elderly father (Mrs Smith's widower) to be able to sit close to his late wife when visiting her. In reliance on the repeated assurances from the Reverend, Ms Hepworth did as follows:
 - i. Re-interred her mother at St Peter's Church as opposed to Grantham Cemetery.
 - ii. Engaged a Stonemason to modify the memorial in order to remove the kerbside element.
 - iii. Paid for the modification to be completed.
9. Ms Hepworth's mother has been interred in St Peter's Church since 4 October 2023. In August 2024, Ms Hepworth was informed that permission was required prior to the memorial being installed.

The Application and Responses

10. By Application dated 3 March 2025, Ms Hepworth applies for the installation of the existing memorial to her late mother with the now removed kerbside surrounding. Ms Hepworth explains that, had she known she required permission, and that a request for permission could be refused, she would have buried her mother in Grantham Cemetery.
11. The Application does not have the support of the PCC. The Application is not recommended by the DAC. There are eighteen objections including from all eight members of the PCC. I have read in detail all the objections and the very well-considered reasons advanced.
12. I have also read with care Ms Hepworth's well-thought through and measured replies. In particular, as a compromise, she asks me to permit the memorial during the lifetime of her father after which point she will erect a new memorial that will comply with the Leicester Diocesan Regulations (hereinafter "**the Regulations**"). Mrs Smith is interred in a double depth grave space with the

intention that Mr Smith will be interred with her upon his time. Mr Smith is 77 years old.

13. None of those who provided objections wished to become party opponents. I am asked to consider the written objections when coming to my decision. I therefore determine this Application on the papers.
14. The PCC decided unanimously not to approve the suggested compromise on the basis it was unknown how long the current memorial would be in situ. There is also a concern it will set a precedent for future families to request memorials contrary to the Regulations. I have read as part of the objections that there have been at least two such requests for memorials outside of the Regulations which have both been declined by the PCC. There is therefore a legitimate and pastoral sensitivity about future applications treating the presence of this memorial as justification for applying for similarly unusual memorials to be permitted. In my view the PCC's reasons for declining to approve the request are well-founded. Nevertheless, I have reached a different conclusion for the reasons I set out below.
15. The DAC does not recommend the proposal. It considered the memorial contained many aspects that were not within the Regulations. Further, the location of the memorial would be very prominent and might therefore be seen to set a precedent. The Archdeacon of Leicester would not object to the memorial provided there was a condition that a replacement should occur upon further interment. Nevertheless, the Archdeacon recognised the DAC's view differed.

Decision

16. The relevant paragraphs of the Regulations are as follows:

- i. Regulation 2

'A new memorial should not overshadow or outshine its neighbours, nor be flashier or larger than them'

- ii. Regulation 15:

'Materials should be of natural stone or a colour, type and texture traditionally used within the locality of the Churchyard.'

- iii. Regulation 16:

'Polished granites... is not allowed.'

iv. Regulation 17:

‘The incorporation of a photograph or ceramic portrait of the deceased [is not permitted].’

v. Regulation 18:

‘Other than the traditional Christian plain cross, no symbols, insignia or motifs such as flowers or things of interest in the life of the person who has died... are permitted.’

vi. Regulation 31:

‘Memorials...may be permitted by the Chancellor in [her] discretion, if a properly completed faculty application is made.’

vii. Regulation 32:

‘The Chancellor... will be influenced by the views of the PCC and the Diocesan Advisory Committee (DAC).’

17. There is no doubt the existing memorial is a significant departure from what is permitted under the Regulations. However, I have regard to **Re St Giles, Exhall [2021] EACC 1** and **St Lawrence, Toot Baldon [2023] ECC Oxf 10** which set out guidance as to the approach to be taken to faculty applications for memorials that do not comply with relevant Churchyard Regulations. The starting point is not a presumption against allowing a memorial outside the parameters of Churchyard Regulations. The starting point is a merit based assessment having regard to fairness, equality and proportionality. As part of this assessment I am to consider, as a relevant factor, the extent of the departure from the Regulations. The only explicit constraint against permitting a faculty is where the proposed memorial is contrary to, or indicative of any departure from, the doctrines of the Church of England in any essential matter.

18. Whilst the burden of proof lies on a petitioner to show why a faculty should be granted, mere non-compliance with regulations cannot be the only basis upon which to refuse a faculty petition. If this were so, a petitioner would never be able to discharge the burden of demonstrating a faculty should be granted where it fails to comply with regulations.

19. In the present case, there are several objections raised in addition to the non-compliance with the Regulations. These are summarised as follows:

- i. St Peter's is a Grade I listed Anglican church from the 13th Century. The proposed memorial is grossly incongruent with the ancient surroundings in which it will be erected.
 - ii. The proposed memorial is in a prominent location where people congregate for wedding photos, funerals and Remembrance services.
 - iii. There is a prominent war memorial within close proximity honouring those who have lost their lives for us. There is therefore a greater importance to maintain the serenity of the church and its churchyard.
 - iv. The churchyard is a shared space of Christian worship and collective remembrance. The presence of a picture of a secular celebrity is disruptive to the calm, reflective and spiritual nature of the grounds.
 - v. The nearby bench is used as a place for solace and quiet contemplation. To have an etched picture of Elvis Presley in view is inappropriate and disrespectful to visitors to the Church who use the bench for moments of reflection.
 - vi. The presence of the proposed memorial may set a precedent for other outrageous designs to be requested.
20. I would have had no hesitation in refusing this Application in light of the well-founded objections set out in summary above. However, I must balance these against the extremely compelling basis of Ms Hepworth's Application. Had this been an Application to install a newly designed memorial into this sacred surrounding, in light of the valid objections, I would find no real difficulty in considering even an assurance from the Priest-in-charge to be unlikely to merit the installation of the proposed memorial.
21. However, the basis of this Application is unique in a number respects. This is a memorial that has been the tribute to Mrs Smith for fourteen years prior to her re-burial. It is therefore a memorial that has been of great comfort and solace to Ms Hepworth, her father and the entire family. Ms Hepworth has clearly a strong attachment to the memorial which is demonstrated by the considerable lengths she went to contact numerous potential churchyards and cemeteries prior to deciding the site for re-interment. She acted quite properly in being transparent with the nature of the existing memorial in order to obtain appropriate approval. She then received what she thought was approval on three separate occasions and relied on it to her detriment in two respects. Firstly, by burying her mother in St Peter's Church instead of Grantham Cemetery and secondly by expending considerable costs to modify the memorial in order to comply with what she had been led to believe had been authorised. Lastly, I consider it important that Mr Smith visits his late wife regularly and asks regularly about the day the memorial will be re-installed. He is not aware of the issues with the installation as Mrs Hepworth is

understandably hoping to relay to him the final position rather than relay the tension that has arisen. He is expecting to see the memorial he has gazed upon and been comforted by since 2009/2010.

22. In **St Chad, Far Headingly [2021] Ecc Lee 3**, Hill QC Ch. granted a faculty due to the petitioner having made out a compelling case and the exceptional pastoral reasons present. In **Re A Churchyard [2018] ECC Lic 5** a faculty was granted due to the assurance given by the incumbent in respect to the memorial. It was held that to refuse a faculty in those circumstances would be unreasonable.

23. I am not bound by these first instance decisions but consider that Ms Hepworth has similarly shown there are compelling reasons for me to permit a faculty but with further modifications and conditions.

Faculty

24. I grant a Faculty for the installation of the memorial to Mrs Teresa Veronica Smith subject to the following:

23.1 The image of Elvis Presley at the base of the memorial must be removed.

23.2 This Faculty is time-limited. It is to be removed upon the first of the following occurring:

a. The passing of Mr Smith;

b. Fifteen years from the date of this Faculty.

23.3 Upon removal it is to be replaced with a memorial that is compliant with the Regulations or any future iteration of the Regulations in force at that time.

23.4 In the event the existing memorial is not removed upon the earlier of the two conditions set out above occurring, the Archdeacons are permitted to take all steps necessary to procure its removal.

24 In respect to the removal of the image of Elvis Presley, this is appropriate and proportionate as its presence is a substantial departure from the purpose of memorials in consecrated Churchyards. I accept that the presence of this secular image is not simply incongruent with the spiritual and traditional setting of a Churchyard but would encourage others to request their own beloved idols and icons to be incorporated into desired memorials. Even if unintended the introduction of secular icons and idols is obviously contrary to Christian doctrine and is not permitted.

- 25 Liberty remains generally for Ms Hepworth and/or someone with appropriate standing to apply for an extension of time for the current memorial to remain longer than 15 years or, in accordance with any Regulations in force, for a replacement memorial that may be outside of the Regulations. Such application will be assessed on its merits and should not be regarded as likely to succeed due to this general liberty to apply.

Conclusion

- 26 I must stress that the permission given in respect to this Faculty is based on the truly unusual and exceptional circumstances of this Application. It should not be regarded as setting any precedent as to the likely outcome of any other proposed memorial contrary to the Regulations. I accept that there will be an unacceptable impact on the Churchyard on a temporary basis as a result of this Faculty. Nevertheless, on this occasion, the exceptional pastoral context and the enduring emotional attachment to the existing memorial outweighs the temporary harm caused by the presence of this memorial. I also took into account there will be no other interments in the vicinity removing the likelihood of a permanent change to the character of the churchyard.
- 27 This case should also not be viewed as authority for the likely outcome of cases where pastoral assurances have been given. It is more likely that, pursuant to the EJA Guidance on Costs issued in November 2024, a person giving such assurances without authority will find themselves the subject of an order to pay the costs of any application, modification or removal of a memorial arising from their unreasonable behaviour in providing erroneous assurances.
- 28 Ms Hepworth has not pursued an application for costs and, on this occasion, I do not make one of my own volition.
- 29 I waive my fee for the writing of this Judgment.

Naomi Gyane

Chancellor of the Diocese of Leicester

18 September 2025