

In the matter of All Saints, Darton
And in the matter of a private petition of Brian Hoyle

Judgment

1. By a petition dated 10 September 2021, Mr Brian Hoyle seeks a faculty for the introduction of kerbs around a family grave where, I am informed, his son is buried.
2. The incumbent does not have delegated authority to permit the introduction of kerbs as they are not included within the categories of items listed in the current Churchyard Regulations.
3. The Court of Arches has recently had occasion to consider the proper approach of consistory courts where a petitioner seeks a faculty for something which falls outside the Churchyard Regulations: *Re St Giles, Exhall* [2021] EACC 1. In consequence of the statutory deeming provision in section 14A of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018, this decision is to be treated as if it were also one of the Chancery Court of York. It is therefore binding on dioceses of the Northern Province, of which Leeds is one.
4. The position is clearly stated in paragraph 11.8 of the judgment of the Court of Arches:

We consider that the right approach is the merits-based one. Clearly, any Regulations in place for the parish or diocese concerned will be part of a matrix of relevant considerations, but we do not think that consideration of a faculty petition should start with a presumption against allowing a memorial outside the parameters of the Regulations, for the reasons articulated in the first instance judgments cited in paragraphs 11.5 and 11.6 above.
5. The merits-based approach advocated by the Court of Arches coincides with the manner in which petitions of this type have hitherto been determined in this diocese: see generally, *Re St John the Baptist, Adel* [2016] ECC Lee 8.
6. In order to carry out a merits-based analysis, I invited submissions from the incumbent, the PCC and the DAC, whose views broadly coincided. It was observed that the churchyard in general, and the area surrounding the Hoyle grave in particular, contained many examples of graves with kerbs. Indeed they appear to be the norm, rather than the exception. The PCC did not raise any concerns with regard to grass mowing or other churchyard maintenance issues as reasons why kerbs should be discouraged. The kerbs would not look out of place and were generally considered to be unobjectionable.
7. In all the circumstances, the merits point towards the grant of a faculty. I emphasise that this is a fact-specific determination and should not be interpreted as creating any form of precedent for the parish of All Saints, Darton or more widely within the diocese. I also endorse

the observation of Lisa McIntyre, secretary to the DAC, that the incumbent and PCC might wish to consider introducing bespoke churchyard regulations, for which they will need to petition for a faculty setting out their reasons and attaching a detailed draft.

8. I therefore direct that a faculty pass the seal. The kerbs are not to be introduced into the churchyard until the costs of these proceedings have been settled by the petitioner.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Leeds

26 October 2021