

NEUTRAL CITATION NUMBER: [2017] ECC ROC 9  
IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: ST PETER BREDHURST SOUTH GILLINGHAM

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J U D G M E N T

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1. The parish church of St Peter Bredhurst, South Gillingham, Kent, is a 12<sup>th</sup> century Grade II listed church. Like many churches of similar age, it has a churchyard which, doubtless, has been in use as a burial ground for centuries. Unfortunately problems have arisen over its use or, to be more accurate, its abuse.
2. By a petition presented on 27<sup>th</sup> March 2017, the petitioners, the Reverend Brian Senior, Team Rector, Mrs Wendy Keast, Churchwarden, and Mr Ronald Murray, Deputy Churchwarden, have applied for a faculty to enable them: "to remove items from graves in the churchyard (of St Peter Bredhurst) as noted in the Statement of Need that do not comply with the Churchyard Regulations 1981."
3. Having reviewed the papers, and noting that there were objections to what was being asked for, but that no one had sought to become a formal party opponent, I indicated that I was prepared to deal with this petition on the basis of written submissions provided that there was agreement in writing from the petitioners to my adopting such a course. I understand that such written agreement has been forthcoming. Having reconsidered the matter, I am of the view that it is expedient and appropriate to deal with the petition in this way, and I am satisfied that this is the proper course to adopt. In saying this, I take into account that with no formal party opponent there can be no cross examination of witnesses, and so credibility is not in issue. Furthermore, there are, in my judgment, no other issues of public interest that might make a full hearing appropriate.
4. The Statement of Need accompanying the petition sets out succinctly the problems encountered by the PCC, stating as it does: "Over a long period there has been a growing tendency among mourners to ignore the Diocese of Rochester Churchyard Regulations 1981." Despite there being copies of the Regulations on display on the churchyard notice board, and a summary

having been given to mourners prior to interment, items such as figurine gnomes, garden gnomes, figurine angels, cupids, balloons, and solar lamps etc have been deposited on graves, with rose bushes and other shrubs and the like being planted on graves, and thereafter not infrequently left unattended. Not surprisingly, those who have complied with the Regulations have complained, commenting, inter alia, on the apparent lack of respect for the churchyard.

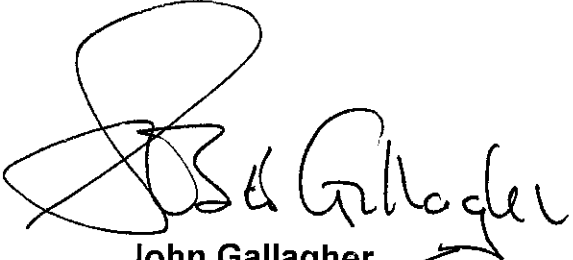
5. Informal methods have failed to resolve the situation, and I note that on more than one grave a pro-forma note has been left, requesting that items should not be removed, and stating that; "The Press/News have been notified." I have to say that I regard this as a concerted and bare-faced attempt to impose improper pressure on the PCC, so as to allow the Regulations, and indeed the law to be, or to continue to be, flouted. The behaviour shown is reprehensible, and greatly to be regretted.
6. At a meeting of the PCC on 19<sup>th</sup> July 2016, the problems raised were discussed, and agreement reached that action was needed to ensure compliance with the Regulations, with it being noted that since the items complained of had not been removed voluntarily, a faculty would be required. At a further meeting of the PCC on 13<sup>th</sup> March 2017, those attending, being 11 in number, voted unanimously in favour of petitioning: "for a faculty to remove unauthorised items from the graveyard...and from the Gardens of Remembrance..."
7. The DAC, through their Notification of Advice dated 26<sup>th</sup> April 2017, recommended the proposals for approval by this Court. The tenor of the DAC's advice can perhaps be best gauged by the rider that was added to the effect that: "The Committee queried whether the Chancellor would be able to approve a mechanism to allow for the removal by the parish of items which are not permitted under the Churchyard Regulations that may be placed on graves in the future, to avoid the need for further faculty petitions." In a letter dated 26<sup>th</sup> April 2017, the DAC Secretary, Mrs Anderson, wrote: "The Committee strongly advised the parish to ensure that families signed an agreement before a funeral took place, agreeing to comply with the Churchyard Regulations, with a copy retained by the family and a copy retained by the PCC."
8. The Public Notice has produced objections, but, as indicated above, no formal parties opponent. However, I do have a bundle

of letters of objection before me, which I have read, and have taken into account. Whilst I appreciate that no one can be compelled to become a formal party opponent, the fact is that without such a course being taken by an objector, I have no means of having the objectors' evidence heard on oath or tested in cross-examination. I note that there is reference to a prayer walk, for which no faculty has been obtained. I appreciate feelings in this regard, but the fact is that one breach of the faculty jurisdiction does not justify another; in the same way as a motorist stopped for speeding cannot as a defence point out that another was driving faster than he was.

9. Ms Louise Ballard, in her letter dated 9<sup>th</sup> April 2017, states that: "The current Rochester Diocese regulations have a total ban on artificial flowers. However I am aware that many other Dioceses have updated their regulations to allow for such items, as well as a limited number of toys and other objects on the graves of babies and children." Very much the same sentiments are expressed in the letter of the same date by Ms Wendy Bonas, and by Mr Cross in his letter of 27<sup>th</sup> March 2017, whilst Mr Bright in his letter of 14<sup>th</sup> April 2017 wants to preserve the ornaments and plants on his late wife's grave because they came from Cyprus, her country of origin. There are a number of other letters, from which I do not propose to quote, save from one, that being from Mrs A. Tutt, and dated 20<sup>th</sup> April 2017. Mrs Tutt says that she feels that: "the whole situation has arisen because a few bigoted people decided to enforce the rules and regulations of the churchyard to the nth degree...." She goes on to say in her letter: "I would say that surely everyone is entitled to mourn in there (sic) own way...." With the greatest of respect I have to disagree with such a sentiment. The issue before me is not whether the Regulations are outmoded, but whether they should be applied.
10. Rules and regulations are in force because the churchyard is subject to the faculty jurisdiction. As a matter of logic and common sense, since there are regulations in force, it would be manifestly absurd to have them broken as each person deems fit. Quite apart from that, to permit such breaches would be wholly unfair to the majority who are content to abide by the regulations in force. Anyone who wants to erect a monument, or to deposit items, on a grave, outside the Regulations can, and should, apply to the Consistory Court for a faculty to allow for such. That is the proper procedure. In my judgment it is not proper for a person to take the law into his own hands, and then cry "foul" when action is taken against him.

11. In **Re St Mary, Roughton 2017 ECC Nor 1** Chancellor Arlow, correctly, stated; “There are limitations on what is permissible in a churchyard for good reason. Incumbents are but temporary custodians of the land which has served and will serve for centuries the parish to which it belongs as a place of peaceful reflection and prayer. Responsibility for the care and maintenance rests with the PCC.”
12. Of still greater importance and relevance, in **Re St Peter, Bratton Fleming 2016 ECC Exe 2**, albeit where the facts were somewhat different, Chancellor McFarlane pointed out that it was of central importance that the faculty jurisdiction operated in a climate in which the rule of law was recognised and respected. In this context, no one was above the law. The Regulations have the force of law.
13. What I have quoted reinforces what I have said, in paragraph 10 above, about the proper procedure to be adopted if anyone wishes to erect a memorial etc outside the Regulations. It is harsh in the extreme to criticise the PCC for trying to ensure that the Regulations are adhered to, and a level playing field provided for all.
14. The petitioners, in my judgment, are correctly and properly trying to apply the law. They are to be commended for this. I note the response to the objections, and it is clear that the PCC is not unsympathetic to the pastoral issues involved.
15. I have no hesitation at all in accepting the evidence of the petitioners. I further accept that the works sought to be carried out are required and are appropriate.
16. In the premises, I direct that that a faculty is to issue as sought, but with the condition that in future, the parish ensure that an agreement is signed before each funeral takes place, whereby the family concerned agree to comply with the Churchyard Regulations, with one copy being retained by the family, and another by the PCC. For the avoidance of doubt, I direct that the faculty authorises both the removal of items currently on graves which are not permitted under the Churchyard Regulations, and any such items as may be placed on or around graves in the future.

17. I further direct that the petitioners do pay the Court costs, including correspondence fees for the Registrar, and expenses incurred by the Court.

A handwritten signature in black ink, appearing to read "John Gallagher". The signature is stylized with large, overlapping loops and a long horizontal stroke at the end.

**John Gallagher**  
**Chancellor**  
**11th October 2017**