

Memorials in Churchyards General Note for Applicants and Parishes

From time to time, an application to erect a particular memorial or gravestone is not approved by the parish priest. It is then open to those wanting the memorial to apply to the Chancellor for a faculty (i.e. permission) to erect it. If granted, it will then be lawful to have the memorial erected, but not otherwise.

This Note is intended to assist applicants, parish clergy, churchwardens, Parochial Church Council members and others to understand the legal position in regard to memorials in churchyards and in particular the function of Diocesan Regulations for Churchyards.

Right of burial

Where a church has a churchyard that is not full or closed for burials by an Order in Council, then certain individuals have a right to be buried there. Those persons are parishioners, those who have their names on the electoral roll of the parish (which includes worshippers not living within the parish), and any person who dies within the parish, even if they have no other connection with the locality.

In addition, subject to general guidance from the PCC, the parish priest **may** allow other persons to be buried there (e.g. former residents or relatives of parishioners). In each case the parish priest may direct where the burial is to be, unless there has been earlier formal approval from the Chancellor, reserving a particular grave space.

Memorials

The right of burial does NOT give an automatic right to erect a memorial or gravestone. Permission is always required.

In principle, permission needs to be obtained from the Chancellor, which would require every application to be made by petition and for the statutory fees to be paid.

It has been recognised for many years however that such a procedure is unnecessary, expensive, and unduly formal in the vast majority of cases, because most applications are uncontroversial and do not give rise to any problems. The general practice therefore in every diocese is to provide Churchyard Regulations – perhaps under a different name – which allow an informal procedure to be used to grant the necessary permission. A written application is made **to the parish priest** that sets out details of the proposed design, size, material and the wording of the inscription. If those features are within the Regulations, the parish priest may give permission. No fee is payable for the grant of permission by the parish priest.

If any of those features are not within the Regulations, the parish priest **has no authority** to give permission.

If for some reason, it appears that strict application of the Regulations is inappropriate, the parish priest may seek guidance from the Archdeacon, who may allow some departure from the strict letter of the Regulations.

If the parish priest declines to approve the proposal because it does not come within the Regulations, the family must either modify their request, or seek formal approval from the Chancellor. That course is **not an appeal** from the decision of the parish priest. It arises from the fact the proposal is not within the Churchyard Regulations and so is not within the authority of the parish priest to approve.

Churchyard Regulations

The purpose of the Regulations (to provide an informal method for granting permission) can only work if they are wide enough to cover what most families are likely to want by way of a memorial. However they must also fulfil **the following aims:-**

- to reflect good practice and show what is considered acceptable and appropriate as a memorial in a churchyard
- to safeguard the appearance of the church and churchyard, and so for instance the permitted materials are usually local stone rather than granite and marble,
- to prevent upset to the families of other people whose graves are near, by restricting designs that may be out of keeping or unsuitable,
- to make maintenance of the churchyard, which is the responsibility of the PCC, easy; therefore kerbs are not permitted or other similar markers apart from the headstone and
- to ensure that the memorials are not a source of danger.

Applying for a faculty

Where permission is sought from the Chancellor for a memorial that is not within the Regulations, then applicants must understand that this procedure is a formal legal one, with a number of stages:

- a) lodging the petition (request for permission) involves payment of a fee that is approved by Parliament
- b) details of the design as a whole are submitted to the Diocesan Advisory Committee (that has responsibility for considering applications for changes to churches or churchyards)
- c) a public notice is put up at the church, stating what is sought, and giving an opportunity for comments or objections to be made in writing by a given date

- d) if an objection is made, then the objector is given a choice whether to become a party to the proceedings, or simply let the Chancellor consider the written comments
- e) the Chancellor will consider any reasons put forward in support of the proposal, any objections, and the comments of the DAC. He will consider in particular the reasons for wanting something outside the Regulations.
- f) If all concerned agree, he may give a decision in writing based on the documents submitted. Usually he will arrange a date (usually a Saturday morning) when those concerned can speak to him personally at the church, ask questions of others involved, and he can view the churchyard. He will then give his decision in writing, so that everyone clearly understands the reasons.
- g) ***Any such hearing will involve the payment of further fees for the preparation for the hearing and attendance of the Diocesan Registrar. Those who seek permission from the Chancellor, must understand that approval may not be given. The fees that are paid at any stage are not a guarantee that permission will be given.***
- h) It is the practice to require **the applicants**, who are asking for consent for something they want, to **pay the fees beforehand**. The Chancellor does not usually require the applicants to pay the statutory fees payable to him, but reserves the right to do so in a given case.

If you read this Note carefully, you will understand the procedure for seeking permission for a memorial in a churchyard, and what will happen if you ask the Chancellor for permission.

John W. Bullimore
Chancellor

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