

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

TUTBURY: ST. MARY THE VIRGIN

JUDGMENT

- 1) The church of St Mary the Virgin in Tutbury has a Grade I listing. Some elements of the 1089 priory church survive although the bulk of the current church building dates from later additions and restorations. The churchyard of St Mary's was closed for burials in 1879 and is now maintained by Tutbury Parish Council.
- 2) In 1920 a war memorial to those killed in the First World War was erected approximately 9 metres from the south wall of the church. It was designed by Bodley and Hare and its construction and installation were funded by public subscription. In recent years the condition of that memorial had deteriorated. The Tutbury War Memorials Preservation Committee ("TWMPC") was formed with the objective of preserving this and the other twelve war memorials of various kinds in Tutbury. The restoration of the churchyard memorial to a sound condition has been a major part of the work of the committee. In December 2014 I authorised the grant of a faculty permitting restoration work. The faculty was amended in March 2015. The restoration and repair work has been completed and the Bishop of Stafford led a service of rededication on 1st July 2016.
- 3) The Petitioners are Revd Ian Whitehead, the Priest in Charge of St. Mary's, and Jocelyn Hickman, a churchwarden, together with Mr. Nuth, the chairman of TWMPC. They petition with the support of the Parochial Church Council for a faculty authorising the installation of two wreath holders. These take the form of metal post and rail frames and will be positioned a few yards from the memorial. Their purpose is to hold the wreaths which it is intended will be removed from the memorial shortly after Remembrance Sunday and which will be attached to the holders until 1st October of the following year. In 2014 seventeen wreaths were laid on the memorial and in 2015 there were eighteen.

The Procedural History.

- 4) Historic England and Tutbury Parish Council have objected to the petition and the former has become a party opponent. There has been no other response to the public notice. The Petitioners and Historic England have agreed to determination on the basis of written representations and I satisfied that is an expedient course. I have considered the detailed submissions of the Petitioners, Historic England, and the Parish Council.
- 5) The Diocesan Advisory Committee has recommended approval of the Petition and I will revert below to the details of that Committee's advice.
- 6) The Local Planning Authority has been consulted. At first blush one might have thought that planning permission might be needed for these works. However, the Council has indicated that it will not regard this as necessary if a faculty is granted and has stated it is content to leave matters in the hands of this Court without expressing any further views.

The Need for two Wreath Holders.

- 7) The longstanding policy of the incumbents and of the Parochial Church Council at St. Mary's has been to allow wreaths to remain in position on the memorial from Remembrance Sunday until 1st October of the following year. Until 2014 the wreaths remained in position on the memorial itself for that period. Since then the expedient of a temporary wreath holders has been used (and I will not dwell on the probable illegality of this expedient for which it appears no faculty was sought or obtained).
- 8) The purpose of installing two wreath holders is to enable the wreaths to remain on display in close proximity to the memorial for the desired period without them remaining on the memorial itself. The Petitioners point out that a number of problems arise if the wreaths are left on the memorial. First, there is the risk of damage to or staining of the memorial either from the wreaths themselves or from the growth of moss and lichen. The Petitioners point out that the guidance from the War Memorials Trust warns of the danger of staining if wreaths are left for a long time on a memorial. Second, the wreaths can be moved by the action of wind and weather and so become disorganised and untidy. Third, the wreaths

can collect water and litter and so become unsightly. The Petitioners say that the installation of two wreath holders would remove these difficulties and would keep the wreaths in a sound condition near the memorial.

- 9) The Petitioners have considered the potential alternative course of moving the wreaths into the church building and retaining them there. It is pointed out that St. Mary's is only open on Wednesday and Saturday mornings and on Sundays so that to move the wreaths into there would reduce the public visibility of the wreaths as well as separating them from the memorial. In addition the only appropriate space would be in the Lady Chapel and for the wreaths to be positioned there would require them to be laid on top of each other (or for a substantial area of that chapel to be occupied by wreaths).

The Design and Location of the Wreath Holders.

- 10) The Diocesan Advisory Committee raised concerns about the design originally proposed. A revised design was put forward after consultation between TWMPCC and the Archdeacon of Stoke. It remains a metal post and rail structure. The Petitioners point out that to fulfil its function of holding a number of wreaths in place for many months the structure needs to be robust. They explain that care has been taken to ensure that the wreath holders are not readily seen from the church building. They will, nonetheless, be visible to those at the memorial and to some of those crossing the churchyard albeit for most of the year they will be covered in the wreaths placed on them.

The Parish Council's Concerns.

- 11) The Parish Council originally put forward a number of concerns but most of those have now fallen away.
- 12) At one stage the Council was concerned about the cost of maintaining the wreath holders. However, it has now been accepted that although the Parish Council has the statutory responsibility for maintaining the churchyard it will not be responsible for the maintenance of the wreath holders. It has been agreed that to the extent that maintenance of them is necessary the burden of this will fall on the Parochial Church Council. Moreover, TWMPCC has confirmed that it will hand over to that Council the sum of £1,000 to meet future maintenance costs.

- 13) The Parish Council formerly raised concerns that young people (and perhaps others) would congregate around the wreath holders and/or climb on them with a risk of injury and anti-social behaviour. This concern is not persisted in. It would in any event have had little force because, as the Petitioners have pointed out, there are now a number of benches in the vicinity together with a replica of the medieval village stocks. Those inclined to tomfoolery already have ample scope for this and the wreath holders would be unlikely to add materially to these risks.
- 14) The Parish Council does persist in its concern that there is no need for the wreaths to be in position for as long as they currently are. In essence the Parish Council contends that it is either unnecessary or inappropriate for wreaths to be allowed to remain in place for 10½ months. If a different policy were to be adopted and if the wreaths were to be removed sooner after Remembrance Sunday the problems flowing from the wreaths being left on the memorial for that length of time would disappear. In those circumstances there would be no need for any wreath holders.
- 15) In addition the Parish Council has said that it does not regard the structure proposed as being in keeping with the appearance of this listed church. The Council has not said in terms that it is persisting in this line of objection. However, this echoes the position of Historic England and I will address it in that context.

The Position of Historic England.

- 16) Historic England has no objection to the principle of a structure to hold wreaths. It does say that the currently proposed structure is not of sufficient aesthetic merit to be in this location. Historic England emphasises the Grade I listing of St. Mary's. It says that the proposed structure will be of undue prominence in the curtilage of the Grade I church. Given that prominence the proposed structure is, Historic England says, overly functional in appearance and of insufficient artistic merit. At one time Historic England was prepared to accept that the wreath holders should remain in place while holding wreaths provided that they were demountable and would be removed when the wreaths were removed. However, it appears that at that stage Historic England did not appreciate that this would involve the structure being in place for 10½ months. As I understand its submissions Historic England would now object even if the currently proposed

wreath holders were demountable. Historic England contends that given the sensitivity of the setting any wreath holder should be a bespoke piece of commemorative art designed to hold wreaths securely but of artistic merit in its own right.

- 17) In response to Historic England's concerns the Petitioners say that they have taken care with the positioning of the wreath holders and that the structure will not be readily visible from the church. They also say that any structure sufficient to hold a substantial number of wreaths in place securely for 10½ months in all weathers will need to be robust. In essence they say that there is little practical alternative to an arrangement of posts and rails.

The Advice of the Diocesan Advisory Committee.

- 18) The Diocesan Advisory Committee has recommended approval of the Petition and has certified that the proposed works will not affect the special character of this church. It is apparent that the Committee had a degree of reservation about this matter. I have already said that it did not support the design originally proposed and that its recommendation relates solely to the revised design. It would not be accurate to say that the Committee was ambivalent in its recommendation but I note that its reasoning was expressed in the following guarded terms "*members were not entirely convinced that the proposed design was the most appropriate for the curtilage of a grade 1 listed building but accepted that, for practical reasons, the PCC required two wreath holders and that the applicants had tried to develop the design as best they could with limited resources*". The Committee went on to say that it was "*conscious that much time and effort had been expended by the Tutbury War Memorials Preservation Committee in conserving the War Memorial to the benefit of both the memorial and the setting of the church.*" I will have to revert in due course to the interrelation between the appearance of the wreath holders and the work done on conserving the memorial. In my judgement the Committee was right to set the issue of whether the wreath holders are of an appropriate standard in the context of the renovation of the memorial and the impact of that renovation on the churchyard.

The Approach to be taken.

- 19) In *Duffield: St Alkmund* [2013] 2 WLR 854 and in *Re Peshurst: St John the Baptist* (2015) 17 Ecc L J 393 the Court of Arches explained the factors which are to be taken into account before a faculty should be granted for works affecting a listed church. The works proposed here do not involve an alteration to the structure of the church itself and the Diocesan Advisory Committee has set out its view that there will not be an effect on the special character of this church. An assessment with which I agree. Accordingly, the *Duffield* guidelines are not strictly applicable. Nonetheless, the *Duffield* and *Peshurst* decisions make it clear that consistory courts need to take careful account of the fact of the listing of a church. This is because the listing shows the special importance and significance of the church. Care must be taken when considering works which might impact on such a church even if there is no adverse impact on that special character. The church of St. Mary the Virgin has a Grade I listing indicating its national significance. The wreath holders are to be installed in the curtilage of that church. This means that although the Diocesan Advisory Committee has advised that the proposed works will not harm that special character I must assess the compatibility of what is proposed with a church of this significance.
- 20) Even when considerations arising from the listing of the church are put aside I have to remember the purpose of the churchyard. This is to provide an appropriate setting for the church building and also to be a seemly place for the remains of those interred there. Alterations which are unsightly and which detract either from the appearance of the church or the seemliness of the churchyard as a resting place for human remains would not be appropriate even when the church in question is not listed.
- 21) Thus a real need has to be shown for alterations to be permitted in the curtilage of any church; particular care is needed when considering alterations proposed in the curtilage of a listed church; even when a need for works of a particular kind has been established the Court must scrutinise carefully what is proposed to ensure that it is of a quality appropriate for the particular location.

The Application of that Approach here.

- 22) The need for two wreath holders derives from the policy of allowing wreaths to remain in place from Remembrance Sunday until 1st October of the following year. If the wreaths were removed on, say, 1st December of the year in which they were laid then the question of whether any wreath holders were need would be unlikely to arise.
- 23) I am satisfied that the existing policy adopted at St. Mary's is a legitimate one. It is the arrangement which has been followed for a number of years at this church. It is clearly regarded as being the approach which best meets the pastoral needs of those laying wreaths (and those whose interests are represented by the organisations who lay wreaths) and which best reflects the village's respect for its fallen heroes. Although this is not a common approach let alone one generally adopted it is by no means confined to Tutbury. The Petitioners have been able to give examples of a number of local churches and a civic war memorial where a similar policy applies. I accept that proper consideration has been given to the question of whether a different approach would be appropriate. Thus moving the wreaths into the church after a period of time has been considered. I am satisfied that this alternative has been rejected for legitimate and understandable reasons.
- 24) The objection of Tutbury Parish Council to the Petition is on the footing that there is no need for the wreaths to remain in place for so long and potentially that it is inappropriate for them to be in position for so long. This is an issue on which opinions will differ. However, I have already indicated that the approach adopted currently by the Parochial Church Council is a legitimate one (amongst a number of different appropriate courses which could be adopted). The Parish Council's argument that it is unnecessary for the wreaths to be in place for so long amounts to a contention that the incumbent and Parochial Church Council should change their approach and should not allow wreaths to remain in place for the time they do. The incumbent and Parochial Church Council are best-placed to judge the particular pastoral needs of this community. I must give very considerable weight to their assessment of those needs. Where there is a difference of view as to what is necessary and appropriate in terms of meeting pastoral needs and in terms of commemorating the fallen it would not be appropriate for me to overrule

the judgement of the incumbent and the church Council even where that judgement is contrary to the view of the elected secular Parish Council. It follows that I must proceed on the basis that the current policy of allowing the wreaths to remain in place for 10½ months is an appropriate one and one which will continue.

25) If the wreaths are to remain in place for several months then I am satisfied that the provision of two wreath holders is a sensible and appropriate arrangement. I am satisfied that leaving wreaths in position on the memorial itself runs the risk of damage to the structure of the memorial from staining or from the build-up of moss and lichen. I also accept that the use of two wreath holders will enable wreaths to be arranged in a seemly and tidy manner and without an accumulation of litter and debris. This is more appropriate and more fitting in this setting than allowing the wreaths to be blown around by the wind or to become receptacles for litter of various kinds. A disorganised collection of wreaths lying in the general vicinity of the memorial but having been blown about and having items of litter in them would give an appearance of untidiness and neglect compatible neither with the need for seemliness in the churchyard and around the memorial nor with the fact that the churchyard is the setting for a Grade I church. In this regard it is noteworthy that Historic England accepted that in principle the use of two wreath holders would be appropriate.

26) The real point of difficulty in this case is whether the particular wreath holders proposed and the location proposed are appropriate. This is where Historic England takes issue with the Petitioners. I have to have regard to the fact that the wreath holders will stand in the curtilage of a Grade I listed church. Even if the church were not listed the proposal would be for two wreath holders near a war memorial and in the churchyard. It follows that care must be taken to ensure that what is proposed is of a standard appropriate in that setting.

27) I am entirely satisfied that the Petitioners have taken very great care in relation to the design of the proposed wreath holders and in relation to the location proposed. It is apparent that TWMPCC and Mr. Nuth, in particular, have put a great deal of thought and work into this proposal. It is also clear that the Petitioners have come to reasoned conclusions as to why the design and the location are

appropriate. Those are relevant considerations but they cannot be conclusive. If, considered objectively and in the light of specialist advice, the design or location were found not to be appropriate for this sensitive setting then the contentions that this is the best that can be afforded or that those involved have not been able to come up with anything better would not justify approval.

28) In assessing the appropriateness of what is proposed I have to give considerable weight to the views of Historic England and of the Diocesan Advisory Committee. Unfortunately, those bodies have reached different conclusions. The former is firmly opposed to the current design. The latter has some real reservations but has concluded that what is proposed is acceptable in these particular circumstances. It is noteworthy that there has been input into the revised design from the Archdeacon on behalf of the Diocesan Advisory Committee.

29) I have concluded that the Diocesan Advisory Committee is correct and that what is proposed is appropriate. The crucial factor in leading me to that conclusion is the context of this proposal. What is proposed is not properly to be seen in isolation. This is not simply an application to introduce a new structure into the churchyard divorced from other works. If this had been such an application there would have been very real force in Historic England's contention that there should be a bespoke design resulting in a structure with artistic merit of its own. That would be fitting if this were to be seen as an isolated application to introduce a structure into the curtilage of a Grade I church. I am satisfied, however, that such is not a true analysis of the context here. The proposal is not to be seen in isolation but is in reality part of the process of improving the condition of the memorial and that part of the churchyard which is near it. The structure of the memorial has been restored and its appearance improved. The proposal to introduce wreath holders is a continuation of that process. Addressing the question of what is to be done about wreaths laid on the memorial is part of the process of the restoration and preservation of the memorial. I have already explained that the course of simply removing the wreaths from the vicinity of the memorial is not available here. Rather, I should say, that I am satisfied that it is appropriate for the wreaths to remain in the vicinity of the memorial for an extended period. The consequence is that wreath holders are needed unless the

wreaths are to remain lying on the memorial itself. I am satisfied that the latter course is undesirable for the reasons set out above. This means that the introduction of wreath holders is a proper measure in the process of improving and restoring the memorial. This context is of importance because it justifies the approach of the Diocesan Advisory Committee in saying that account must be taken of the resources available. A person or body seeking to introduce a new structure in isolation would not be able to contend that something less than ideal should be permitted because of the limitation of resources. A person or body engaged in works which are part of a process of improvement is in a different position. Such a person or body is entitled to point out that the refusal of an improvement which can be afforded might result in no improvement at all rather than in the improvement which could be achieved with unlimited resources. Even when account is properly taken of resources and context an installation in the curtilage of a Grade I church must be of an appropriate standard but it is not necessary always for the Court to say that what is required is to be of the standard which could be achieved with unlimited resources.

30) I am satisfied that what is proposed here is of an appropriate quality. If it were not it would not be permissible even in circumstances where account can be taken of the available resources. The wreath holders may very well not be of the high artistic quality which would result from commissioning a top flight designer and saying to such a designer that money is no object. They are nonetheless of an appropriate standard. That is sufficient to warrant approval in circumstances where the proposed works are part of a continuing programme of improvement. The appearance of the churchyard and in particular of the area around the memorial will be improved by the introduction of the wreath holders because the wreaths will be kept in an orderly manner. The appearance might not be the same as it would be if there were a bespoke piece of art holding the wreaths but it will be better than if there were to be no wreath holders at all. Putting the same thought in other words what is proposed is an improvement. It may not be as great an improvement as Historic England might have wished but it is an improvement nonetheless and as such is to be welcomed.

31) It follows that the Petition is granted and a faculty shall issue in the terms sought.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
19th January 2017