

Neutral Citation Number: [2021] ECC Swk 4

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF THE CHURCHYARD OF ST JOHN'S CHURCH, ELTHAM

AND IN THE MATTER OF A PETITION BY JUDITH BRAND

JUDGMENT

Introduction

1. This is the petition of Miss Judith Brand who seeks a faculty for reservation of cremation plot in the churchyard of St John's Church, Eltham and in respect of associated matters.

The churchyard

2. There has been a church at Eltham since at least the late 12th century but the present building, by Bloomfield, dates from 1880. Surrounding the church, and extending north and west is an extensive churchyard. This is closed for burials. However, although no separate area has ever been set apart for the interment of cremated remains, there has been some limited interment of cremated remains. This has taken place in appropriate available spaces between graves.

The circumstances of this case

3. The remains of Miss Brand's paternal grandparents are both buried in the churchyard. In 1961, the ashes of her late father were interred there in a place near the west end of the church. A memorial stone measuring 18 inches by 12 inches marks the place.
4. Mr Brand was an active member of the congregation at St John's and Miss Brand attended Sunday school there; and Eltham Church of England Primary School. Mrs Brand attended the Baptist Church and latterly Miss Brand has done so but they have continued to support St John's. Until Mrs Brand's recent illness, Miss Brand would come with Mrs Brand three times a year to tend her father's grave. Mrs Brand died in July 2020. Her remains were cremated and her ashes were interred under the memorial stone.
5. In 1989, Miss Brand's mother was in correspondence with the then incumbent. He agreed that, in due time, the cremated remains of Mrs Brand and Miss Brand could be interred together with those of Mr Brand. In terms of memorialisation, there was only space on the existing stone for Mrs Brand to be commemorated, so as regards Miss Brand he agreed that there could be a further stone measuring 18 inches by 12 inches which could be placed in front of the stone commemorating Mr and Mrs Brand.
6. Miss Brand now seeks a faculty confirming these arrangements. In addition, the existing stone has weathered badly and she proposes to replace it with something of the same size but which will weather better.
7. There is currently no vicar of St John's but the PCC and Area Dean have both approved these arrangements.

Law

8. There is no objection to the interment of ashes in a closed churchyard (see paragraph 11 of Part 9 of *Legal Opinions concerning the Church of England*).
9. A parishioner has a right to be buried in the churchyard of his or her parish. However such a right only crystallises when the person in question dies (strictly speaking, it is a right which accrues to his or her estate) (see *In re West Pennard Churchyard*¹). It is a practice of long standing that both parishioners and non-parishioners may apply for a faculty to reserve a grave space; whether it be granted depends on the circumstances of the case (see *In re Sargent*² and *De Romana v Roberts*³).

Consideration

10. In this diocese, petitions to reserve grave spaces are infrequent and I am not aware that there has been a petition for a faculty for reservation of a cremation plot. However there is no reason, in principle, why such a petition should not be made, and it is my understanding that such petitions are made in other dioceses. I am not aware of a faculty having been granted for reservation of a cremation plot in a closed churchyard but it seems to me that, again, there is no objection in principle to the grant of such a faculty. If it is not a bar to the interment of cremated remains that the churchyard is closed (and it is not), it seems to me that there cannot be a bar to reserving a cremation plot in a closed churchyard.
11. Turning to the facts of this case, it seems to me that the present is an entirely appropriate case in which a right of reservation should be granted. In *In re Blagdon Cemetery*⁴, the Court of Arches said that family graves were to be encouraged as expressing family unity⁵. The Brand family have a long association with St John's Church, Eltham. The granting of the faculty will bring Miss Brand the certainty that the arrangements that she and her mother wished to see happen will in due course be carried into effect. I note that Mrs Brand died during the pandemic and Miss Brand has told me that her mother's last months were difficult. I hope that she will now be able to derive some comfort from knowing that she has brought about what her mother wished; and from visiting her parents' grave.

Details of the order

12. I direct that a faculty shall issue. The right under the faculty for the interment of Miss Brand's cremated remains is to be exercised within 50 years of the date of the order (or further order). This will ensure that there is no possibility of an unexercised faculty remaining extant for an indefinite period. The existing stone shall be replaced within 12 months of the date of the faculty or such further period as may be agreed. Details of the memorial stone to Miss Brand are to be approved by the incumbent in office at the time of installation of the stone. In accordance with the usual practice I shall ask Miss Brand to make a contribution of £100 to the funds of the PCC to assist with on-going maintenance of the churchyard.

PHILIP PETCHEY

Chancellor

24 May 2021

¹ [1992] 1 WLR 32 (Bath & Well Cons Ct).

² (1890) 15 PD 168 (Ct of Arches).

³ [1906] P 332 (London Cons Ct).

⁴ [2002] Fam 299 (Ct of Arches).

⁵ They may also make economical use of grave space but that is not a relevant matter in the present case.